



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Reference: Contract management in the Australian Public Service**

THURSDAY, 30 MARCH 2000

CANBERRA

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## JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Thursday, 30 March 2000

**Members:** Mr Charles (*Chairman*), Mr Cox (*Deputy Chair*), Senators Coonan, Faulkner, Gibson, Hogg, Murray and Watson and Mr Andrews, 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 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 9.35 a.m.**

**LEWIS, Mr Simon, Deputy Chief Executive, Office of Asset Sales & IT Outsourcing**

**SMITH, Mr Ross Sydney, Chief Executive, Office of Asset Sales & IT Outsourcing**

**WHITHEAR, Mr Rodney, Senior Director, IT Outsourcing, Office of Asset Sales & IT Outsourcing**

**YARRA, Mr David, Executive Director, Asset Sales, Office of Asset Sales & IT Outsourcing**

**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 for its inquiry into contract management in the Australian Public Service.

I declare open this public hearing of the Joint Committee of Public Accounts and Audit inquiring into contract management and the Australian Public Service. Today the JCPAA will take evidence from the Office of Asset Sales and IT Outsourcing, the Department of Transport and Regional Services, the Commonwealth Ombudsman, the Department of Family and Community Services, the Department of Foreign Affairs and Trade, the Department of Industry, Science and Resources and Centrelink.

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

I welcome representatives of the Office of Asset Sales and IT Outsourcing to today's hearing. We have received your submission, for which we thank you. It was quite comprehensive. Would you like to make a brief opening statement before we proceed to ask you questions?

**Mr Smith**—We do not want to make a formal statement this morning other than to say that we are very happy to be here to talk with you about something which we consider a very important subject.

**CHAIRMAN**—It goes without saying that you are right at the heart of what we are inquiring into to see if we can get a handle on best practice for contract management in the public arena. When you were talking about mechanisms for management accountability, you said:

In most cases, the contractor will need to provide a greater level of management information than that previously collected by the in-house organisation simply to support billing.

Can you expand on that a bit?

**Mr Yarra**—We are talking about the ITO now. The process of contracting out causes the agencies to require large amounts of information from the vendor to support their contract management to make sure they are getting their services delivered for the prices they are

paying. For example, agencies in our experience are requiring billing information broken down to quite a detailed level within the agency. The billing information that agencies have at hand allows them to measure costs at a divisional level or a subdivisional level within the agency. That is just a necessary product of the outsourcing contractual relationship.

**CHAIRMAN**—Are you implying that, at least for your organisation—I assume you cannot speak for everybody else—the results of outsourcing are producing a more accountable environment than would have been the case previously if the same tasks had been done in-house?

**Mr Yarra**—With respect to the agencies that have been subject to the outsourcing program, in my opinion, the process of outsourcing—that is, the process of drafting public tender documents, the process of modelling costs—has generated far more information than those agencies ever had before about the operations that are being outsourced. Once they are outsourced, they continue to have far more information than they ever had before and, in my view, they are far better able to account to parliament for their activities with that information than they have ever been able to before.

The other spin-off from the outsourcing process is that, at the end of the process, the people involved know their business far better than they ever knew it before, in a management sense. So the bottom line comment that I would make is: this process has put them in a position where, if they are required to, they can account at a far greater level of detail than they have ever been able to before—in terms of their costs, management decisions, deployment of resources, et cetera.

**CHAIRMAN**—Mr Yarra, would you agree that that view is counter to the general public perception that outsourcing has led to a decrease in public accountability?

**Mr Yarra**—I am aware of that view. That view, in my opinion, hops over the issue that we have not outsourced accountability. We have outsourced the provision of functions. The agencies remain accountable to the parliament. They cannot outsource that. They cannot contract out of that. The outsourcing process better equips them to meet their accountability obligations to parliament.

**Senator HOGG**—Are you saying that there is greater accountability now because of the information that has been gathered?

**Mr Yarra**—No, I am not saying that. I am saying that there is an increased capacity to account. The accountability has remained unchanged. Ten years ago—I am talking about IT—you could ask a series of questions of agencies about their IT operations that they could not answer, and they can now answer those questions, if you choose to ask them.

**Senator HOGG**—As time progresses, the knowledge and skill that people within the Public Service had previously to interpret the data that was being given to them may have dissipated because of the fact that that level of work is no longer available to them within their department. Will there be a decrease in accountability because they are either getting too much information



or information that they are unable to interpret because they do not have the skill levels to interpret the data?

**Mr Yarra**—Absolutely not. The level of information that they receive in their interface with a contractor is the information that they require to make the decisions about spending public money on IT. With that level of information, over time, they will understand the contractor's operations and the contractor will, in turn, understand where the Commonwealth or the agency is coming from. They would no longer need a detailed understanding of how to load a server or do those sorts of functions. They would be dealing with management level information which is the sort of information they need to make proper decisions. They do not need to have the level of detail that is in the brains of the people who leave the organisation to go and work for the outsourcer, or go somewhere else. There is a change in the way that the service is delivered. It is delivered via contract. It is just a delivery technique. There is a change in the skills that they need. But the information that they need to account for what they are doing is delivered, through the contracting arrangements, better, in my opinion, than it is through existing arrangements in-house.

**Senator HOGG**—What has this meant by way of changed training needs within that area at this stage? Has it meant significant changes or is it something that is always going to be at the margins?

**Mr Smith**—What is clear to us as we go through the outsourcing program is that the fundamental skill now is one of contract management and commercial acumen on the part of departments. What we do is arrange a contract which they have to manage for the next five, seven or nine years. So the shift changed from that detailed technical expertise because it is now with the outsourcer to being able to manage large contracts on a commercial basis.

We have recognised that there is a need for that. We have started a program internally. We have made reference to it in here. We now conduct contract management seminars. We have a contract management manual that we are now introducing and handing over at the time of implementation across into outsourcing. It is probably in some respects us jumping in to fill a vacuum, and agencies will need to take that ongoing responsibility themselves, either collectively or individually. In this transition phase, as we go through the program, we saw a gap. It is clear to us that key to fundamentally good outcomes and outsourcing is good commercial contract managers on the Commonwealth's side, and we are now stepping in to try to commence some sort of training and give them the sorts of materials they need to be able to do that process through the contract period.

**Senator HOGG**—What sorts of IT skills will those people who are assessing how the contract is going need to have, or is that not really a prerequisite? I am just trying to get an understanding of the flavour of what is emerging.

**Mr Smith**—I think it is important, Senator, that there is a cross-section of capability within the contract management teams. I think that commercial contract managers are going to be paramount—people who understand IT. Just to pick up on your earlier point, when these functions transfer to the private sector, the agencies are keeping a core competence. Not all of the IT capability is going across to the outsourcer. There is a core competence capability being

retained within agencies. Some of them are directly inside teams; some continue to stay in key executive positions to advise the executive of the agencies on how the contract should be managed and so on. I do think it needs a combination of skills—commercial contract managers as well as IT and financial people.

**Senator HOGG**—Is the volume of information that is coming back from the outsourcer causing an overload of information that is being provided to the officers of the department by which to assess the performance of the outsourcer and whether the Commonwealth is getting value for money? Whilst it might not be a concern at the early stages of the contract, will it become a concern later on down the track in the contract?

**Mr Smith**—Senator, I think it is fair to say that across outsourcing, in a sense, we are breaking new territory in the APS with large-scale outsourcing. There is a natural conservatism within agencies to require what we regard as more detail at this point than is necessary. I am sympathetic to that view, and I understand it. If I were in their shoes, I would probably do the same. But we are finding over time, and that goes not just to information in terms of what we have fed back to the agencies but the way in which their contracts are managed, that the obligations they are requiring people to fulfil are fairly onerous and fairly cautious at the outset. What you find, as they go through time, is that settles down. They get to understand at the broad level what is the key information that is really important to them.

**Senator HOGG**—So does this come down to a matter of risk management to a certain extent?

**Mr Smith**—Yes, absolutely. Understanding the risk is very important. But you can see, as you move from one fundamental system to another, that there is going to be a degree of learning what that transition is and what the new environment is all about. So they tend to be more cautious, in our view, than they need to be. We think that is appropriate because of the magnitude of the change. What we are seeing as contracts go forward in one and two years into this operation is that that is being pruned back and people are taking more informed judgments about what information is absolutely necessary.

**Senator HOGG**—But that will in no way inhibit the power of this committee or other committees of the parliament, whether they be Senate or House of Representatives, to scrutinise outsourcing as such.

**Mr Yarra**—Can I say that the reporting regimes that are put in place for the ITO contracts are determined by the agencies; that is, they write their requirements. They are writing their own requirements from scratch each time. They are not cookie cutting this thing. They are determining what they want to support their contract management function and, as Ross said, they are overshooting the mark early in the piece because they are being very cautious. Once they have that information, it is their information that allows them to make decisions about things, and that information should absolutely be used for the purpose of them accounting for what they are doing. There is no reason at all for them to be not willing to divulge what service levels they have required the vendor to deliver for the dollars that they have paid. In fact, they should state that up front. That should be one of the key things they should be able to address

and discuss in great detail, because they have demanded those service levels of the vendor and the vendor has struck a price which responds to that service level.

If they require a lower service level the agency are accountable for that service level, not the vendor. The agency are accountable for having picked that service level; the vendor is responsible to deliver at the price. So the agency are absolutely accountable for the quality of service that they have asked to be delivered for the dollars that they are prepared to pay, and that is the accountability transaction. They have paid these dollars out. Did they ask for the right quality of service? Are they getting the right quality of service? How do they know they are getting the right quality of service?

**CHAIRMAN**—Before we put this to bed, the Auditor-General has on a number of occasions expressed to this committee his concern at one of the issues that we are examining in this inquiry: the loss of corporate memory within the APS as we sell what are essentially commercial operations and as we outsource other more technical requirements, IT in particular. I have to say that in talking to ANAO yesterday they did tell us, as I recall, that they believe that the private sector has found that in outsourcing their IT, for instance, many companies have gone overboard and lost the in-house skills to be able to communicate effectively with the IT company that is under contract. I can recall years ago trying to explain to a consultant the information that we needed in order to do a whole processing system which included receiving an invoice from a client, accounting for that as work done and trying to update a cost to complete on a project contract. The individuals that I was dealing with, not having the corporate knowledge within the organisation that I held, had great difficulty in understanding how on earth to comply with those requirements.

What you are saying is in a sense the opposite of that. You believe that the APS are retaining the corporate memory and retaining the skills to evaluate the contractor and to evaluate whether or not they are getting the information that they need in order to manage their business properly or provide the service that they are required to by charter to the public.

**Mr Smith**—I will make an additional comment on that. I am not sure that we would say to you emphatically that the APS is retaining the skills. What we are saying I think is that it is essential to have the proper skills mix to be able to manage the outsourcing contracts. We are working with agencies early in our processes to get them to identify what the skill base is that they will need on an ongoing basis to manage these contracts. Those skills can come from within or without the service—I do not have a personal view about that. All we are trying to do is to work with agencies to get them to identify very early in it—our processes are usually in excess of 12 months—and to sit down and examine very carefully what skill base they will require after the contract is transferred back to them in an outsourcing environment. To the extent that those skills are available in a wide scale sense in the Public Service, I am not sure. All we are very keen to do is to make sure that they sit down and think about it, identify it early and do something about it before the contract is handed back to them.

**CHAIRMAN**—Can you share your personal view with us? You are allowed.

**Mr Smith**—I have been in this game a very long time and one of the things that has always been of concern to me is the need for good commercial project contract managers in the Public Service on a wide scale basis.

**CHAIRMAN**—It is just the same in the private sector.

**Mr Smith**—I think it is a fundamental issue for both sectors. Depending on the agency involved, there are some organisations—like Defence, for example—where project management is part of the way in which they do most of their business. That is one issue. However, there are other agencies which do not do much contracting. I make the point that these contracts are large, complex and commercially challenging to deal with. Therefore, agencies will need the proper skilled and experienced people to deal with them in the future.

**CHAIRMAN**—Just to be sure that we are getting value for money out of the contract itself, administering the contract is critical, isn't it? If you do not understand what it is that the contractor is doing and how it does it, then you are placed at a disadvantage commercially, aren't you?

**Mr Smith**—One cannot argue against your proposition, Mr Chairman.

**Senator HOGG**—What are you doing with the agencies to ensure that they keep up the skill levels of their people, so that some of them do not see these people as being surplus to their needs and lose the corporate memory that the chairman has just been talking about?

**Mr Smith**—It is an interesting issue for the Office of Asset Sales and IT Outsourcing because our responsibilities are to implement the IT outsourcing program. The ongoing management of the contracts is left with the agencies—and properly so, in my view.

**Senator HOGG**—I accept that.

**Mr Smith**—What we have done, recognising that we think we need to provide some leadership to agencies in this area—although at the outset of our program it was not contemplated that we would do so—is that we have, as I said earlier, developed a contract manager's manual. We are conducting contract management seminars with agencies and we are working with them to make sure that they identify and recruit early the key people involved. Beyond that, we believe that it becomes a matter for agency accountability and responsibility.

**Senator HOGG**—Outside your doing this in a benevolent, overarching way, there is no-one who has the deemed responsibility to do this other than the agencies themselves? There is no-one taking a broader perspective to ensure that the programs that you have put in place of your own volition are being taken up?

**Mr Smith**—In relation to the IT outsourcing program, no agency that I know of has a central responsibility to ensure—

**Senator HOGG**—But you seem to have identified a need.

**Mr Smith**—There is a need. I think there is a need with all large contracting. I do not think this is just an IT outsourcing issue. Having regard to all large-scale commercial contracts, be they long-term acquisition, service contracts or the like, the skill base is necessary inside agencies. In our case, because IT outsourcing is very new, not only in this country but worldwide, we are providing some leadership and guidance based on our experiences. We try to keep in touch with what is happening overseas.

**Mr COX**—The process of outsourcing IT has only been going for a few years. Have you got any experience yet with contracts completing and the reletting of them?

**Mr Smith**—Not within our program. Our first contract was placed about two years ago. It is not up for renewal for another three years.

**Mr COX**—So it will be some time before we have any idea whether individual agencies have lost their skill base to manage their contracts and it will be some time before we have any idea whether there are any problems associated with vendors, because of their experience in looking after agencies' requirements and their control of the process for so many years, being in a dominant position when tenders are relet?

**Mr Whithear**—I understand that the Australian National Audit Office's contract is up for renewal in the near future, so we might see something earlier than we would see from the transactions we have arranged.

**Mr Smith**—To answer your question, I have not seen any evidence of material skills lost in the first couple of years. I have seen evidence of what is a very typical characteristic of outsourcing worldwide in that these things take time to bring in and to get the arrangements running effectively. We have not gone anywhere near a renewal process and we have not yet developed far enough down that program. Theoretically, you are right: those issues will come into greater focus in three to five years time.

**Mr COX**—Are there any observations that you can share with us through what you have seen of international experience with the renewal process?

**Mr Smith**—In terms of whether the in-house operation has competitive advantage, there are many examples where outsourcers enter into long-term relationships. When I say long-term, it is 10 to 15 years. There are many examples also where those outsourcers are changed. It depends on the nature of the relationship and the effectiveness of the contract that has been in place in that time. I have seen as many arrangements that have been transferred as I have those that have been kept with the same supplier.

**Mr COX**—It was basically a government policy decision to outsource IT, I take it. Has there been a systematic process of testing outsourcing against continuing to perform those functions in-house in terms of cost?

**Mr Yarra**—Part of the outsourcing process, to simplify it, is that before going to market to get prices from bidders we go to the agencies to get their in-house pricing. We cost the in-house operation absolutely forensically. We just do it to the nth degree and to the point where we

really cause problems for the agencies because it is so detailed and it is such a lot of work. We do that before we go to market and we cost what they do today—whatever service is being delivered today is costed—and we cost what they plan to do in the next five years. Then we ask the vendor to put a price against exactly the same thing. It does not mean that the agencies have to ask for the same thing from the vendor—they can ask for improved services; but we ask for this baseline. When we get the prices in they come in in a structure and a form that can be overlaid directly on the agency's costing so that we can see where they stick out and where they do not stick out. There is the separate process of buying improved services or new services but they are always readily identifiable, hopefully.

**Mr COX**—What have you found in the comparison process in terms of relative costs?

**Mr Yarra**—Before I comment on that, I would say that the process of costing itself has been a major logistic challenge.

**CHAIRMAN**—I'll bet it has.

**Mr Yarra**—It has.

**CHAIRMAN**—How many agencies did you find that had time sheets?

**Mr Yarra**—None.

**CHAIRMAN**—Thank you.

**Mr Yarra**—We found no time sheets and no service levels. I am sorry; I should be a bit fairer. We find that it differs between different sized shops. The great big shops and very large operations do tend to monitor service levels, make resource based decisions based on service levels and try to turn up and turn down the tap on resources if they do not want to deliver a high and expensive service—that sort of thing. They are managing their resources. The smaller shops do not and quite reasonably. The shift over to outsourcing required them to move into a performance monitoring frame of mind—that is, when we put service levels to the market, there had to be service levels that we could demonstrate to the market were being delivered today by the agencies. In the cost modelling process, clearly we had to rely on the agencies to do the work for us and yet we had to make sure that the work was being done—we are doing it in groups—consistently across the agencies within the group and being done accurately. We have not done that as well in the earlier groups as we have done in later groups. We are getting better at it. That cost modelling, I think, is pretty defensible. It is really quite a good job as a measure and a yardstick against vendor prices when they come in.

**CHAIRMAN**—You would not mind if we asked the auditor to test that?

**Mr Yarra**—Not at all.

**Mr Smith**—The auditor is currently testing it now.

**CHAIRMAN**—Is he? Good.

**Mr COX**—What have you found?

**Mr Yarra**—What we found is a patchy experience. Where we are satisfied that the costs have been properly modelled, we have typically found that the private sector can deliver lower unit prices in most areas. There are many areas, of course, so it is hard to draw a generalisation across the board, but typically my expectation is that, if I went out with outsourcing now with rigorous cost modelling, with a good pricing schedule, I would expect the private sector to deliver that more cheaply.

**Mr COX**—Is a large part of that the absence of their having to pay the sorts of superannuation costs that the public sector do?

**Mr Yarra**—We take all of those sorts of things into account in the cost modelling. We adjust for those differences. We make all sorts of adjustments. We model the baseline costs, and then we model the cost of retendering down the track. We model the costs that are there in the private sector that are not there in the public sector, and we model the costs that are there in the public sector that are not there in the private sector. So we try and make it as defensibly fair as possible.

**Mr Whithear**—The remuneration of IT professionals by these outsourcers, at least in our estimation, tends to be greater than that that the APS pays.

As another general observation, you asked what we have found in the costing of these transactions: there is one general trend that I think applies to each of our transactions so far. If we look at IT expenditure within agencies over the past few years, we will see an upward curve as we shift expenditure towards more electronic service delivery methods, et cetera. At the point that outsourcing occurs, that seems to generate a change in direction, so we generate this downward pressure on pricing. The apparent threat of outsourcing appears to have some effect on at least the forecasting of IT expenditure in out years.

**Mr Smith**—I cannot let the opportunity go by without commenting on a couple of what I think are quite encouraging things happening in relation to this area. The fact that they have to define their scope of work for the next five years against which bidders have to bid forces them to sit down and work out what it is they actually do want. They have taken the opportunity to standardise on platforms and on hardware, so you have not got all sorts of different systems. So over the next two, three or five years, you will see a much more standardised, rational IT structure within the agencies. And that is very encouraging for me having come out of agencies where you have 25 disparate systems. The outsourcing actually brings that together, so there are some really good efficiency things that will come with this process over the duration of the contracts, in my view.

**Mr COX**—What was that major Defence process that I think happened in the mid-1980s where they tried to standardise their computing systems?

**Mr Smith**—It was a contract called DESINE.

**Mr COX**—Yes. That turned into a total disaster, as I remember it.

**Mr Smith**—Yes. You are talking about a very different beast in that. That was not an outsourcing arrangement. That was just to standardise on an IBM based platform.

**Mr Yarra**—Could I offer one personal view here? I did not know much about IT when I arrived on the scene. I have observed that there has been a precondition established to allow effective outsourcing to happen, and that took a while to research, but to a certain degree there has been a commoditisation in IT. There is a thing called the desktop, there is a thing called a CPU minute, there is a thing called a MIP—commoditisation. I am thinking back to the DESINE example. They were trying to standardise across platforms that were wildly different—the technologies were also wildly different—and it was just beyond them technically. But there has been a commoditisation, a standardisation, anyway. Outsourcing—we are only outsourcing infrastructure and services—has allowed those increasingly commoditised services and products to be sold for a price—outsource, unit pricing, et cetera. That feeds back, in my view, to the skills needed to manage this thing. I am not an IT person. At the end of 12 months, I was engaging at quite a strategic level with outsourcers on the services that they were proposing to deliver under contracts—to my surprise.

With one or two more years' exposure to this sort of stuff, I could competently manage an outsourcing contract. It is a bit about IT, but it is a lot about commercial skills and judgment, et cetera. The IT is no black box anymore. I still do not know what goes on in the black box, but there is the desktop, there is the help desk, there is the server; and they are standardised concepts now within the industry. I am personally aware of the need for the right mix of skills, but the IT bit does not figure hugely in the skill mix. It figures appropriately, but it is not the overwhelming skill you need. You need commercial skills, legal skills and management skills as well as IT.

**Mr COX**—We have been pursuing a couple of obsessions in the course of this inquiry and one of them is the committee's desire to have access by the Auditor-General to the records and the premises of vendors. Do you encourage agencies to put those sorts of conditions in contracts?

**Mr Smith**—We have made reference to that point in our submission, and it is a standard clause in our contract. In all contracts, be they for advisers appointed to our processes or for the outsourcing contracts, there is a standard clause which requires—this is not negotiable—access by the auditor to all records, to all people, and to premises at the contractor and subcontractor level. That applies to all contracts, all the key documents, any records, and that is not a matter that we are prepared to negotiate on. That is a mandatory clause in our contracts.

**Mr COX**—And all the agencies are adhering to that?

**Mr Smith**—We put the clause in the contract. The contract is signed off by OASITO and then handed to the agencies. The agencies get a contract with a clause in it which says the auditor has all rights to go into EDS or CSC or IBM for their records. We do a lot of contracting engagement of advisers, be it CS First Boston or ABN AMRO. There is a clause in all of our contracts which says that the ANAO has the right to come in at any time, talk to anybody and get any records whenever they like. And that is not a clause we are prepared to negotiate on.



**Mr Lewis**—As a matter of course they regularly do that. The Auditor-General reviews most of the asset sales conducted—certainly the high-profile asset sales—and his office gets access and follows that up with both the primes and subcontractors.

**Mr Smith**—That is a fundamental thing for us. We see that as the key channel for transparency to the parliament and we have never been prepared to compromise on that.

**Mr COX**—And the people who you are contracting with do not complain and say ‘Yes, we are quite happy to do that but it will cost you a lot of money’?

**Mr Smith**—No. We do not see any evidence of that. What they want is to understand what it means. That is fair, and we talk them through. They then go in this thing with a full understanding. We have not seen any evidence of people not wanting to do business with us because of it, nor have we seen a reduction in the competition because of it. I think it is now generally understood and generally accepted in the contracting that we do. You do not get a tender response which says, ‘We do not want to comply with this clause,’ and then we negotiate with them to comply. They simply accept the clause.

**Mr COX**—You wouldn’t like to run a seminar for Defence on that subject, would you?

**CHAIRMAN**—You don’t have to answer!

**Mr COX**—The other thing that we have been pursuing in some detail over the last couple of days is commercial-in-confidence and what gets released and what doesn’t. How do you handle that in your contracts?

**Mr Smith**—As with the days when we worked on the Defence contracts, we have the same commercial-in-confidence provisions that surround our documentation. Our view is that accountability to parliament is through the ANAO. That is the way we like to manage it, very strictly and very strongly. In terms of commercial-in-confidence information, that is accessible by the auditor at any time, in any reviews, or in any other process he likes to pursue.

**Mr COX**—What about parliamentary committees? If we as a committee asked for a particular contract, what commercial-in-confidence issues would that raise for you?

**Mr Smith**—You would seriously have to look at that on a case-by-case basis. In my view, the fact that we have had such quality and unconditional willingness to provide information over the last 20 years of this issue is because industry fundamentally believes that their information will be protected. I actually believe that. I have had many discussions with industry in several forums on that issue. There are occasions when information is requested by parliamentary organisations and that is an appropriate request. My personal view is that you need to protect the commercial position of the companies. Therefore, a process of dialogue between the contractor and the parliament might be necessary in terms of what can and cannot be released. This is a sensitive area and it is an area which you should be prepared to have a debate with us about. They are not prepared to have a debate with us about it on the Auditor-General’s side, but they will have a discussion with us on this because they are fundamentally concerned that their position might be compromised through whatever process if the information is disclosed.

**Mr COX**—In a recent inquiry we made a recommendation that your minister prepare some guidelines for parliamentary committees in handling commercial-in-confidence issues and bring them back to this committee for approval. We had a lawyer in front of us yesterday. We looked at what sorts of general propositions could be put into the relevant pieces of legislation that would give us some comfort that there would be both reasonable access for parliament and for the public—that would be on the same principles as for freedom of information—with proper safeguards for things that really would affect people’s commercial interests. Do you have any views on how that might be managed?

**Mr Smith**—To be honest, I have not actually thought that through. The FOI framework seems to me to be a reasonable one. It is certainly worth discussion because it is a tricky issue to run with on our side. To the extent that there could be some clarification on that, that would be helpful. I must admit that we have always relied very heavily on the fact that the Auditor-General can report back to parliament on areas of parliament he is concerned about. That is why we have been so emphatically insisting on access through the Auditor-General as perhaps an alternative solution to the problem.

**Mr Lewis**—It is not unusual for the Auditor-General to comment on contractual matters if the Auditor-General has formed a view that there is a deficiency in some respect that warrants a find in a recommendation in relation to the agency concerned. So there is some transparency there. The subsequent appearing before the JCPAA in relation to the resultant report that has been tabled in parliament by the Auditor-General provides a further forum for that matter to be discussed, if there is an issue arising from a contract which might be useful in terms of best practice.

**CHAIRMAN**—I am not aware in the Commonwealth jurisdiction of any agency or GBE even claiming blanket privilege with respect of commercial-in-confidence as has happened with a number of the states. Are you?

**Mr Smith**—No, I am not aware. I do think that some contractors would be quite prepared to release some of the information. My experience tells me that they would be. But they are very concerned about some of their critical commercial information which is somewhat protected by the principles of the FOI Act. In my view, the closer you get to the release of information that is fundamental to their competitive position, the more difficult it is going to be to get them to release the information. That is not to say that there should not be guidelines. Maybe that is a sensible way ahead—producing guidelines and bringing some clarification to the issue—because it is becoming increasingly focused as an issue and it is difficult for us to manage that from our side.

**Mr COX**—We had some evidence before us yesterday of some contractual arrangements which seem to conveniently limit access to information which might not really be commercial-in-confidence. It was really being left to the vendor to decide whether their information was commercial-in-confidence and likewise left to the Commonwealth to decide whether some of their information from their side was commercial-in-confidence, and it just seemed that some of these arrangements were altogether too convenient for words and there certainly was not a sensible structure or discipline that had been applied to the release of information.

**Mr Smith**—I am not suggesting that you are forming this view, but I keep going back to the point that the parliament does have full access through the Auditor-General, certainly under our framework, to all of the commercial-in-confidence information that is in front of our processes—every bit of it. The contractor cannot say, ‘I don’t want the Auditor-General seeing my pricing structure or my particular clause on liability,’ or anything. He has full access to every bit of information that underpins our transactions, and that is accepted by industry. There is no doubt about that. There is an industry we deal with. How industry would react to the commercial-in-confidence stuff is something that is a worthwhile discussion to have.

**Mr COX**—One of the particular aspects which we discussed yesterday was the release of contracts after the event, after they have been signed, perhaps with any information that was in fact commercial-in-confidence for good reason deleted, and also the prices that the Commonwealth paid for particular goods. In the case of your organisation, from my recollection, every time a major asset has been sold the Commonwealth has been very forthcoming about the price that it has received. We had the secretary of one department before us yesterday who thought that the world would end if the parliament had access to the prices that the Commonwealth was paying for services in his area. Do you have any views about difficulties releasing price information in the information outsourcing area?

**Mr Smith**—There is an obligation on all agencies to disclose the contract price. I think it is a legal obligation. Where the issue gets trickier, though, is when you want to break down the pricing, for example, in IT outsourcing—which is a very complex pricing framework; the thing has quite a number of pages. How a particular vendor responds to the price on desktop for, say, a Centrelink contract versus its private sector clients might not be something that could commercially damage them in the marketplace. So the higher the level the less difficulty I have; the greater the detail in terms of component pricing—and not all component pricing bothers me, by the way, but in this sort of transaction—then I think you will find that the resistance level from the private sector increases significantly.

**Mr COX**—The legislative requirement to disclose the contract price, where is that done?

**Mr Whithear**—It used to be finance regulations. I presume it is now the FMA Act.

**Mr COX**—Is it published?

**Mr Smith**—There used to be an obligation, but I had better check my facts now. There used to be an obligation that every contract, I think over the value of \$2,000, had to be published in the *Commonwealth Gazette*—no question, automatic. I think the principles of that still prevail, if not a legal obligation, and we certainly do make ours known all the time, as you know.

**Mr COX**—One of the functions of this committee is to approve the guidelines for departmental annual reports which were the prime accountability mechanism to parliament for the old way of doing business. Are there any suggestions that you could make for things that should be included in the annual reports to improve accountability for outsourcing?

**Mr Smith**—Could I take that on notice? I would like to get back on that because it is a very interesting point. In our last annual report we tried to lift the debate about outsourcing and the

principles of outsourcing. That seems like an extension of something we might be able to consider. I would like to take that on notice and come back to you on that.

**Mr COX**—That would be excellent. Finally, if you have a look at the evidence of yesterday when we saw the ANAO, there was a bit of an interchange between me and the ANAO about the extent to which the Office of Asset Sales tends to qualify its agreement to recommendations from the Audit Office. Can you give us any commentary as to why the Office of Asset Sales is so conditional about its acceptance of the Auditor-General's recommendations?

**Mr Smith**—I really do not want to give a view on that, to some extent because I am now the chief executive of the organisation. I have not been confronted with findings from the ANAO report and we will see how OASITO responds in the future in that regard. I can say that there are many examples of where we have taken on board the ANAO's recommendations and good examples are phase 1 and phase 2 of the sale of airports. The ANAO made several very constructive and quite excellent recommendations for us which were picked up in phase 2 and acknowledged by the auditor as having been implemented and having achieved good results for phase 2. If there is a notion that the Office of Asset Sales, certainly under my leadership, in any way does not have the appropriate regard for what the ANAO recommends then let me put that to bed right now. I have already had dialogue with the auditor about how we work together constructively and in a partnership role to improve the efficiency of the way in which we do things. I have a very open mind and a very supportive attitude to his role and responsibilities.

**Mr COX**—That is a totally satisfactory response from my point of view.

**Senator HOGG**—Could I follow on quickly?

**CHAIRMAN**—Quickly, because we have to close down.

**Senator HOGG**—I understand that. It is easy for a committee such as this to deal with commercial-in-confidence as it is also for, say, a references committee of the Senate because they can take evidence in camera. But that then begs the question of Senate estimates, where it is not at the disposal of the committee to take evidence in camera. Senate estimates is the process which scrutinises public expenditure of the parliament and the agencies whether the function is outsourced or not. That still leaves the issue of commercial-in-confidence to be a major issue to be dealt with in that arena. Here we have the place which rightfully scrutinises the budget and its expenditure, yet if agencies or the outsourcer puts up the shutters and says that this is commercial-in-confidence, it then breaks down the capacity of an important element of this parliament to scrutinise the expenditure of the agencies and the parliament. How do we handle that?

**Mr Smith**—I probably cannot add more to what I have previously said. I think you should have regard to the very legitimate process that happens on the ANAO side and, on the other side of that, to pick up a point that was raised earlier—

**Senator HOGG**—Could I just stop you there? That is not always practical when we come to the Senate estimates process.

**Mr Smith**—I understand that.

**Senator HOGG**—That is why I am trying to stretch you. If you do not have an answer for me now, I would be quite prepared for you to take it on notice and give it some thought. It is an issue that I know is exercising the minds of people in the Senate. If you can supply an answer, it would be helpful.

**Mr Smith**—I am always happy to provide answers and as much information as I can.

**Senator HOGG**—I understand that.

**Mr Smith**—Maybe the appropriate forum for that is one in which, if there are guidelines to be produced in terms of how commercial-in-confidence information is to be handled, we could most certainly contribute to that debate. I do not know what the framework and the terms of reference of that are yet.

**CHAIRMAN**—We do not know that it will be accepted; it was a recommendation.

**Mr Smith**—I am not sure there is much more I can add other than to say that the sort of issues that I talked about today are tricky. I think you will find, provided that industry is comfortable that its commercial interests are protected, that they will react in a way which will provide information to parliament in a form that is acceptable to you. But it is tricky. In some marketplaces and in some situations you have very limited competition to deal with in terms of getting the best value for money. Any processes need to balance the need for appropriate transparency for parliament against trying to get the best value for the Commonwealth's and the taxpayers' money. So it is a tricky issue. I do not have the answer for you, I am sorry.

**Senator HOGG**—I accept what you are saying, but ultimately the responsibility lies here with the parliamentarians, be they in the House of Representatives, the Senate or a joint committee such as this. It seems to me that one of the products of outsourcing is that whereas previously the whole issue of IT was subject to the scrutiny of a parliamentary committee, people are now saying that, as a result of outsourcing, we are removing part of that scrutiny. And therein lies a major concern for me.

**Mr Smith**—I understand your point.

**Senator HOGG**—That equally foments concern out there in the real world when people try to scrutinise what they previously were able to scrutinise and are no longer able to scrutinise because of commercial-in-confidence. I will leave it at that and I will look forward to it, if you can address the issue for me.

**CHAIRMAN**—Thank you very much, gentlemen. We appreciate your coming today and we thank you for your submission. We will be pleased to receive any further information that you can supply.

**Mr Smith**—Thank you very much.

**Proceedings suspended from 10.31 a.m. to 10.41 a.m.**

**BOLLARD, Mr John, Director, Contracts and Purchasing Policy, Department of Transport and Regional Services**

**QUINLIVAN, Mr Daryl, First Assistant Secretary, Corporate, Department of Transport and Regional Services**

**THOMAS, Mr Troy, Director, Surface Transport and Corporate Legal, Department of Transport and Regional Services**

**CHAIRMAN**—I welcome representatives of the Department of Transport and Regional Services to today's hearing. We have received your submission for which we thank you. Do you have a brief opening statement, or shall we ask you questions about your submission?

**Mr Quinlivan**—I have got nothing of a general character to add to our submission, other than to reaffirm the obvious view of the parliament and the committee that contracting is an increasingly important activity for government and it is essential it be done well.

**CHAIRMAN**—Thank you for that. I noted that all your agreements, that is all your contracts I assume, allow access by the Auditor-General and examples of the clauses were in Attachment B, on page 3. Does that include all of your contracts?

**Mr Quinlivan**—To the best of my knowledge it does.

**Mr Bollard**—Generally, yes.

**CHAIRMAN**—That would include service contracts and agreements with advisers as well as purchasing contracts?

**Mr Bollard**—Yes.

**CHAIRMAN**—We thank you for that. We believe that is highly appropriate and we are pleased to see that. One of the things that we are interested in is risk management. We would be interested in your views because we have had some indication from the private sector during the course of this inquiry that in their view there is, or has been, some effort within the public sector to transfer risk to the private sector, either through onerous terms and conditions of contract or through inadequate supply of technical information. We have heard some effort has been made to put extra risk onto the contracting firm as we increase the speed of outsourcing of work that was previously done in-house. Could you comment on the approach that Transport and Regional Services takes to that issue?

**Mr Quinlivan**—There are two main issues in that that I can see. One is a cultural issue. Our department has some fairly diverse areas in terms of their functions and their bureaucratic history, and I think there is a different cultural approach to risk in those areas. Some of it is very risk averse and others have a much more relaxed attitude to risk. It has not caused us any serious difficulties within the organisation to date, but we have made a recent decision that we

are going to take a more systematic approach to risk management within the department generally, which is going to be an education process among other things. Ultimately that will be reflected in a more consistent approach to treatment of risk in contracting matters across the department. So I think that is one issue, and you will probably find quite large cultural differences between different departments as well.

The second issue is really a commercial issue in general. It is good for government organisations to be seeking to shift as much risk as they can to private organisations they are contracting with. That is a normal commercial transaction. If you are contracting with a private company that has a lot of market power in the transaction, if it is the only supplier of a service, they certainly shoot as much risk as they possibly can back to the government contracting entity. I hope, as a general commentary on our practices, we have a firm but fair approach to risk allocation with private entities. But I do not have a lot of sympathy for private companies in this because, to me, it is just a normal commercial negotiation issue.

**CHAIRMAN**—Would any of your contracts require unlimited liability?

**Mr Thomas**—Our standard contract relies on liability falling on whoever is responsible for an act or omission that results in some other party having damage. If the matter goes to court, then it is left to the courts to decide the level of liability. So our starting point is not to actually set a limit in the contract for liability, and that seems to be a fairly common practice across the Commonwealth departments. Certainly the standard contracts that were developed some time ago by Attorney-General's do not address that issue of liability up front. They simply set the terms and conditions and, if you breach them, then damages flow from that breach. What we are finding occasionally now with some negotiations is that some of our contractors are saying they want a limit, a cap, set on their liability, particularly in IT contracts. That seems to be an industry standard that there is a limit set. Other than that, it is generally just let it flow from the normal general legal principles.

**Mr COX**—Is there a rule of thumb about what that limit is?

**Mr Thomas**—I suppose it is really set by court precedents. Obviously if something goes wrong and there is a breach, there is not always a situation where the parties go to court. They are going to attempt to negotiate a settlement without resorting to going to court. I suppose the lawyers always have in their minds the usual level of damages that might be expected. It really depends on what has caused the liability to arise in the first place. If it is simply a breach of the contract, then the general principle is you try to put the parties in the position they would be in if they had finished the contract properly. If the breach was caused more by negligence or by tort, then the general legal principle is you try to put people in the position they were in before the tort occurred or before the damage had occurred. So there is a bit of a difference in the manner in which you calculate the level of liability. I would have to say, though, that the instances of that occurring are extremely rare.

We very rarely get into a situation where we find either party has breached the contract and we need to look at an issue of liability. Another flow-on from that is our standard contract has an indemnity clause in it where the Commonwealth says it wants to be indemnified by its supplier, but that indemnity is, in my opinion, very fair and very reasonable. We only expect the



supplier to indemnify us against their own acts and omissions. We do not expect them to indemnify us against third party acts and omissions. And also, if we have contributed to the loss or the damage, then we will reduce the level of their indemnity by the extent to which we were responsible. So they are really only looking after their own acts. It seems perfectly reasonable that they should be responsible for their own actions, and we ask them to indemnify us for no more than that.

**CHAIRMAN**—Do we have trouble insuring against those clauses?

**Mr Thomas**—There have been some instances, particularly with the large accounting firms, where they are saying that their insurance companies are now saying they will not insure them against certain clauses. I am only aware of one instance where we had to significantly alter our indemnity clause as a result of that, and we decided we would simply rely on our common law rights. We removed the indemnity clause and significantly narrowed it down to enable that particular contractor to maintain their insurances. But we knew we always had our common law rights to fall back on anyway, so the Commonwealth was still protected.

**CHAIRMAN**—Is the Commonwealth paying a premium because of unlimited liability, or are we discouraging some who might deal with the Commonwealth to be players?

**Mr Thomas**—In terms of the insurance requirements that we put on suppliers, we have public liability. We expect people to have public liability insurance and that is only for a fairly reasonable amount in this day and age, which is about \$10 million usually.

**CHAIRMAN**—So that is not unlimited?

**Mr Thomas**—No. That is the level that we expect. If a contract requires them to have some special form of insurance, such as professional indemnity insurance, our starting point is \$10 million, but we are more than happy to discuss an appropriate level depending on what the contract is worth. There may be instances where professional indemnity insurance is not really required because of the nature of the work being done.

**CHAIRMAN**—Then are you saying to me that you are not paying a premium and you are not discouraging companies or individuals from participating in Commonwealth business?

**Mr Thomas**—John might have a better feel for that.

**Mr Bollard**—No, I do not think so, because as a general rule, if these people are in business, they would have that sort of cover anyway. It is a cost of being in the business that they are in. We are not asking for anything more than they probably have anyway.

**Mr Quinlivan**—There are a couple of examples that I can think of where people we were planning to engage claimed they had difficulty securing these insurances, but once you began talking to them about possible adjustments to the pricing arrangements in the contract, the insurance was readily available. It was just a question of what cost, and the cost turned out to be fairly trivial.

**CHAIRMAN**—In your submission you said that for intermediate and complex purchasing, commercial contracts are issued centrally by suitably accredited staff. Could you expand on that a bit?

**Mr Quinlivan**—Would you like to talk about that, John?

**Mr Bollard**—Yes. We have a centralised purchasing unit, as we said in the paper we put forward. In that centralised unit we try to have people who met competencies in purchasing and, as new staff come in, we train them up through the various levels from simple through to advanced purchasing. So that all our staff in that centralised cell are either at an accredited level or are working towards that.

**Mr Quinlivan**—There is always a tension within our organisation and people wanting to exercise more individual discretion in the way they manage these things and in maintaining a corporate quality assurance arrangement over purchasing and contracting decisions. I think we have a reasonable balance, but it is moved around at times. We do have quite stringent centralised requirements and we have provided you with some of the documents, checklists and things like this which we expect people to take very seriously in setting up contracts. But we do not then have a centralised arrangement for managing contracts. That is done by project officers throughout the organisation.

**Ms GILLARD**—It was put to us by a lawyer who appeared yesterday that there is not a great deal of awareness in some Commonwealth departments and agencies; that conversations between departmental officers and potential contractors pre-contract or post-contract can actually create a contractual variation or a waiver or estoppel problem if it later comes to a damages breach dispute. How do you handle those sorts of issues if contract management is pushed out to project officers after the contract is concluded?

**Mr Quinlivan**—As Troy mentioned a little while ago, there are cases that we have had where this has become a live issue—although we cannot think of any on the spot—but it does not seem to be a day-to-day problem. It is an issue about people exercising proper judgment in this as in any number of other sensitive issues they deal with. You have to try and properly inform people but then rely on them to make mature and sensible judgments about the way they manage these transactions. It does not seem to be a serious problem. There have been a few instances where we have had to pull people up short and perhaps go over a process and do some of it again, or do some of it a bit differently. But I would not single out contracting as being a particular problem in that regard. There are lots of transactions so it is inevitable that some of them will be a bit odd or worth revisiting. But I do not think it is a serious problem for us.

**Mr Bollard**—If I can just add to that, too; we do run legal awareness courses within the department and the project officers in the line areas are invited to come along. The very matter that you spoke of is always very well covered so that people know what the pitfalls are and what to look for and not to get trapped in that way. One of the people we have had along is Nick Seddon who I think also gave evidence to the committee. I was at one of the courses he gave and he put a lot of emphasis on just that point.

**Ms GILLARD**—Nick Seddon was the person who appeared before us yesterday.

**Mr Bollard**—Yes.

**Ms GILLARD**—In your submission you deal with the issue of tenders and say that you do allow tenderers an opportunity to comment on and suggest amendments to tender conditions if they are not entirely suitable. How often does that happen and that a change results in the conditions as a result of that sort of commentary?

**Mr Bollard**—I think I can answer that. When we go out for tenders, or when we invite quotations or tenders, as part of the tender documentation we issue them with the draft contract which we expect them to sign if they get the job. We also ask them to sign a statutory declaration to say yes, they agree to all those terms and conditions, so there is no argument later about, ‘We didn’t want to’ or, ‘We didn’t agree with this clause or that clause.’ So we get their agreement up front to either accept our draft terms and conditions as part of their tender or, if they have a problem with any of the clauses, to note on the statutory declaration which clauses they have problems with so that everybody is aware up front when the tender is lodged as to whether they are happy to accept our contract as is or whether, if they get the job, there needs to be some adjustment made to some of the clauses. I think that is being fair to the tenderers.

**Ms GILLARD**—And is that opportunity taken up much by tenderers, that they make quotations?

**Mr Bollard**—Occasionally. It is about 50/50, I would say. Generally speaking it is not a problem because I think our clauses are fairly reasonable.

**Ms GILLARD**—Thank you.

**Mr COX**—There are a few things I wanted to take up. You say in your submission:

Departmental files (including those relating to the SANAP contracts) are available for access by the Auditor-General in the normal way. The principal SANAP management contract also includes specific provision for the Auditor-General to access the service provider company records.

Does it also include access to his premises?

**Mr Thomas**—I would have to check that. I cannot recall offhand.

**Mr COX**—In the past, lack of access to premises was a big issue for the Auditor-General in the defence area.

**Mr Thomas**—If it is our standard clause, it will also include an access provision, but I will check that and get back to you.

**Mr Bollard**—The SANAP contracts were special contracts. That is why I do not know anything about them.

**Mr COX**—The other issue is in relation to your ability to get people to tender for work in the external territories. In your submission you say:

The external Territories are remote with small populations. ... This often means that the Department's ability to secure adequate competition and favourable conditions is not as strong as it would normally be.

One of the issues that we have been canvassing over the last couple of days is commercial confidentiality. A range of views have been put to us by agencies about whether providing price information after the event is detrimental to the Commonwealth's subsequent position. Do you release price information after the event when you have let contracts?

**Mr Bollard**—To the extent that we have to gazette all contracts entered into over \$2,000, yes.

**Mr COX**—If you are paying significant premiums—which I interpret the two sentences that I read to you to mean—in order to get people to do work in the external territories, doesn't gazetting the prices indicate to people that there is a premium there to be obtained and possibly encourage more people to bid?

**Mr Bollard**—My understanding is that there is a statutory requirement to publish this information, so we really do not have any choice.

**Mr Quinlivan**—It is a good point, though. I suspect that in the end it probably does not make all that much difference because there are a lot of smallish contracts on the islands which collectively add up to quite a lot of money for the Commonwealth. There are a small number of providers on the island or specialised mainland providers who have the capacity to do that on the island. I suspect there is such a small number of people in the field that the gazetting of the price is probably a fairly academic act. The prices which the Commonwealth is willing to pay for these things are probably well known to the few players in this field.

**Mr COX**—I just wondered, if the information was spread more widely, whether there might be a few more bidders.

**Mr Quinlivan**—I understand your point. I think it is probably more realistic to look at it from the other perspective—that there is simply not enough money in it for it to attract a greater number of mainland suppliers.

**Mr COX**—In your submission you mention:

... the National CreditCare Project contract, which aims to help rural and remote communities recover access to financial services, commenced on 13 August 1997 for a period of three years.

What is envisaged will happen when that contract expires

**Mr Quinlivan**—I do not know. We will take that one on notice.

**Mr COX**—There has been no planning in relation to that contract to encourage a private provider to keep those services going?

**Mr Quinlivan**—I would expect that there is a plan for some arrangement to succeed the contract, but I do not know what it is, so I will take that one on notice.

**Senator HOGG**—How long should commercial-in-confidence apply if it can and must apply to a particular contract? Is it at the signing date, some time after the signing date or is it upon the subsequent renewal? Do you have a view?

**Mr Quinlivan**—It depends on the individual circumstances of the contract and the particular information that is regarded as commercial-in-confidence. The value of the contract ceases to be a confidential matter quite soon after it is settled. For the bulk of our contracts there is not much that is commercially sensitive about them.

**Senator HOGG**—That generally applies to most contracts. It would be safe to say that the vast majority have very little that is of great commercial-in-confidence.

**Mr Quinlivan**—Most of it that is commercially sensitive is only of ephemeral significance. Once the deal has been done, the work completed, the information would be pretty uninteresting to everybody else. It is a case-by-case issue but it did not seem to be much of an issue for our portfolio.

**Mr Bollard**—But to add to that, we do keep our records for the statutory period. All those contract documents are kept in a commercial-in-confidence manner for the life of the file, which would normally be about seven years before they are archived.

**Mr Quinlivan**—The most commercially sensitive contract we have is our IT service provider. That is not a contract with our own department; it is a contract with the Commonwealth. The Office of Asset Sales signed the contract on behalf of five departments. We contributed to the terms of the contract but were not a signatory to it. That is by far the most commercially sensitive contract we have.

**Senator HOGG**—Having spoken to OASITO before, I am not going to traverse those grounds again. I do not think I have any other issues; your submission has covered everything.

**ACTING CHAIR (Mr Cox)**—Thank you for your assistance.

[11.13 a.m.]

**BLUCK, Mr Frederick Paul, Director Legal, Commonwealth Ombudsman's Office**

**WINDER, Mr Oliver, Deputy Ombudsman, Commonwealth Ombudsman's Office**

**CHAIRMAN**—Welcome. Is there anything you would like to add about the capacity in which you appear?

**Mr Winder**—I am Deputy Commonwealth Ombudsman, but this week I happen to be Acting Ombudsman.

**CHAIRMAN**—Do you have a brief opening statement you would like to make or we will go straight to asking you questions about your submission, for which we thank you?

**Mr Winder**—I would like to make a brief statement. The Ombudsman's position is essentially that set out in the submission. The main issues that we are concerned about are our jurisdiction over functions that are contracted out, and the office continues to receive complaints about the way in which Commonwealth agencies deal with tenderers and contractors.

I would like to make a few remarks about jurisdiction. I do not want to overemphasise the difficulties that we have had with jurisdiction because they have really not been significant to date. It is a matter that I think should be resolved and it could be a greater difficulty potentially if more functions become contracted out. The Senate Standing Committee on Finance and Public Administration recommended in May 1998, as an interim measure, that the Ombudsman's jurisdiction be extended on a case-by-case basis in sensitive areas. That recommendation has not been given effect. I have some difficulty in seeing how this easily could be achieved. Would it be by amendment of the area's legislation? What would be a sensitive area? How easily would legislation be amended, particularly if this is post hoc because problems have arisen when contractual arrangements may have been locked in for some time.

More recently the Administrative Review Council recommended, in August 1998, that the Ombudsman's jurisdiction should be extended to deal with the actions of contractors. The government has not yet responded to the council's report. In our view, the simplest and most efficient option would be to adopt the ARC's proposal, perhaps by a single inclusive expansion of jurisdiction to include all government contractors as in the Queensland legislation that we mentioned on page 40 of our 1997 submission to the Senate Finance and Public Administration References Committee. It would be a much more practical solution to exclude our jurisdiction in special cases. This would demand a much stronger justification in relation to accountability.

We would also like to question the view that is put about a bit that contractors are opposed to our external review of their administration and that, if the Ombudsman were to be given jurisdiction, this would increase their costs and thus the cost to the Commonwealth. As with most agencies, most major service providers, such as the banking industry and the insurance industry, these days have complaint review arrangements. Service providers, including recently

local government, appear to be establishing more and more ombudsmen. Most large contractors welcome advice on how they can improve their service delivery. For example, we have a very constructive relationship with Australian Correctional Management through DIMA, in respect of their administration of detention centres.

We are not going to be investigating contractors every day. In the vast majority of cases, we would operate as we currently do and decline to investigate unless and until the complaint arrangements of the agency and the contractor have been exhausted. But we will, as we currently do, review these arrangements from time to time to see if they can be improved. That is all I would like to open with, if I may.

**CHAIRMAN**—Thank you for that, Mr Winder. As I understand it, you are recommending that the Ombudsman Act be amended to include a deeming provision so that administrative action taken by a service provider in the delivery of a government service is deemed to be the action of the contracting government agency. This committee deals from time to time with this complex issue of administrative law and where it should apply. We recently brought down a report on government business enterprises where we dealt with part of this issue.

We have had concerns expressed to us by either private companies or partially privatised companies that being subject to administrative law, firstly, puts them at a competitive disadvantage with those against whom they are competing and, secondly, it can be expensive, so I have some concerns there. But, beyond that, how far do we go? For instance, the government used to provide airline services and used to be a banker. Do we then give your office access to Commonwealth bank officials, as an Ombudsman, because the government once upon a time was a banker, and do the same with Qantas, because once upon a time the Commonwealth owned Australian airlines?

**Mr Winder**—I do not think we are saying that. What we are saying is it is this issue between services performed ‘for’ and services performed ‘on behalf of’ the Commonwealth. The issue is with those contractors who believe they are performing services ‘for’ rather than ‘on behalf of.’ Those contracts would include the one we mentioned before, the Job Network one with DEWRSB. That is a contract for the provision of services and they used to be provided by DEWRSB through the CES. It is a strange situation because the contract with the service providers makes quite specific arrangements for them to have a complaints process. The theoretical process is very good, and we are looking at that in a review sense, but when they have a difficulty with a service provider which is not satisfied, they then take it up with the DEWRSB service. It is only after that, if they are not satisfied, that they come to us, usually.

The difficulty for us is that we can look at something at the end of that line but we cannot look at it at the beginning. If we have a complaint by an individual at the end of the line, we can use our powers under section 9 of the act to demand information from just about anybody, but we are not able to look at the actual complaint as it is in relation to that service provider at the beginning of the line. That is the sort of contract we are talking about. We are not talking about the sorts of contracts that you have referred to, with respect, Chairman. We are talking about contracts that provided, generally speaking, ‘for’ the Commonwealth. As for the ones that are provided ‘on behalf of’ the Commonwealth, like the correctional services management one with DIMA, we do not have a difficulty with that and we are able to look at their activity.

**Ms GILLARD**—It is such a fine line. Is there actually case law dividing that line ‘for’ from ‘on behalf of’?

**Mr Winder**—There are legal opinions on both sides which are not resolved. It is a matter, it is safe to say, that has not been resolved. We have not sought to actually pursue it in terms of having something resolved. As I said to start off with, we have not really had great difficulty with it at the moment. I know some of our state colleagues simply ignore it and proceed as though it was not a problem. We have not got a problem at the moment, but we foresee that there could be. In terms of our review with DEWRSB, there is some sensitivity to us actually going on our own and investigating the processes of the service provider.

**Ms GILLARD**—As matters currently stand with the Job Network, to take an example, you are empowered to investigate the failure of the department to resolve an individual person’s complaint rather than the initial problem with the Job Network work provider. Is that correct? Is that the problem.

**Mr Winder**—Just about, yes.

**Mr Bluck**—Plus the systemic method that Oliver mentioned previously about the structure and adequacy of the complaints system that has been built into the contract. That is another issue we can investigate.

**Ms GILLARD**—It has been a while since I read the contract conditions for the Job Network. Does the complaint system make actual reference to the Ombudsman’s role?

**Mr Winder**—Yes, it does. It very clearly sets out a three-step process. This is very good. Step 1 sets out that the Job Network members must have an internal complaints process. It says they have to tell people about it and all this kind of thing. Step 2 says that if a job seeker has a complaint with a Job Network member and is not satisfied with the response then they go to the Job Network customer service line, which is with DEWRSB. If they are not happy with that they come to us, and that is step 3. We can investigate any administration activity of the department. We can investigate how the department audits the Job Network members and how they go about looking at their process, but we cannot, in our own right, go in, if we take that separation between ‘for’ and ‘on behalf of,’ and say, ‘Job Network member, we would like to look at how you’re dealing with this particular matter’, and so on. But we can use our powers under section 9 to say to anybody, ‘We want information about this particular event. Please give us the documents and come and see us.’

**Ms GILLARD**—What would happen if someone refused?

**Mr Winder**—We can take it the next step further to the courts. That is the next process if somebody refuses under the act.

**Mr Bluck**—It has never been needed, to my knowledge.

**Ms GILLARD**—You have got power under section 9 to have a Job Network provider—



**Mr Winder**—Anybody—a journalist, anybody.

**Ms GILLARD**—To provide you with the information?

**Mr Winder**—That is right.

**Ms GILLARD**—But you do not have clearly defined jurisdiction to deal with the conduct. You can get information about what the problem might have been but in terms of remedying the problem you do not have clear jurisdiction to do that between the Job Network provider and the individual unemployed person?

**Mr Winder**—That is right.

**Ms GILLARD**—If the department had mishandled the complaint on its complaints line you would have full jurisdiction there.

**Mr Winder**—That is right.

**Ms GILLARD**—Is there a large volume of complaints in terms of areas of government activity? Is Job Network a substantial generator of complaints?

**Mr Winder**—We do get some complaints but it is not huge. Our main complaints are from other areas of the Commonwealth rather than Job Network. The DEWRSB side of it gets a lot of complaints and a lot of those are relatively minor. They handle them. We get some that come through there but not a huge number.

**Ms GILLARD**—Have you ever had a Job Network provider contest with you the issue of your jurisdictional powers to act?

**Mr Winder**—No. Not to my knowledge. I do not think so.

**CHAIRMAN**—Are you sure you are not making a bid for DEWRSB's work?

**Mr Winder**—Not at all.

**Mr Bluck**—Absolutely not.

**CHAIRMAN**—It did read a bit that way to me, as if there might be a degree of self-interest in the submission.

**Mr Winder**—Not at all. We could not possibly operate if we were not to use the complaints handling processes of the major agencies. We insist that complaints are first handled by the complaints handling process of the agency. It is in our interest and this is what we do to make sure that those complaint handling processes are robust. We undertake reviews from time to time. I am undertaking three at the moment to look at the complaints handling processes of major agencies. The better they are, the less comes through to us. That is the way it should be in

our view. We are not trying to take over the complaints handling process of DEWRSB at all. They may have 20,000 or so complaints coming through to them every year. They should be able to handle those properly. The public, the complainants, should have the opportunity if they are dissatisfied with an area of government administration to be able to come to the ombudsman. We have to be the area of last resort for them to fix things up.

**Ms GILLARD**—In the absence of changing the legislation—I do not want to be seen to put the view that that is a bad idea but that is one alternative—another alternative would be in something like the Job Network round. It would be possible to make it a requirement of that contract that you could not do that?

**Mr Bluck**—It is almost impossible to confer jurisdiction by contract. We have got a power to enter into contracts, to become effectively an industry ombudsman, but I do not think that is the issue here. Of course, the contract may alter the relationship between the parties so that instead of being expressed to be providing services for DEWRSB the structure of what they are doing is that they are acting as the agents on behalf of DEWRSB. That would change the relationship and bring them back into jurisdiction.

**Ms GILLARD**—They might have concerns about that formulation of words because of legal implications flowing from the principal agent's information.

**Mr Bluck**—They may have other concerns about it.

**Ms GILLARD**—So you do really need the legislation changed. It is the only way through it.

**Mr Bluck**—Yes. As Oliver was suggesting, if there were a case made in any particular area to exclude us, that could be fitted, taken out and excluded, rather than having to make a case-by-case argument ex post facto for inclusion.

**Ms GILLARD**—I see. So you would have a broad extension of jurisdiction, with the ability or possibility of exempting?

**Mr Bluck**—Yes.

**Ms GILLARD**—And, to take up the chairman's point, there might be circumstances in which that would cause a market distortion for you to be involved, but, as with something like the Job Network, where it became a requirement of all participants, then it could not possibly cause a market distortion because every person participating in the market would have the same requirement on them.

**Mr Bluck**—Because the market is dominated by the Commonwealth as being the funder and setting the conditions under which the market operates.

**Ms GILLARD**—That is right. Thank you.

**Mr COX**—So the change to the legislation would be to the Ombudsman Act?

**Mr Winder**—Yes.

**Mr COX**—Have you formulated a draft legislative solution that you would like to give us?

**Mr Winder**—As I mentioned in my opening remarks, the clause that is in what is called the Parliamentary Commissioner Act 1974 of Queensland, which relates to the Queensland Ombudsman, says:

If administrative action of an authority or body that is not an agency is taken under functions conferred on or instructions given by an agency, the action is taken for the purposes of this act to be action of the agency.

**CHAIRMAN**—Are you familiar with much of Queensland law and administrative practice?

**Mr Winder**—Not myself, no.

**Mr Bluck**—In a very general sense.

**CHAIRMAN**—Well, this committee gets involved from time to time and I would simply make the comment that they tend to do things differently than most other people, for whatever it is worth. I make no comment about whether that is good, bad or indifferent, mind you—certainly not on the public record!

**Senator HOGG**—I am pleased to hear that. Some might share the same view about Victorians.

**Mr COX**—Occasionally, individual states institute reforms that are ahead of the Commonwealth.

**Mr Winder**—Chairman, I am not able to give a definitive response in terms of how apt that particular piece of drafting is. All I am trying to say is that something like that would be suitable in terms of conferring this functional responsibility under our act.

**Mr Bluck**—And obviously we would need to wait for the government's response to the Administrative Review Council and the substantive response to the Senate Finance and Public Administration References Committee.

**CHAIRMAN**—Sure.

**Ms GILLARD**—When will your review of the Job Network complaints procedure be completed?

**Mr Winder**—In a couple of months, I hope.

**Ms GILLARD**—Will those results be publicly available or do you produce a report?

**Mr Winder**—We have the choice whether to make them publicly available or not.

**Mr COX**—Can the Ombudsman do that of his own volition, or would that be a matter for the minister for DEWRSB?

**Mr Winder**—No, it would be a matter for the Ombudsman.

**Ms GILLARD**—What factors do you take into account in making that decision as to whether or not to make it public?

**Mr Winder**—Really, public interest is the issue.

**Mr Bluck**—Section 35A of the Ombudsman Act enables disclosure in the public interest, provided certain procedural fairness requirements have been met.

**Ms GILLARD**—Right.

**CHAIRMAN**—Can we move on to some more generic issues associated with this inquiry. Through your submission you have noted a whole range of issues that have come to your attention, from suppliers and consumers of contracted services, that relate to tender procedures, contract administration, service delivery, and you cite corruption, conflict of interest, breach of confidence, failure to follow guidelines or procedures, sloppy procedures, lack of due process, failure to abide by specified tender procedures and ambiguous tender specification. On page 5 of the submission you stated:

... important aspects of the service performance expected of contractors have not always been adequately addressed within contracts.

How widespread do you think such action or lack of action is and what degree of concern has your office received?

**Mr Winder**—As I said in my opening statement, we get complaints in respect of the departmental administrative practices in relation to tenderers and contractors quite regularly. For the last two years—not this year—the complaints have been about 80 a year, including the ACT jurisdiction as well as the Commonwealth jurisdiction. They cover a range of these different issues. The better the contractual arrangements and the description of the requirements in the contract, the better the administrative process are, in our experience.

**CHAIRMAN**—Sorry?

**Mr Winder**—The better the contractual arrangements that are specified in the contract in the way of performance and so on, the better the administrative process is and the fewer complaints that you have.

**CHAIRMAN**—These complaints that you get, are they about major contracts or mostly minor or small contracts?

**Mr Winder**—I will ask Mr Bluck to perhaps give you some examples.

**Mr Bluck**—The vast majority are relatively small. Postal delivery contracts seem to be a very substantial chunk of them, just on my reading of what is on the database. Just as an example, a Commonwealth agency made a contract with someone to obtain advertising material for its journal. It did not specify in the contract what performance standards were required; it did not specify anything other than that the person should make their best endeavours. The contractor was to be paid in instalments and as a percentage. The journal failed and ceased publication after one or two issues. The contractor was able only to retain a couple of advertisers. He, on a business basis, agreed to waive some of his fee but the department, it turns out, believed they had terminated the contract at some earlier stage but they had failed to inform him that they were concerned about his performance or that they had terminated the contract. Their concern was that he had not performed up to the standard that they expected, but they had never expressed the standard that they required. It is not a common situation, as Mr Winder mentioned. There are only about 80 to 90 cases a year, but that is the kind of issue that arises.

**Mr COX**—Can I raise a specific issue that you might like to add to those 80 or 90 cases a year. A request for tender No. CAU399, the provision of private hospital services to veterans in the Adelaide metropolitan area, was a tender that was let by the Department of Veterans' Affairs and the Noarlunga Private Hospital put in a bid for it. The tender documents had two tiers to the contract but nowhere in the Veterans' Affairs documents did it say that a conforming tender would have to bid for both tier one and tier two, and the Noarlunga Private Hospital only bid for tier one and was therefore rejected as non-conforming. Is that the sort of issue that you would take up?

**Mr Bluck**—Definitely. That is the kind of thing that people make complaints about to us. Whether we decided to investigate in a particular case would depend on the circumstances.

**Mr COX**—Would I, as a member of parliament, have jurisdiction to raise that with you or should I get the Noarlunga Private Hospital to do it directly?

**Mr Winder**—I think it would be more appropriate if they were to raise it with us, Mr Cox.

**Ms GILLARD**—When you say 80 or 90 complaints about contracting issues can be identified—

**Mr Bluck**—That can be identified from the database but the database is only as perfect as the people who put information into it. It is quite likely that there are many more cases which raise contract and tendering issues at some point where they have been seen as subsidiary and not included in the key words.

**Ms GILLARD**—And amongst those 80 or 90 is there a common pattern in relation to either recidivism by individual departments in terms of being complained about, or a theme as to the nature of the complaints—that is, it is poor tender documentation design or poor management once the contract relationship has commenced. Is it possible to subset it to get a feel as to where the problems might be located, or areas of expertise where the problems might be?

**Mr Bluck**—The scatter given in 6.1 of our submission is pretty well the scatter that we get. I have collected a couple of examples of each but I will not bore you by reading through all of

those. If you are interested in any particular one, I have made two- or three-line summaries of each.

**Ms GILLARD**—What about the focus in terms of individual departments?

**Mr Bluck**—Because Australia Post has so many small contracts for service delivery—basically delivery of mail in rural or remote areas is a fairly classic issue—they tend to withdraw quite a few. I would not say that means that they are handling it badly; it is simply that they are doing so many. It is the same as why we have generally about half our complaints about Centrelink—they have so many interactions with the public.

**Ms GILLARD**—After Australia Post, what would be the next biggest agency you receive complaints about?

**Mr Bluck**—We have a few from Telstra, a fair few from the Defence Force, in one way or another—either individual service or defence generally. It is not anything extraordinary, whereas Australia Post seemed to be a bad quarter in some years.

**Mr COX**—What about DEWRSB?

**Mr Bluck**—They scored 15 in 1997-98, but that would have been related to the Job Network 1 round I expect.

**Mr COX**—Do you have any figures for Job Network 2?

**Mr Bluck**—In 1998-99 they had one, which does tend to support that.

**Mr COX**—Yes.

**Ms GILLARD**—So they will be in this financial year.

**Mr COX**—So there will probably be another round of them this financial year?

**Mr Bluck**—Quite likely, although with practice, effect and what DEWRSB has learnt from the first round, it is to be hoped that they do not get quite so many. But 15 is not all that many really.

**CHAIRMAN**—One is exceptional I would have thought.

**Mr Bluck**—Given the size of the transaction and the number of bidders.

**Mr Winder**—I would actually not anticipate a large number in relation to this latest round, because our experience for the first six months is slightly under the previous two years in terms of numbers, so I do not think there has been a huge increase coming out of that round.

**CHAIRMAN**—On page 5 you noted ‘that agencies should remain accountable for contracted out services to the same degree as when they delivered the services themselves’. This committee has received some evidence from some departments and individuals within agencies that the degree of accountability has increased. As an example I would give IT outsourcing. When IT was handled totally within the departments the degree of information that was available, the degree to which the departments were accountable for their IT services, was far less than it is now on a contracted-out basis, because there are performance requirements that are specified in the contract and they wind up being in department annual reports. The agency maintained before us today that accountability in IT across the Commonwealth, as a general statement, has improved because of outsourcing, not declined.

**Mr Winder**—I can accept that. The actual action of outsourcing could in itself provide for a mechanism for a greater range of performance indicators to be identified that had not previously been identified. However, what we are concerned with is the issue where in the actual specification of the contract there is a clause which says that the contractor is not an employee or the activities of the contractor are not those of the Commonwealth. I think that is the sort of thing that we are talking about, where the Commonwealth is, through that contract, distancing itself in terms of accountability.

**CHAIRMAN**—Is that accountability or a legal liability we are talking about?

**Mr Winder**—It is the same sort of thing.

**Mr Bluck**—I think the distinction that is being made here is that systemic accountability of the nature referred to in annual reports, investigations by the Auditor-General and evidence to committees, whereas the Ombudsman’s interest is because the vast proportion of the complaints we deal with are about service delivery. We are talking about that micro-level individual interaction responsibility. Does that explain it?

**Mr Winder**—We are talking about the actions of the administrative process which would be the actions of officers of the department. If under the contract the department is distancing itself from the actions of the individuals of a contractor, then I think we have an issue in terms of accountability.

**CHAIRMAN**—Just because we have you in front of this committee, I would not want to be held accountable for the operations of the Office of the Ombudsman.

**Mr Winder**—No comment on that.

**Mr Bluck**—By the way, the case that Mr Winder was referring to related to the New Apprenticeships scheme. The contract provided that the service provider in this particular case—and because we have not completed the investigation I think it would be improper to name the provider—was not an employee, partner, or agent of the Commonwealth and that they were providing services for or to the Commonwealth, rather than acting in any sense on behalf of the Commonwealth.

**CHAIRMAN**—And you do not think that is right?

**Mr Bluck**—It is at least opening up an issue about who is going to be responsible when things go wrong at the individual level, as they did apparently in this case.

**CHAIRMAN**—I would have thought that the Commonwealth, in that incident, had done well to protect itself against the possible illegal or improper actions of a contracted agency.

**Mr Bluck**—Yes, but someone missed out on—

**Mr Winder**—I agree there is that kind of protection out of those words. We are looking at the issue of accountability in terms of the delivery of the services by that contractor; the delivery of the services to the particular person who might have had those services delivered by the department previously. It is the delivery of services to individuals we are looking at.

**CHAIRMAN**—But can we leave those words in the contract and require certain performance standards from the contractor within the contract?

**Mr Winder**—That is what DEWRSB does with their Job Network, that sort of clause. However, as I mentioned earlier, we do not have the ability to investigate the processes of the contractor.

**CHAIRMAN**—You do, but it is down the line.

**Mr Winder**—We have difficulty investigating them more systemically. As I said before, we can actually get information from them because we can get information from just about anybody, but in terms of the mechanism of the contract there is this issue of ‘for’ and ‘on behalf of’ that I have mentioned.

**Mr Bluck**—The focus of the Ombudsman Act is on the concept of action of an administrative character taken by department or prescribed authority. In this case, the department that was involved, DEWRSB, in the Job Network case, the only administrative actions they are taking are dealing with their second stage complaints.

**CHAIRMAN**—So when you say agencies should remain accountable, you are really talking about the same general issue that you began this discussion with, not about the agencies’ accountability in terms of the performance of the work that they are doing?

**Mr Winder**—I am not sure that I quite appreciate what you are saying.

**CHAIRMAN**—You are not saying that, because you have evidence, contracted out services have no accountability clauses or performance standards in their contract, are you?

**Mr Winder**—No, I am not saying that they do not have that sort of—

**CHAIRMAN**—That is what I said. You are talking again about the base issue, the degree to which you have access, or are the responsible office, to investigate complaints.



**Mr Bluck**—More than that, I think. We are talking about whether or not an individual has a right of complaint to the department in relation to a service that is provided by a contractor.

**Mr COX**—Yesterday, when we had the secretary of DEWRSB in front of us, he said that there were very specific penalties for breaches of code of conduct in the Job Network legislation. We had asked him about that because we have had Nick Seddon in front of us, and Mr Seddon had made the point that with a lot of human services contracts it was difficult to establish what those financial penalties were because it was difficult to establish what the actual financial losses would be. Have you got a view about the adequacy of the financial penalties in the Job Network contract for breaches of the code of conduct? Do you think that having a power that would allow you to investigate the complaints at the contractor level would be a better solution to some of those problems than financial penalties?

**Mr Winder**—I do not have a view about the financial penalties and how adequate they might be. In the final analysis the issue is whether or not the actions of a service provider in a systemic way amount to a case where somehow or other the service provider's contract can be terminated. That is the final analysis. Financial penalties along the way are probably difficult to deal with when perhaps there are from time to time individuals whose complaints do not get dealt with properly. What we are interested in is the ability to include a way in which the service providers actually administer their complaints processes and deal with complaints so that we are able to improve that process if we can and make the whole contract more sustainable.

**Mr COX**—Have you had a direct discussion with DEWRSB about that? Have they rebuffed you in terms of including those provisions in their contracts?

**Mr Winder**—We have started the review of their complaints handling processes. We have not really taken them to task about whether or not we can investigate the activities of their service providers because with their cooperation we are getting around that in a formal sense. We are looking at the way in which DEWRSB themselves look into the mechanisms of the service provider. I would not go so far as to say we have been rebuffed. We are working our way through it.

**Mr COX**—Thank you.

**CHAIRMAN**—Thank you very much for your submission and talking to us today. It was all very interesting.

**Mr Winder**—Thanks, Chairman.

**Proceedings suspended from 11.53 a.m. to 1.02 p.m.**

**LANSLOWNE, Mr Richard Mark, Acting Executive Director, Department of Family and Community Services**

**LEEPER, Mr Geoff, Executive Director, Partnership Framework, Department of Family and Community Services**

**ROSALKY, Dr David Marcus, Secretary, Department of Family and Community Services**

**CHAIRMAN**—Thank you for coming and for your submission. Do you have a brief opening statement to make before we ask you questions about your submission, or are you happy for us to proceed?

**Dr Rosalky**—I would appreciate making a short statement. I appreciate the opportunity to appear before the committee. The Department of Family and Community Services is responsible for quite a wide range of outcomes in areas of strengthening families and communities and in supporting economic and social participation. We administer over \$47 billion worth of payments which are largely in the area of the income support payments. We had departmental expenditure that amounts to about \$2 billion. About three-quarters of that latter figure, about \$1½ billion, is a fee we pay to Centrelink for the provision of services in the delivery of our income support payments.

The submission that we made to the committee in November 1999 provided information on contract management as far as the operation of the department was concerned. We identified some 400 contracts that were under management. They largely cover services to the department's operations, long-term contracts such as things in property services and information technology services, and a number of short-term consultancies such as in social policy research, specialist management advice, audit training and those sorts of things.

Across the department we have adopted some common principles to improve the way we manage contracts. We do have a risk management approach for our management practices generally and a stream that particularly relates to the role of purchases in the department. We are seeking to ensure value for money in our purchasing and reduce the cost to providers of doing business with the Commonwealth through common contract forms—that sort of approach. Consistent with our general management approach in the department, accountability for contracting is devolved. This helps, from our point of view, to ensure that managers have control of the resources they are responsible for. It also helps, we believe, in having managers able to focus the purpose of their purchasing more on the outcomes they are responsible for contributing to.

We do appreciate and value the benefit that contracting has from specialist skills. Therefore, we have undertaken a number of initiatives to support staff in line areas when they undertake this practice. Examples are setting up a contract management services unit—effectively a central servicing and assistance unit—a team that is staffed with people with quite a lot of expertise in contract management processes, and legal people within that team. They provide a number of immediate services, but can also become part of teams if they are engaged in quite

large contracts, and help through the process. We also draw on some external expertise on an outsourcing basis from a firm that gives us immediate commercial and market information to help us where we find that desirable.

As I said before, we have developed some standard contracts to help reduce costs and introduce best practice as we observe it elsewhere. We are developing and improving internal guidelines and reference material such as through our chief executive instructions in the procurement manual, and setting up panel contracts where we draw frequently on particular types of services such as legal, audit and training services. It is those sorts of areas. More broadly, we are looking at areas where we have a number of similar contracts to consider whether we can change the way we develop and manage them to get better results.

In summary, the Department of Family and Community Services grew out of the Department of Social Security in terms of its management processes. It was the department at the time Centrelink had been separated. We have a high awareness profile which we put on the concept of being good purchasers, because much of our delivery is through purchasing services either internal to government or externally. We have given that high profile and we think that that profile has continued in the way FACS management approaches have developed and helped us to build it into our strategic management and a number of our processes. That is what I have been outlining here. We will be very pleased to take questions from you on that.

**CHAIRMAN**—I thank you for that. One of the things this committee is interested in is public accountability. It is said by some, and there is some perception in the community, that as governments of all political persuasions and jurisdictions, both state and federal, sell off operations which are deemed to be commercial, and as they contract out service provisions that were previously done in house by government officials or by the bureaucracy, we are losing that public accountability. The public service is no longer as responsive to the needs of parliament for accountability or to the public as it was in the past. Have you got any general comments on that?

**Dr Rosalky**—I will make two general comments, and my colleagues might want to add to them. One is that we find that the contracting process and the purchaser provider process, properly handled, have sharpened very much our definition of the outputs that we have to buy at various stages of our production process. Sometimes that is external but sometimes it is internal. I think it has heightened, in some senses, our accountability as managers to have to define those outputs, to specify performance indicators and to monitor them. That is certainly true of both our internal relationships within government and externally. We have also been very conscious of the degree of public accountability we have in front of estimates committee hearings, et cetera. We make sure that we have the various clauses and components in our contracts that ensure audit access for monitoring and value for money monitoring purposes with our contracts.

**CHAIRMAN**—One of the things you just mentioned was audit access. Do all of your contracts contain provision for the Auditor-General to have access to contractor records and/or contractor premises in the rare event that it might be necessary?

**Dr Rosalky**—We do have a model clause. As to whether it is used in every contract, I might seek advice from Mr Lansdowne.

**Mr Lansdowne**—We have a standard set of contracts that we use and we do have clauses that allow for access for those purposes in our standard contracts. So I think we are in the position where all the new contracts that have been formed for the new department are in that position. It may not be one hundred per cent, but it would be the vast number. We may have some older contracts, but as they are rolled over we use our standard clauses.

**CHAIRMAN**—Have you had any flak from people who deal with you saying they will not tender because of that, because it causes some difficulty or because it is going to cost the Commonwealth more money?

**Mr Lansdowne**—I am not aware of it.

**Dr Rosalky**—I am not aware of any difficulties.

**CHAIRMAN**—That is good. Back to the first issue, accountability: the Office of Asset Sales and IT Outsourcing told us this morning that it was their view that in IT outsourcing there was now a heightened degree of accountability because performance standards are set and monitored which of course were not set or monitored when the operations were held within the purview of the departments themselves. Do you agree with that view? If so, do you intend to put benchmarks and progress against those benchmarks—in other words, performance against the standards—in your annual report?

**Dr Rosalky**—As a general statement, I do agree with it. Clearly, one has to make sure of a number of factors to protect the form of contracts to get greater accountability. I think it is more a management philosophy of purchaser provider, of having clearer roles as to products being utilised at various stages of the production process and clear responsibility on the part of the people providing them.

As I say, it is a management philosophy. It can actually be done within a department—for example, the common services of a department could be put on a purchaser provider basis internally, purely to get that crisper definition of what is being provided, removal of the ad hoc approach, and to be able to measure performance and to have the user of the services provide feedback as to whether they feel they are getting the proper performance. As a general principle, we certainly gain greater management sharpness and accountability for performance through it. With respect to your issue about benchmarking, I am not quite sure how far we have gone with benchmarking against those contracts. As a matter of principle, certainly we would see that as one of our measures of performance, once we got them to a point where we trusted them ourselves for the annual report—

**CHAIRMAN**—So would we.

**Dr Rosalky**—but my colleagues might be able to expand on that.

**Mr Leeper**—The department is in the process at the moment, as is publicly known, of calling for tenders through the office of asset sales in relation to group 1, for IT service provision. In developing the tender material, we have certainly been conscious of the need to specify clearly what we want. That requires us to be clear about what it is we are currently getting from our

own internal providers and then to build a statement of deliverables—a statement of work, it is called—which allows us to assess both the tender bids and then, once a contract has been executed, to hold the successful tenderer to the performance standards. So it is useful in the sense that it makes us make explicit what is otherwise, I would think, captured in an informal relationship inside an organisation by putting a distance relationship between the department and an outsource supplier. There is a need for great clarity in what you are purchasing and the standards with which you expect the services to be delivered, so it has been a useful process.

**CHAIRMAN**—But what about the annual report? What are we going to see in the annual report?

**Dr Rosalky**—My view is that sometimes when we are getting into these new approaches there is a long learning curve. It has certainly been an approach in the Department of Family and Community Services that sometimes we will attempt to put performance frameworks on our operations internally as well as externally as a testing plan, recognising we are not going to get to best practice quickly and sometimes, therefore, they are rather experimental. I think developing effective performance indicators takes a couple of rounds of really sensing whether they are giving you the information that you required. So with that sort of caveat, that it is a learning process, as outcomes reach a point of maturity where we have faith and understand that they are giving the right sort of information that we would expect and we internally manage against them, then I think they are the right sorts of indicators that one should put in performance information publicly in such things as an annual report. I have not got explicit examples of that.

**CHAIRMAN**—Being honest about it, the old procedures back when we had cash accounting rather than accrual accounting tended to focus on operations rather than outcomes. In other words, what did you deliver and against what benchmark did you perform? How well did you perform against that benchmark and what did it cost? The whole emphasis of accountability has changed. With due respect to Senator Hogg, some of the Senate estimates process is still about procedure and the minutiae of public accounting, whereas I think we are more concerned about the overall philosophy of holding departments and their CEOs to account as individual operations in being able to tell us the benchmarks they or their ministers set, and how well they performed against those benchmarks. So we look forward to your new annual reports.

**Mr COX**—Before we get off accountability, can we just deal a little with commercial-in-confidence? You have some draft clauses in your submission where you say:

(a) any information that the Contractor reasonably denotes as commercial-in-confidence is kept confidential and secure by the auditor at all times ...

**Dr Rosalky**—That is in respect to third party auditing, if I recall it.

**Mr COX**—Yes. This is putting the responsibility for determining what is commercial-in-confidence in the hands of the contractor, rather than having an objective arms-length approach. Do you use any other clauses in any other part of the contract to deal with other issues of commercial in confidence, apart from third party audits?

**Dr Rosalky**—I might say about this clause that it does say ‘reasonably’. There is obviously, therefore, a bit of discussion about what is reasonable. It might be a discussion about the level of information, and whether down at the detail that information would be part of the building up of a contract. We would accept that information would be commercial-in-confidence, but the main indicators of the contract requirements and success factors we probably normally would not accept a priori would be reasonable to keep confidential. Mr Lansdowne might be able to expand on how they apply more practically.

**Mr Lansdowne**—We are seeking to get independent confirmation that they are delivering at the service levels that we have specified. So that would be information for the purpose of being provided to us. I think this is just to give the confidence that this third party auditor would not disclose information to other parties other than facts. Once the information is in our hands, it is to let us check their performance, basically. So I do not think this is going to block any sensible accountability arrangements.

**Mr COX**—Do you have any other contractual arrangements in relation to commercial-in-confidence information, apart from this one?

**Mr Lansdowne**—No. That is the main standard clause.

**Mr COX**—Has the department any views about whether disclosing the price at which the Commonwealth receives services is a matter which should be kept confidential or not?

**Dr Rosalky**—My starting position—but I must admit one might have to look at individual cases—is that, once a contract is struck and going into place and the Commonwealth through an agency such as ours is paying a price for a service, that price should be publicly available and the product that one is getting for it. So I think my answer to your question is that it is appropriate as a general rule that a contract that is in place, and therefore is incurring public expense to acquire services, would normally be expected to be public.

**Mr COX**—I think the committee is probably coming to that view itself. We have had secretaries of other departments who have put the complete opposite, which we found rather curious.

**Dr Rosalky**—I think it depends to an extent sometimes on a particular contract, but as a starting position, I would want to know why there was a difficulty in being able to reveal. Sometimes contracts depend on a lot of subcontracts and they can be getting down into quite detailed commercial information but generally, as the price of significant input into government activities, one would expect to reveal that unless there was a perfectly good reason, I would have thought.

**Mr Leeper**—In fact, that material is contained in our annual report. I think to go below the level of the total contract value and enter into territory where it might be then possible to break parcels of activity down to individual sets of costing may cause difficulties in future contract negotiations. But the overall value of the contracts is already reported in the department’s annual report.

**Mr COX**—If it shows perhaps that there is a certain amount of fat in an area of activity, isn't that likely to encourage other people to come in, want to bid, bid the price down and, therefore, ultimately save the Commonwealth money?

**Mr Leeper**—In theory yes, but in practice I think the department would have gone through a competitive tendering process already, and you would hope that those processes would lead to the best value for money decision. It will not always be the cheapest tender, though, but the assessment is based on value for money, rather than just the cheapest possible price, because we have an obligation to make an assessment about the likelihood of the service being delivered, and that is not always a pure price issue.

**CHAIRMAN**—Now to the issue of risk. One of the issues that we are concerned about is risk management and we understand—and certainly I do—that if you are going to manage risk, you are accepting the fact that there is risk. I suppose even 10 or 20 years ago, it seems to me that the departments and the agencies were highly risk adverse operations. So today we talk about risk management, the Auditor-General talks about risk management and you talk about risk management. To what extent do interrogations like this committee, Senate estimates committees and others deter you from taking risks because we so intently quiz you when something goes wrong?

**Dr Rosalky**—I guess the principle is that there is nothing like an estimates committee or something to make one think of the public presentation of reasons why one takes a decision, and that is what it comes down to. This concept of taking a higher degree of personal responsibility through the management layers of the department is actually a value we push quite hard. As a general framework, we have an active risk assessment and risk management process from the higher strategic levels down through the department. We have a risk assessment and audit committee. We are required to, but ours is actually a very active committee. It reports to our board, as we call it, which is basically a high level management committee. We discuss significant risks. We assign people to be responsible for strategies to make sure that risk is acceptable, but not avoid it. We are clear about what our rationale is.

In promulgating, for example, our new set of chief executive instructions, which are about to go out very soon, the principle again is that these are principally guidelines and broad principles of proper conduct of use of public funds, but essentially it is in a risk management framework and people have to hold themselves responsible for why they took a decision within that framework. We have copies we could give the committee of a risk management kit, a risk management strategy, which addresses layers of the department depending on the roles that people play, and purchasing is one of those, and there is active raising of the awareness of the issues of risk assessment and training. So all of that framework is in place. It is a value that we build through our management. I do not believe our practice has been to avoid risks. Taking care and assessing them and being able to explain the base of one's decision is not avoiding risk, in my view, and I think that is really the approach we have taken. We are obviously very sensitive to appropriate care, but the rule is that if one can explain it as a reasonable decision based on the information at the time that is the approach we take, and I think that is demonstrated in the evidence we have given before.

**CHAIRMAN**—We do not contribute to you being risk averse?

**Dr Rosalky**—If I did a forward exercise and said if we did not have these committees would we be behaving in exactly the same way, the answer is perhaps we wouldn't, but I am not sure whether that does not set a standard for which we are accountable.

**CHAIRMAN**—On the risk issue again, and dealing with corporate memory, you said that you have a panel of external audit service providers to provide advice and auditing work as required primarily relating to internal auditing matters. I would have thought that you needed a strong internal audit committee to ensure that, when you go to set up a contract, the risks are identified and to some degree quantified, and that the information is passed down through the contract so that whoever is going to manage the contract after it is let is aware of all those things that were taken into account in the beginning. The internal audit team ought to be able to audit performance based on the original assessment and the final performance of the contract itself. And then you tell us you are contracting out internal audit.

**Dr Rosalky**—I just want to give you a general answer and Mr Leeper can explain it in more detail. We do have an internal audit approach which has direct access to me as the CEO. We do have management running what our audit agenda should be and involving them, but they as a service, partly because they cannot spread themselves widely enough, sometimes use, and frequently use, an external resource to conduct particular audits. That does not prevent close management attention to the issues you are raising, but Mr Leeper can expand on that.

**Mr Leeper**—The shaping of the internal audit strategy is done by the department, by departmental staff, under the guidance of our risk committee which also includes an independent external representative. That person is particularly active in keeping us focused on the major risks, and that is a very valuable role that he plays. I will not name the individual concerned. The material that was provided that says that we are using external resources is in the execution of the work program, not in the design of the strategy. The strategy is a departmental strategy; it is informed by a high level risk assessment around all of our activities, and that is what generates the principal risks through which we shape and frame the audit program. We use internal and external resources to do the work required to assess those risks and provide the internal audit reports.

**Ms GILLARD**—In your submission, above the monitoring clause we were talking about before on the same page, page 7, you have got a standard default clause. I was wondering what your experience has been with default problems generally. To put that in context for you, we had a lawyer make a submission to us yesterday about contract management in the public sector and he made the point that, whilst matters are rarely litigated, there are often default problems leading to contractual variations, so I would be interested in your view about that. He also put the view that it is not broadly understood or there are some problems in some parts of the public sector with understanding that pre-contractual and post-contractual conversations can actually result in contract variations, people not realising that a casual act like that can cause a substantial problem down the track. So I am interested in your comment as to whether, in your experience, that is a difficulty.

**Dr Rosalky**—I do not think they have had much difficulty in that area partly because, I suspect, it is a simpler set of contracts we have. But, again, I might ask my colleagues who are closer to the individual contracts.



**Mr Leeper**—There are two issues that I will talk about which give illustrations of the general principle. Firstly, for me, it is the specification of what is required to be delivered that is very important. When we talk to you about a standard contract it is really the front part that contains the major clauses. It is the schedule of work required which is the part where we focus our people by saying, ‘That is the bit that you will own. You are the business manager and this is where you set out clearly what it is that you require the consultant or the contractor to deliver.’

It follows, therefore, that the problems that arise principally in situations which might lead to default—and I am aware of only two in recent years in the department—can be because of poor specification or because of poor performance. Both the situations that I am aware of were because of poor performance, and it was the actual monitoring of the contract and the execution of the responsibilities by the Public Service people that led to a judgment that the situation should not continue. So there are a couple of situations I am aware of where we acted to terminate the use of the particular contractor or consultant because the work that was being delivered was either not to standard or not consistent with the schedule of requirements that the department had purchased.

**Ms GILLARD**—Were they consultancy contracts in both those cases?

**Mr Leeper**—Yes, both of those were for the provision of services.

**Ms GILLARD**—The termination did not lead to any legal problems post-termination?

**Mr Leeper**—At this stage, as far as I am personally aware, no. One of them arose out of the fact that the contract manager assessed the material coming forward and decided that the consultant clearly was not actually doing the work properly, and so it was in our interests to intercede very quickly and pursue a different course, which was done.

**Ms GILLARD**—Broadly, in terms of expertise and training for staff who are involved in contract management, what does your department do to ensure that people have got the appropriate level of legal awareness, managerial skills, and so forth.

**Mr Leeper**—Out of my own group, because my group has really the largest—I will call it—‘contract’, which is the Centrelink relationship, we have been focusing our staff very much on building skills and expertise in managing a complex service agreement, which is what that arrangement is. So we have put a number of staff—probably getting close to 100 now in the department—through specialised contract management training. But there is also some corporate work that Mr Lansdowne might talk about.

**Mr Lansdowne**—More broadly, we have got the formal training, which is a course of several days, which about 100 people have been through. We have got a central contract management services unit which has got all the expertise to handle the issues that you have raised, and we run very regularly awareness campaigns where we have mentions in our weekly staff bulletin. There are little fliers that go out reminding people, if they are thinking about a contract, of some issues that they should think about, but that they should please ring the experts. We try and encourage people when they are at the contemplation stage of contracts to ring our contracts help desk and then somebody can talk them through the sorts of issues and send them out a

number of checklists and help them through the process. I think it is through that way that we minimise the risks of these sorts of inadvertent variations that can happen because people are not aware of all those legal issues. But I am not aware that that has been a factor for us, that sort of inadvertent change through conversation. But mainly we have got, as I say, a lot of awareness to make sure that people go to the expertise when they need it.

**Ms GILLARD**—When you say 100 people have been trained out of a potential pool who are involved in contract management, how many is that?

**Mr Lansdowne**—The staff of the core department is 1,500, but I would think that only several hundred of those have work duties that would touch on contracting.

**Ms GILLARD**—In deciding that training in your contract help desk system, have you relied on information or support from the Department of Finance and Administrative Services or have you designed that yourself to meet your own needs?

**Mr Lansdowne**—We have used a combination. The Department of Finance and Administration has got a lot of good material and that forms the basis of quite a lot of the work that we do. But we have also drawn on some other expertise. We mentioned earlier that we have an outsourced expert on procurement matters and we have developed some material that is specific to the facts arrangements. But to a large extent we do try to rely on standard material.

**CHAIRMAN**—Do you build any buildings anymore?

**Dr Rosalky**—No, we have not got any building projects at all.

**CHAIRMAN**—I was interested. You state in your submission that you have now outsourced to a ‘property management company to provide property management services outside the central office including accounting, leasing and inspection matters’. The Fire Protection Association, which appeared in this inquiry, as I recall, told us that when they had the Department of Administrative Services there was a central requirement which was based on their standards of maintenance of fire services in all Commonwealth owned, leased or occupied buildings and that that had disappeared into the ether with the devolution of responsibility and the demise of the Department of Administrative Services. You would not have any idea what you would do about fire protection maintenance?

**Mr Lansdowne**—We lease our buildings so they would all comply with state and territory regulations. I am not sure of the specific details but my broad understanding is that we would be complying with state and territory regulations in the buildings we lease and occupy.

**CHAIRMAN**—And that would include maintenance procedures on a fire service?

**Mr Lansdowne**—I am not sure of the specific detail of that. I am sorry.

**CHAIRMAN**—Would you like to get back to us on that?

**Mr Lansdowne**—Yes, certainly.

**CHAIRMAN**—I would be interested. It is fascinating. The Master Builders Association told us, and the Institute of Architects agreed, that the Commonwealth appeared to be devolving risk to the private sector by specifying building contracts without having bills of quantities and we have not been able to find anybody who builds buildings anymore.

**Mr COX**—You do not build any more child-care centres?

**Mr Lansdowne**—No.

**CHAIRMAN**—I am beginning to wonder where the statement came from. You also said one of the outsourcing programs was the National Child Care Information Telephone Service which was ‘to establish and operate a national child-care information telephone service for parents and employers to assist families in considering child-care options’. The Commonwealth Ombudsman has expressed to the committee this morning some concerns about outsourced program service delivery no longer falling under the purview of the Ombudsman. Do you know if that telephone service would fall into that category?

**Dr Rosalky**—I think the first thing to say about that telephone service, as I understand it—and I will stand to be corrected if I have this fact wrong—is that it is not about any individual circumstances or entitlements. It is general information about the program; therefore, it is the sort of phone service where one provides standardised information and the phone operators pass on that standardised information. It does not get to an individual’s circumstances. To do that they would have to go on to a government based inquiry line.

**CHAIRMAN**—But still, if I were a member of the public who rang that hotline to get information and I found when I got down to my local child-care centre that the information I had been given was wrong or ambiguous or whatever and I made a complaint, could the Ombudsman investigate my complaint?

**Dr Rosalky**—I would have thought that, if the operator had given wrong information through poor reading or whatever, then that would be a contractual issue. We would have to terminate and get a better provider. That complaint would be brought back to us and it would be information that our contract was not being conducted correctly. If it was our information that was incorrect, then it would be an issue about our provision and I would have thought it would have come under—

**CHAIRMAN**—If it was your information, yes. But if the service provider, the outsourced contractor—

**Mr Leeper**—We would certainly expect to have to deal with the matter under our customer service charter. But I honestly do not know whether that means it would then, by a matter of process or law, refer through to the Ombudsman. We can check on that if you wish.

**Mr COX**—Do you have any circumstances where you have an outsourced provider giving information to individuals that might have an administrative law implication or create a legal obligation because people would act on the basis of that information believing that it came from the Commonwealth and that it was right?

**Dr Rosalky**—I cannot think of anything at the moment, Mr Cox.

**Mr Leeper**—The department is certainly very careful in situations where information is being provided to keep it as information and not advice. So there are a couple of things. Through Centrelink, for example, the financial information service provides factual information around pension entitlement issues, and there is a national investment clearing house on retirement incomes which the department funds. Again, it is restricted to information, not to providing financial advice. So the duty of care issues around the Commonwealth have certainly guided us in that area.

**Mr COX**—I know that 15 years ago we went through a process with the Block reviews of trying to upgrade and make more efficient processes for departments dealing with correspondence. We found that there were a few issues there, particularly for the then Department of Social Security. I do not think you would have wanted to contract out that sort of advice, even about individuals' entitlements or eligibility, because you would be creating a legal obligation on the part of the Commonwealth.

**Dr Rosalky**—There is advice given through private suppliers—things such as family relationships counselling advice, and there are probably a number of examples, but they do not relate to a specific statutory entitlement. Therefore I am limiting the access of administrative law provisions in that sense. It does get a bit blurry. I will have to think across a wide range of services as to whether that is precisely correct, but I cannot think of any at the moment.

**Mr Leeper**—The only clear one is Centrelink, but it is not a contractual arrangement because it is the Commonwealth dealing with the Commonwealth. Centrelink provides that information and it goes to individual entitlement. There are administrative law avenues open to people, but it is not a contractual relationship in the sense that I think your committee is looking.

**Mr COX**—They are generally pretty good at it, even if the clients do not think so.

**CHAIRMAN**—The auditor has expressed to us on a number of occasions his concern about the loss of corporate memory within the departments and agencies themselves. It has the potential of creating a situation where there is not enough technical expertise or understanding of the way service provision should be made to be able to clearly manage the outsourced business and/or specify what is needed if you are developing a specification for a new contract, either to purchase something or lease something or outsource a service provision. Can you comment on that?

**Dr Rosalky**—I suppose corporate memory is the correct phrase, but there is a lot of movement and turnover and therefore lack of continuity in a number of areas in the Public Service. I think that is a characteristic more so in some areas than in others. The clear need therefore, which we have actually identified internally and are trying to improve, is on better documentation, on individuals not containing critical information in their brains and nowhere else. I think the whole process of transfer of knowledge is part of the whole responsibility of the public service process—that new staff coming through have to be given knowledge, the benefit of the experiences as well as the hard knowledge that can be documented easily. I think that is an issue we are giving more attention to for that very reason—that one does find breaks in

continuity and therefore weaknesses in management. I think we can address them, though, by those methods.

**CHAIRMAN**—At a higher level the issue goes to, for instance, an IT outsourcing contract where there remains not enough real understanding, from management's viewpoint, of what information is really required and how it is generated in order to be able to explain all this to the technical people that are going to do the work. So there is a lack of understanding of how they are going about it and being able to test what they do against the contract itself to be sure you are not getting ripped off. Both those areas, from specification to actual contract performance, concern the auditor. If they concern him, they concern us.

**Mr Leeper**—Our strategy already on the IT outsourcing arrangements meant we were already deliberately structuring our internal teams to focus on the post-contract period, and that includes developing and retaining the skills required to form that independent view about the contract so we do not lose the expertise required to make hard-headed and objective assessments about whether we are getting good value for money, and that is about retaining both technical expertise and people who have a good understanding of our business context. We already have a strategy in place to do that, and I am fairly confident that will work for us. It is only as good as the people who stay around, though, so there is an exposure there, but you have to deal with that in each case.

**CHAIRMAN**—You can only make the manuals so thick before the bedtime reading dissolves into sores. Dr Rosalky and colleagues, thank you very much for coming and talking to us today.

**Dr Rosalky**—Thank you.

[1.49 p.m.]

**CRIGHTON, Mr John, Assistant Secretary, Information Management Branch, Department of Foreign Affairs and Trade**

**HARDY, Mr Keith George, Manager, Competitive Tendering and Contract Management, Department of Foreign Affairs and Trade**

**HAZELL, Ms Beverley Anne, Chief Finance Officer, Department of Foreign Affairs and Trade**

**THORNTON, Mr Kevin Richard, Director, Domestic Property and Physical Security Section, Department of Foreign Affairs and Trade**

**VALTAS, Mr Alan, Director, Business Development and Management Services, Department of Foreign Affairs and Trade**

**CHAIRMAN**—I welcome representatives of the Department of Foreign Affairs and Trade to today's hearing. Thank you for your submission and for coming today. Do you have a brief opening statement?

**Ms Hazell**—No, we do not.

**CHAIRMAN**—One of the things I am a bit confused about is that in your submission you did not mention overseas aid contracts. Is there a specific reason for that?

**Ms Hazell**—This is the Department of Foreign Affairs and Trade submission. Overseas aid is administered by AusAID, which is a separate organisation. You would need to talk to them about overseas aid contracts, not this department.

**CHAIRMAN**—I thought that came under—

**Ms Hazell**—They are within the portfolio but this was just the Department of Foreign Affairs and Trade submission.

**CHAIRMAN**—In your submission you said:

Last year the department created the Competitive Tendering and Contracting unit to provide best practice advice to departmental managers. The unit reviews tendering and contract documentation being prepared by departmental managers and refers its clients to departmental legal officers where required.

Could you tell us a bit about how that operates? You are telling us that now you are centralising your purchasing contract administration supervision?

**Ms Hazell**—It might be useful if I start by giving a brief overview of the areas of the department that undertake contracts and contract management; then I will hand over to Mr Hardy, who can explain how the unit works. There are basically four areas within the Australian operations of the department that are involved in contracts and contract management: Information Management Branch, hence Mr Crighton's presence; Diplomatic Security and Property Branch, which is the property side of our operations; Passports Branch, which contracts out some of the delivery of passports and interviewing; and the Finance Management Branch, where the Competitive Tendering and Contracting Unit resides, which basically has a role in administering department-wide contracts that do not fall in any of the other categories, and, as we mentioned in our submission, providing advice to people who are looking at contracting. There are areas of the department that do not do a lot of contracting but they may have a need occasionally for some consultancy advice. They are the sorts of areas that the Competitive Tendering and Contracting Unit provide advice and assistance on—sample contracts; they may even get involved in the review of tenders, et cetera. I might ask Mr Hardy to elaborate on the mechanisms and how they work.

**Mr Hardy**—The CTC unit, as it is known, is a policy unit. Whilst Ms Hazell has said that we do get involved operationally in assisting areas to review tenders, its primary role is to give advice to those units and areas in the department, in the devolved environment, as to how to best operate through purchasing, procurement and contract establishment and management. Typically, an area will decide on the form of procurement, clear that and contact the CTC unit and we will give advice.

Preliminary advice is provided in two forms. We have a finance management manual, which provides guidance on contracting and procurement generally. That chapter is going under a major review as we speak, and that will be finalised in the next few weeks. Additionally, we have prepared a specific administrative circular to all staff specifically on contracting and contract management.. That will be issued within the next two weeks. Again, by way of background reading, there is some general material available to all staff involved in procurement. They would look at that material and then come to the unit with specific issues—sensitivity, size of projects, procurement methods, et cetera. So the unit's principal role is that of policy advising.

**CHAIRMAN**—Given that it is an advice bureau, if you will, and this committee has a general concern about accountability of public entities, how do you assure yourselves that all requirements are met? You outsource a service or you have a contract which is ongoing in nature and they have no control and no management responsibility. Then there is the specification stage, the contract negotiation stage, and the contract management stage where performance monitoring should be undertaken. How do you go about assuring yourselves that you go through all three giving due consideration to all the requirements of the contract, the requirements of the department, or the service delivery requirements, and that you measure the actual performance of the contractor against what was originally specified in such a devolved—

**Mr Hardy**—Again, typically speaking, an area would seek advice. We would provide, as part of our guidance, an overseeing service and check out the specification prepared. The specifications of any tender and procurement process are paramount for us. It keeps people off the phone. It is easier. The crisper, cleaner and more unambiguous criteria are for tenders, the

easier the whole process becomes. Prior to that, however, where there is a process involved, we do encourage areas to undergo where necessary some re-engineering to make sure that they are outsourcing efficient systems rather than having the benefits therefore flowing from efficient operations to the department not to the contractor provider.

Secondly, again, the unit looks over the criteria to make sure they are correct. And, thirdly, we look over the contract which we stipulate as far as possible be as comprehensible as possible and the service level agreement contains clear markers, goalposts, performance indicators and performance management items. We have a number of examples of these. Our travel contract, for instance, has over 30 items of which the contracted travel provider is measured very regularly—in fact monthly—and that serves as a very good example. This service level agreement has been used as a template, an example, for other areas of the department.

**CHAIRMAN**—When we did the purchasing inquiry I recall that we had criticism from some contractors and suppliers that departments were not really following up on basic contract requirements and that, for instance, what was agreed in the original tender would be Australian content never got tested by the department officers administering the contract. Can you assure me that your procedures now would pick that up?

**Mr Hardy**—I can tell you that the administrative circular I spoke of earlier regarding contracting focuses heavily on the ANZ and SME content of contracts and the preference or focus that such companies should be invited to have and the focus that should be given to these people so that the tendering process should be enhanced, and that is the case now. I do not know of any dissatisfaction by any supplier, apart from disappointment from not getting a contract, with the process of any of our tendering and procurement in the department.

**Mr COX**—There is an interesting breakdown in your submission of areas where you have got major contracts, and one of the things that is missing from it is the lease on buildings. There is a whole range of contracts in relation to the maintenance of buildings and internal fittings but there is nothing for the actual lease payments. As I understand it, the R.G. Casey building is owned by a private sector organisation—I think it is the Motor Traders Association, isn't it—

**Mr Hardy**—Yes.

**Mr COX**—and it is leased to the department? Can you tell me how much the R.G. Casey cost to build?

**Mr Crighton**—If you do not mind, I will ask Mr Thornton to answer that question.

**Mr Thornton**—I am sorry, I do not have specific details of the final cost of the R.G. Casey building. Just for the record, it is the MTAA Superannuation Trust that owns the building, rather than the association. They are different organisations. The final cost for the building was spread between a number of agencies. DFAT contributed quite a bit. There are other agencies which were required to contribute as well as DOFA. I do not have that final figure. I can seek to get that for you.

**Mr COX**—Could you take that on notice?



**Mr Thornton**—Certainly.

**CHAIRMAN**—What has this got to do with the inquiry?

**Mr COX**—It has quite a lot to do with the inquiry, as you will find out. Do you recall how much the sale price of the building was to the MTAA Superannuation Trust?

**Mr Thornton**—No, I do not. I am sorry. I have only recently returned to the department.

**Ms Hazell**—It would be useful to point out that the responsibility for sale of Commonwealth buildings resides in DOFA, not with the departments that may lease those buildings. So decisions about how the tender was let and how they chose who they chose to buy the building are not decisions made by the Department of Foreign Affairs and Trade. They are made by the Property Group in the Department of Finance and Administration.

**Mr COX**—So it has been a decision that has been visited upon the Department of Foreign Affairs and Trade by a central agency?

**Ms Hazell**—They are responsible for the property holdings of the Commonwealth.

**Mr COX**—Do you know what the annual lease payments are for the R.G. Casey building?

**Mr Thornton**—Just over \$14 million a year.

**CHAIRMAN**—What are the lease payments for the building where ANAO is?

**Mr Thornton**—They are quite high.

**CHAIRMAN**—They sure are.

**Mr Thornton**—It works out at \$400 per square metre per annum. But, as Ms Hazell has indicated to you, the lease was actually part of the sale documentation and therefore was governed by another agency.

**Mr COX**—I am just trying to get to a basic issue about value for money in outsourcing and whether some decisions have been taken for policy reasons, where value for money is not necessarily the prime motivation. The details of how much the building cost to build, how much it was sold for and what the annual lease payments are ought to give a pretty fair indication of whether that is the case in relation to the R.G. Casey building at least.

**Ms Hazell**—I am afraid you would have to take up those issues with the Department of Finance and Administration.

**Mr COX**—Would you be able to take on notice to give us those three figures?

**Mr Thornton**—Certainly.

**Ms GILLARD**—I want to raise with you the question of non-compliance with contracts. We had a lawyer make a submission yesterday who is familiar with contract management in the public sector. He put the view, which is probably right, that there are some default episodes which lead to litigation, some default episodes which are commercially resolved or which result in a contractual variation. Could you give us an idea over the last, say, three years of what, if any, problems you have had with contractors failing to meet agreed objectives or failing to comply with contractual requirements?

**Ms Hazell**—There are two examples we are aware of in the last several years. One example has been the contract for ADCNET and resolution of issues relating to that. That is our secure network. Mr Crighton can say some more about that. The other was a very short-term contract of low value to assist with some graduate recruitment processes where negotiations with the contractor basically resulted in termination of the contract, at no cost to the Commonwealth, for non-performance of the contract. It was negotiated and settled, I would not say amicably, but at a satisfactory result.

**Ms GILLARD**—In explaining that, would you say that was a contract specification problem in terms of departmental expectations, or a contract performance problem?

**Ms Hazell**—That issue was a contract performance problem. The specifications were very clear, and because they were very clear it enabled us to determine very easily and very straightforwardly that the performance was not up to specification.

**Mr Crighton**—Mr Chairman, perhaps I might add a brief word on ADCNET, although I am sure you are very familiar with that. That is an issue that has been dealt with in considerable detail by the committee.

**CHAIRMAN**—What is that?

**Mr Crighton**—The ADCNET contract.

**CHAIRMAN**—Let's not talk about that now.

**Mr Crighton**—I am happy to agree with you on that. I will make one brief point that may help the committee. With project management and contract management, you will find in our organisation at least that there is a much better process for continual review of the business case, continual review of performance, because circumstances do change. And even if the specifications are very cleverly dealt with in the beginning, as the environment changes or the business case changes they need to be reviewed. We have processes, at least on the IT side, to keep that under continuous review.

I might say also that, with all of my directors, a key feature of their performance agreement with me, and with the department, is their ability to manage projects, manage contracts and manage budgets. So there is a strong incentive and a system there to require people to keep these things under close scrutiny.

**CHAIRMAN**—Do you have within your department enough retention of corporate memory to assure yourselves that, when you go to the issue of an IT outsourcing contract, from a management perspective you are able to specify what it is you want out of the system, what information you want from it or need from it, and that you have enough technical expertise retained to be able to supervise the contract to make sure that the contractor who knows more about it than probably you do is not ripping off the department and the Commonwealth?

**Senator HOGG**—Can I just add to that question. How do you ensure that you are dictating the terms rather than the proposed contractor dictating the terms to you?

**Mr Crighton**—Yes. It is always a risk, but the whole point of instituting a much better project and contract management system is to first of all ensure that it is better documented, better analysed, argued and defended before we make commitments, and to provide that review process. The nature of IT is such that there is always deep suspicion that we are being sold things rather than we are buying things—that is, it is more of a push than a pull. That is a very legitimate concern. It is for that reason, for example, that now, as head of the IT branch in the department which is responsible for the global network, I am a policy officer with management expertise; I am not an IT person. The whole point is to make sure that what drives these processes are business needs and the business case, rather than what is being sold to us.

As far as retention of expertise is concerned, it is difficult. We have around 25 per cent fewer staff now than we had two years ago. The department has streamlined the government's policies. The need to maintain the understanding of those things has been built into that process. It is not as good as I would like. I would like to have more in-house development staff, for example, to provide independent advice. Despite the pressures on our staffing level, I have vigorously defended the retention of the unit which is there purely to provide high level advice to management about claims that are made by contractors and by vendors. I understand it is a difficult issue. Under the circumstances, it is being dealt with quite well.

**CHAIRMAN**—Risk management is another area that we are concerned about and which the Auditor-General is also concerned about. I think you know that from constant dealings with the ANAO. But I make the point that if you take no risk, you do not need to manage it. That was the old risk-averse nature of the Commonwealth bureaucracy. I do not think anybody would disagree much with that. With respect to the new environment with outsourcing and contestability, we would like to know whether or not you agree that you need to take some risk and the risk in any contract needs to be shared appropriately with whoever can take it. Surely, we do not just shove all of it to the contractor, which is going to cost a lot of money. Recognising that once you take a risk, sometimes things are going to go wrong and committees like JCPAA and Senate estimates are likely to call you to task and say, 'Please explain,' do we tend to make you more risk averse than you would otherwise be?

**Ms Hazell**—In terms of risk management strategy—

**CHAIRMAN**—You were looking forward to answering that!

**Ms Hazell**—we have a risk management strategy in the department. Our approach on major contracts is very much one of strategic partnership and working with the preferred tenderer to

develop something that is going to work for both parties. By way of context, there are only about 175 contracts in the department at the moment. We do not have a lot of contracts. Apart from the IT contracts, property and passports, they are very small, very short-term contracts. With those contracts, we tend to use far more generic standard contracts and the issue of risk, sharing risk and developing long-term partnerships is not as relevant. We do tend to have an approach of strategic partnership, particularly in contracts where we are going to be dealing with that particular supplier for a number of years.

**Mr COX**—I wanted to raise one more issue—the letting of the contract to produce passports. That is a relatively new contract which was let a couple of years ago, I understand?

**Ms Hazell**—That is correct. Unfortunately, we do not have a direct representative from the Passports Branch here. We will try to answer your questions but we may have to take some of them on notice.

**Mr COX**—I was told that the contract had been let for a set period, for a set amount of dollars, for a set number of passports, but the successful bidder had bid on the basis of a different time period, a different number of passports and a different amount of dollars.

**Ms Hazell**—I would have to take that on notice.

**Mr COX**—And that when the contract expired it was extended without any further competition.

**Mr Hardy**—The contract for the outsourcing of the issuing of passports, or collection of information for passports, has just been renegotiated. I do not know that the result of the contracting has been announced yet, but to say there has been no competition in the process is not correct.

**CHAIRMAN**—I have one more question. This relates directly to you, not to AusAID. Ballistic Innovations: you probably do not have any idea who they are but they design bullet-proof doors and windows. They do a lot of business with the Department of Foreign Affairs and Trade because of all your overseas posts and some difficulties that may be imposed. Every time we have anything to do with purchasing, they want to talk to us, but I will use this opportunity to ask their questions, push their case or whatever.

They raised several concerns relating to subcontracting, such as the provision of incomplete or wrong specifications, or head contractors pressuring subcontractors to reduce prices or supply solutions to the requirement that had not been tested and not proven to be bullet-proof. Their argument, as I recall, is that when we had the Department of Administrative Services we had a centralised purchasing function to a degree. The knowledge of their product and what was standard in the industry and what had been approved was well understood by purchasing officers, but with the devolved nature of things now, and with some inexperience, from time to time we were buying bullet-proof or bullet resistant windows, doors, shop fronts or whatever that may not be. I know it is a tough, detailed question off the top of my head without notice.

**Ms Hazell**—I think we will have to take that on notice.

**CHAIRMAN**—Okay. As much as anything I guess we are alerting you—without writing half a report about it because it is not a big issue in the overall scheme of things—to the fact that they have on two occasions now made complaints to us. So I would ask you to take that on notice, because you would not want to endanger the lives of your personnel or overseas personnel either; I am confident of that.

**Mr COX**—Did we ask the standard question about access for the Auditor-General?

**CHAIRMAN**—No, we did not do that. Do your contracts provide for Auditor-General access to contractor records and/or contractor premises if necessary? I am getting a nodding head, but the *Hansard* record cannot record nodding heads.

**Ms Hazell**—The answer is yes, it is a standard contract.

**CHAIRMAN**—A hundred per cent?

**Ms Hazell**—A hundred per cent in all new contracts. I suspect there may be some older ones.

**CHAIRMAN**—And have you had any resistance from your contractors to those standard clauses?

**Mr Hardy**—There have been questions, but nothing they have not been able to accept.

**CHAIRMAN**—Sorry?

**Mr Hardy**—Essentially no. There has been an odd question of what it meant, but there has been no resistance; clarification but no resistance.

**Mr COX**—And nobody has said yes, but it will cost you a lot of money?

**Ms Hazell**—No, not yet.

**CHAIRMAN**—We are pleased. Very good.

**Senator HOGG**—I have got a question in relation to your overseas sites, such as the embassies, high commissions, trade commissions and so on. How do they fare in relation to the last question that has just been asked by the chair? I presume the contracts are generated at the overseas posts and not back here in Australia. How are those contracts scrutinised?

**Ms Hazell**—Contracts that our overseas posts may enter into are subject to the local contract laws of the particular country they are in, and that is what determines the style and standard of those contracts, in the main. Where it is not a problem, they follow the guidelines and the policies that we have in Australia.

**Senator HOGG**—All right, but those contracts are not necessarily subject to the scrutiny of the ANAO, are they?

**Ms Hazell**—We have never actually had a contract overseas where it has been an issue where we have had to look at the local law versus what we do in Australia, so it has not actually come up. The Auditor-General has not necessarily had any problem when he has wanted to look at an overseas contract.

**Senator HOGG**—Okay. I just wanted that clarified.

**CHAIRMAN**—Thank you very much for your submission and for coming to talk to us today. We look forward to any additional information that you want to provide to us. Thanks once again.

**Proceedings suspended from 2.19 to 2.47 p.m.**

**BROWN, Mr Steven John, Manager, Corporate Procurement Team, Department of Industry, Science and Resources**

**KIRK, Mr Steven John, Director, Purchasing and Contract Services, Department of Industry, Science and Resources**

**NOONAN, Mr Philip, Head, Corporate Division, Department of Industry, Science and Resources**

**PEEL, Mr William, Deputy Executive General Manager, AusIndustry, Department of Industry, Science and Resources**

**CHAIRMAN**—I welcome witnesses from the Department of Industry, Science and Resources appearing at today's hearing. Gentlemen, thank you for coming and thank you for your submission. Do you have a brief opening statement you would like to make?

**Mr Noonan**—No, Mr Chairman.

**CHAIRMAN**—You talk about risk allocation management. In your submission, you say:

For contracts of up to \$100,000, Head of Division approval is required, and for contracts of more than \$100,000, Deputy CEO approval is required. All tenderers are assessed against approved criteria using a standard assessment methodology.

We understand that Commonwealth departments and agencies operate differently now than they did a decade or more ago in that many services are contracted out, as well as the purchasing of goods and services, which has always occurred. We and the Auditor-General are always concerned about risk assessment and its management. There is no sense in talking about risk management if you do not take risks. So I guess we expect you to take risks, but it is the degree to which you manage them that really is important. Can you tell me: to what degree does this committee and its interrogation processes, and committees like Senate estimates committees, make you risk averse?

**Mr Noonan**—It is fair to say that those accountability requirements weigh very much on the minds of officers undertaking contracts. But, at the same time, we have tried to set up our framework in a way that does not encourage people to become too risk averse, in the sense that the guidelines we give them are, we hope, sensible and practical guidelines. We do not impose unnecessary restrictions on them. For instance, as you can see here with the \$100,000 threshold between CEO and head of division approval, we try to make intelligent decisions about what contracts need to be addressed by more senior managers so that the people in the line divisions can get on with their job for lower level contracts. We probably go through a far more careful approach to evaluating purchasing decisions than the private sector would, but I am not sure that I would say that we are risk averse because of that; rather, that we just recognise that the public expects us to be spending the public's money carefully.

**CHAIRMAN**—Can you tell us about the procedures that you use? We understand, from what you have written, about the up to and over \$100,000 limits and all that stuff. But when you go to design a contract specification would you go through risk analysis processes before you complete the specification itself?

**Mr Noonan**—It is a difficult question to answer for all contracts because the extent to which you think about risks is itself something where the value of the contract is a critical consideration. For a \$5,000 or \$10,000 contract we do not require any kind of formal assessment of risk; rather, we just trust the judgment of the officers concerned. For contracts over \$100,000 there is a much more careful assessment of the risk factors involved and we would, for instance, have a tender assessment panel for contracts above \$100,000, with more than one officer involved in the decision making about who should be awarded that tender.

**CHAIRMAN**—The question was not about how you award contracts but how you specify them in the first place—in other words, how you take account of risk at the time you are writing the specification, which may be the risk zones of the contract. For instance, an IT development where the activity has not been undertaken before and where what you are looking for may never have been done before would be a pretty risky operation. Do you take account of how you write the specification in the contract itself? And then, once the contract is let, does that follow through to the specific individuals charged with managing the contract so that they are aware of the risk assessment process leading to the specification itself, the areas that senior management think offer some potential for risk, and do they take those into account in terms of their project management activities?

**Mr Noonan**—Yes, I think for the most substantial contracts that would be the case and part of that would be the way the contract was designed. For a contract where there was assessed to be a greater risk there might be more milestones built into the contract so that moneys were not flowing out until specific achievements were made. In a sense, that is an automatic direction to the person who is managing the contract because at regular intervals they have to assess whether some specific thing has been done before they make the next payment. In that sense, they would be aware of the kinds of risks that were assessed because that would be reflected in the design of the contract. We encourage our areas to talk early on to the purchasing units that I have referred to in the submission, so that they become aware of the kinds of clauses and the kinds of tools that can be used to meet the types of risk.

**CHAIRMAN**—In designing your service provision contracts where you are outsourcing a service which might have been provided by the Commonwealth before, that is AUSLIG and mapping, I would assume you put performance indicators in the contract itself.

**Mr Noonan**—Yes.

**CHAIRMAN**—And the project manager would test actual performance against those indicators?

**Mr Noonan**—Yes.

**CHAIRMAN**—Do you intend to report any of those or all of those in your annual report?



**Mr Noonan**—Let me take the example of the IT contract which has recently been let and is one of our larger ones. There are a number of service level agreements built into the contract to do with matters such as the responsiveness of the help desk, the speed with which problems when they arise are resolved and the speed with which additions and changes to the system are made. We receive weekly reports. The contract requires the contractor to give us weekly reports against all of those service level standards. At the moment, with the other agencies in the group, we are arranging for an audit of the way in which the contractor measures the service standards so that we can be sure that they are giving us accurate data. As for the extent to which they get reported on, we have not had an experience of doing an annual report under that contract but basically we would certainly be saying something about the report and if there were major failures in the service level standards we would be mentioning those in the annual report. In regard to the extent to which we go into detail about that, because there are quite a few of them, I think we will just have to see when we get there.

**CHAIRMAN**—Let us take AUSLIG, because they are, I would assume, fairly large outsourcing contracts. Is that right?

**Mr Noonan**—Indeed.

**CHAIRMAN**—And they provide a service to local government and the private sector that was formerly provided by the Commonwealth. Do you intend to report in the annual report on cost performance of those contracts against what you set as benchmarks?

**Mr Noonan**—Yes. Perhaps I could ask Mr Kirk to talk about those contracts because he is more familiar with them than I am, but we would certainly intend to report in our annual report against all of our major contracts. As I say, the detail that we provide would depend on the size and significance of the contract, but the principle of it we do not doubt at all.

**Mr Kirk**—With the facility management contracts, are you talking about the mapping contracts?

**CHAIRMAN**—Yes.

**Mr Kirk**—We have a panel in place and we measure their performance by the time they get map sheets in and they go through a validation and testing unit. The validation and testing unit actually tests the maps with algorithms developed by AUSLIG to ensure that they are consistent. When they do not meet those levels, the maps are sent back to the contractor for revision work. Their poor performance, if there is poor performance on a particular map sheet, reflects back when the next work package goes out to the panel for quoting.

**CHAIRMAN**—But do you measure or report on the cost of mapping provision versus what it was doing it in-house?

**Mr Kirk**—I am not sure whether we report as such because I am not fundamentally managing that specific contract. We have a program manager responsible for managing those contracts as such. But we certainly do have KPIs that we measure the subcontractors against every time a map sheet comes into our validation and testing unit.

**Mr Noonan**—With most of our major contracts there is a price that is fixed. It may vary according to the number of services provided but it is a clearly understood price. We entered into the contract because it represented value for money compared with the existing service provision—this was certainly the case with the IT contract—and that is the maximum amount that we are going to pay. So the question is whether, for the amount we are paid, we got a service that was equivalent to the service that was previously provided, and that is certainly a matter that we would be looking at in preparing the annual report.

**CHAIRMAN**—To put the reporting issue in context, you know that the JCPAA is always concerned about accountability. We think there is a perception in the broader community that outsourcing and sale of publicly owned enterprises which are deemed to be commercial has caused decreased accountability in the public sector. However, some agencies have put to us that, in fact, there is increased accountability because these issues have to be dealt with on their merits within the agency where before they were just part of procedure. They say that as a result of the sale they need to be examined and detailed and precisely quantified, and that then they need to be reported on in annual reports so that committees like ours can evaluate your real performance against what you expected it to be.

**Mr Noonan**—Certainly we noticed with the IT contract that we had to specify our service level standards that we were providing in-house in order to seek tenders for the provision from external providers, and we found out a lot about our own in-house business that way. We are going through a similar process at the moment for corporate services where we will be testing the market in a few months time. We have never had to actually work out exactly what our services are and what they cost because of the factor that you mentioned, that within a large department there is no incentive really to focus exactly on what a particular service is costing. But as you move towards market testing you have to do that. I think that that has made us, in the corporate area in particular, look at our current processes and improve them because we realise that they are too costly and there are more sensible ways for doing that. They are changes that are taking place even in advance of going to the market.

**Mr COX**—One of the things that I wanted to pursue was the extent to which your grant agreements with industry are dealt with by contract.

**Mr Noonan**—Perhaps I could ask Mr Peel to deal with that as AusIndustry deals with most of our grants to industry.

**Mr Peel**—We have a large number of grant agreements with individual companies and individuals, principally in the research and development field. The grant agreement itself is a form of contract between the Commonwealth and their grantee. Included in the grant agreement are milestones that have to be met before certain payments are made. So while we might offer a company a grant of, say, \$1 million to undertake a certain amount of research and development, we do not actually pay the \$1 million up front, we pay it in accordance with the contract or the grant agreement which specifies milestones that have to be met before individual payments are made. Those grant agreements are managed by AusIndustry customer service managers who visit companies on a regular basis and receive from them reports as to how they are progressing with their particular research. So they are governed by contractual arrangements.

**Mr COX**—They certainly fit within the ambit of this inquiry. You are effectively contracting to a private sector provider to do some research and development which, while that research and development will be a private good, supposedly will have some public benefit.

**Mr Peel**—What we are doing is providing taxpayers' money to encourage innovation and research and development within Australian industry and we need to ensure that that money is used for the purpose for which it was provided.

**Mr COX**—Yes.

**Mr Peel**—So we are not actually contracting research as such for the Commonwealth. The research, as you say, is owned by the company. But the contract or the grant agreement seeks to outline exactly what is required for the amount of grant that we are passing across.

**Mr COX**—There is a public benefit, supposedly—or we hope.

**Mr Peel**—Indeed.

**Mr COX**—With respect to legal services, in your submission you state:

ISR has a standing arrangement with a panel of legal firms which conduct litigation work on behalf of the Industry Research and Development Board and provide legal advice on ISR matters.

Is that legal advice on the development of the contracts or are you having a certain amount of litigation with grant applicants?

**Mr Peel**—The answer is both. We do not tend to have terribly much litigation with grant applicants. The litigation load is mostly focused on the 125 per cent tax concession for research and development. AusIndustry has an audit process whereby we sample claimants for the tax concession and do a post-claim audit of their tax deduction. If we bring down a decision which says that we do not agree that that deduction was valid, then the taxpayer has the right to seek internal review, AAT review, and ultimately it can go to the Federal Court. The litigation load is essentially focused on the tax concession. For example, we have about 30 cases in the AAT at present. so the litigation load is more on our management of the R&D tax concession rather than on grant agreements. It would be very rare that we get into litigation on grant agreements.

**Mr COX**—I can only think of one dispute that has come to my attention in my electorate in relation to grant agreements. I have pursued that in enough detail elsewhere so I do not want to go into that. With respect to the tax concession, the company makes a claim; they do not seek a prior ruling from you as to whether the thing that they are proposing to do will conform?

**Mr Peel**—There is the facility for companies to do that but, generally speaking, they simply register through AusIndustry for the tax concession and then make their claims. The concession is jointly managed by AusIndustry and the tax office. We carry out the audit of a claim and we need to establish—this is managed by the Industry Research and Development Board—whether or not we believe the claim meets the appropriate criteria. We would then advise the company,

‘Yes, it does, it’s fine,’ or ‘Certain aspects we don’t believe do,’ and so on. So our role is to audit those claims.

**Mr COX**—What is the nature of the criteria?

**Mr Peel**—There are a number of criteria that define research and development. I have not got them with me but I can certainly take that on notice and provide them to you.

**Mr COX**—That would be quite helpful. What is your view about the control that the tax office places on the sort of advance advice that you together, I presume, give applicants who seek it?

**Mr Peel**—The decision is fundamentally made by the Industry Research and Development Board under the Industry Research and Development Act. We advise the tax office of the board’s decision, which is generally accepted by the tax office.

**Mr COX**—How often is it not accepted by the tax office?

**Mr Peel**—I am not aware of any occasions when it has not been accepted by the tax office.

**Mr COX**—Is that the sole area where the department is engaged in giving tax advice to clients? I notice two paragraphs further on in your submission you say:

AusIndustry uses specific outsourcing arrangements to manage workloads and overcome skill shortages in particular areas. Below are the key outsourcing arrangements for AusIndustry:

Provision of tax concession assessment services—AusIndustry maintains a standing arrangement with a small group of consultants expert in carrying out technical assessments of tax concession claims;

**Mr Peel**—What that refers to is that from time to time we will examine a tax claim and we will not necessarily have the expertise to determine whether or not the research and development that is being claimed by a particular company is novel, which is one of the criteria. What we would do in those cases would be to engage eminent people in the field, expert people in the field, to give us their view as to whether the research and development that is being carried out is novel. We seek advice from a small panel, as we said, and we spend about a million dollars a year on securing that advice.

**Mr COX**—Is the advance advice that you give applicants in the nature of a binding ruling?

**Mr Peel**—Effectively we are saying to then, ‘The research and development that you are planning to undertake would meet the requirements of the tax concession.’ So provided that they proceed on the basis that they have disclosed to us, it would meet the requirements. Effectively, instead of doing an audit on them further down the track, we are doing it up front to give them some sort of certainty about that research and development.

**Mr COX**—Does the tax office confirm that you are correct in the opinion that you are providing before you give it?

**Mr Peel**—We provide the opinion to the tax office and the tax office uses that opinion when assessing the tax claim. It is relying on the advice of the Industry Research and Development Board, so the board is taking the decision rather than the tax office.

**Mr COX**—So you are effectively issuing that advice?

**Mr Peel**—Yes, we issue a certificate under the act.

**Mr COX**—And that certificate has not been vetted in any way by the tax office before you issue it?

**Mr Peel**—No, we do it ourselves and provide that certificate to the Commissioner of Taxation.

**Mr COX**—What sort of controls have you got over the people issuing those certificates?

**Mr Peel**—Those certificates are issued by the Industry Research and Development Board, which is a statutory body appointed by the minister, or they are issued by a delegate of the board, and that delegate would be me or people more senior than me. So that authority to issue those certificates is limited to very few people within the organisation.

**Mr COX**—What level is that? Is that the equivalent to a first assistant commissioner?

**Mr Peel**—I am a division head, which would be equivalent to a first assistant commissioner, I think.

**Mr COX**—The same level as Petroulias?

**Mr Peel**—I am not sure. I hope you are not making a connection there.

**CHAIRMAN**—I think, David, you are pursuing another agenda at the moment. We might get back to the topic or we are going to waste our colleagues' time.

**Mr COX**—What sort of vetting has been done of the people who are on the panel providing the expert advice?

**Mr Peel**—I have to take that question on notice, Mr Cox.

**Mr COX**—I would appreciate it if you would.

**CHAIRMAN**—One of the questions we ask everybody—it is one of our favourite questions—is: do you, in all or any of your contracts, require of your contractor access by the Auditor-General to contractor records and access to contractor premises, if necessary?

**Mr Noonan**—We require access to premises. There is a clause that in fact talks about both documents and records as well as premises. It is set out in the submission.

**CHAIRMAN**—Is it? I missed that.

**Mr Noonan**—I do not think it mentions the Australian National Audit Office, but it basically gives the Commonwealth complete access to information relating to the contract, to the material generated by the contract and then reasonable access to premises. Basically, that means the department has that access and therefore the ANAO would be able to get information through the department.

**CHAIRMAN**—With the greatest of respect, DOFA has issued a recommended guideline of specific words to be used in this respect, which does not give the department access to records but gives the Auditor-General access to records and to premises. We would be interested in knowing why you were not willing to pick up the department's advice.

**Mr Noonan**—The clause does talk about other persons being authorised by the department. I must say that the issue has not arisen for us at all so far.

**CHAIRMAN**—It is not an issue that arises every day.

**Mr Noonan**—No.

**CHAIRMAN**—It is an issue of great concern to this committee. It probably involves a department other than yours in a major respect. But it is a court of last resort. I will just explain to you that, in terms of public accountability, we believe that as a matter of right the Auditor-General should have access to all contractor records and all contractor premises where Commonwealth property is held, regardless of the size of the contract or the nature of it. We have said so very strongly.

**Mr Noonan**—The point I was making was that, if the ANAO wanted access, they could get it under this clause, because our department is able to authorise them to exercise all the powers that we have.

**CHAIRMAN**—We simply point out there are other forms of words that have been recommended. My next question is: do you build any buildings?

**Mr Noonan**—No.

**CHAIRMAN**—I cannot find anybody who builds buildings. It is an issue regarding risk transfer. I suppose it is appropriate to ask you the question in any case. So that you understand where it is coming from, the Master Builders Association, the Royal Australian Institute of Architects and, I believe, the Institute of Engineers all commented that in building contracts it appeared that the Commonwealth and the state governments were transferring risk to the private sector by no longer supplying bills of quantities, along with drawings and specifications for buildings, requiring the building contractor to accept all the risks of what it was that was necessary. We are simply trying to determine whether there is a view amongst agencies that, as much as possible, all the risk should go to all contractors and whether that is costing us money.

**Mr Noonan**—I cannot answer the question from the building point of view.

**CHAIRMAN**—I understand that.

**Mr Noonan**—That is a question that we have to address generally—that is, where does the risk lie? A practical example of that that I can refer to relates to the IT contract, where originally we were asking for a help desk that always answered the phone within a certain number of rings. The contractor said, ‘Why don’t you just specify a high percentage? If we have to guarantee 100 per cent, then we will have to add a significant extra amount to the cost for very little extra gain.’ So that was an occasion where, in the course of the contract negotiation, we settled for a high percentage figure rather than insisting on 100 per cent. That was a small example of us asking, ‘Where does the risk lie?’ and negotiating with the private sector provider on what was a reasonable allocation.

**CHAIRMAN**—Would any of your lower or middle level ranking contracts—in dollar terms—contain legal requirements for unlimited liability?

**Mr Noonan**—There is a liability clause in the standard contract. I do not think it is as broad as that, but I would have to take it on notice and perhaps send you the text of the standard clause if that would be suitable.

**CHAIRMAN**—Yes. On accreditation, to what extent are your procurement and contract management personnel accredited and/or trained? What procedures do you have in place?

**Mr Noonan**—We have two purchasing units: one that services just AUSLIG and one that services the rest of the department. The AUSLIG procurement unit has for some time been headed by an officer with a diploma in purchasing and materials management and a certificate level 4 in public sector complex procurement. The officers in the departmental unit have recently reached the position where they are now all qualified. In fact, I think at the time of our submission some were still being trained, but all those officers are now qualified. We offer training courses for the individual line officers who are negotiating contracts. It is a training course provided by the Public Service and Merit Protection Commission. It is a two-day course which deals with all aspects of purchasing. We have now put 79 staff through that course.

**Senator HOGG**—I note at page 317 you refer to access to premises, documents and records, and clause 17.2 reads:

The rights referred to in this clause 17 are subject to:

- (a) the provision of reasonable prior notice by the Department;
- (b) the Consultant’s reasonable security procedures; and
- (c) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Consultant’s confidential information.

Could you give me some insight as to what that might mean?

**Mr Noonan**—I think that clause would relate to where there is access to premises, for instance; whoever is accessing the premises may be seeing some information relevant to the

contract and some information that is not relevant to the contract. Subclause (c) is a reasonable protection of the contractor from the disclosure of information that is not relevant to what the Commonwealth has contracted for the provision of.

**Senator HOGG**—So it is not necessarily obtaining to what might be in the contract—giving the person to whom the contract is being given the option to put a border around this contract and to say that the whole contract is confidential.

**Mr Noonan**—No, I do not read it in that way at all. Obviously, the Commonwealth needs access only to information that is necessary to ascertain whether or not what we have contracted for has actually been provided. There may be commercially sensitive information about the cost of the help desk on the IT contract, for instance. We are not really interested in what that help desk is costing the contractor and I think it would be unreasonable for us to demand that. What we are interested in is whether our staff are getting the service that has been agreed under the contract. In that area, I think we have adequate capacity to get at that information under this clause.

**Senator HOGG**—Do you have any examples of any deeds of confidentiality that you might have in existence?

**Mr Noonan**—I would have to take that on notice but I can certainly see if we can find one and send it to the committee.

**Senator HOGG**—Obviously, if it is a deed of confidentiality, we could not ask for the document as such, but if you could give us a pro forma example of what your deed of confidentiality would be like, that would be of interest to us.

**Mr Noonan**—Certainly.

**Mr COX**—I want to go back to the contracts and the grant agreements. One of the things that we are looking at in great detail, as you probably realised from Senator Hogg's line of questioning, is what is commercial-in-confidence. This is obviously an area where I imagine there is going to be a high proportion of the information contained in those contracts that is commercial-in-confidence. What sorts of arrangements do you have for managing the commercial-in-confidence aspects of those contracts? Are they taken as blanket commercial-in-confidence or has it not been an issue?

**Mr Peel**—It is an issue in the sense that if a company is undertaking some novel research and development that might ultimately go, for example, to a patent, quite understandably it does not want its work or its research publicly disclosed because that could have an adverse effect on the company. Most of the companies that we are dealing with under the grants program are start-up companies. They are in the early stages; they are trying to develop a new concept or a new thing that they can commercialise. Our grant agreements do contain provisions, where appropriate, to protect the company from the disclosure of information which would be damaging to the company. But nonetheless they also provide that we can release certain information which would allow us to give generic advice to the parliament and others on the sort of research that



we are supporting without breaching confidentiality with a company which could have an adverse effect on its future profitability.

**Mr COX**—In those contracts, is the balance of determining what is commercially in confidence in the company's favour or in the department's favour.

**Mr Peel**—I would say that we are very conscious that we are dealing with companies that are really in many cases just starting out and are carrying out work which may be of benefit to the Australian economy generally in terms of creating something new. The position that we take would be more towards protecting the company's interests while at the same time having that balance of having to protect the taxpayers' interest. But we can do that without publicly disclosing information so we would be more inclined to protect the companies.

**CHAIRMAN**—But you do publicly disclose the company, broadly what the research is about and the amount of the grant?

**Mr Peel**—Yes, and we ask them to sign off on that as part of the agreement that we—

**CHAIRMAN**—And the amount of the grant?

**Mr Peel**—That is right.

**CHAIRMAN**—So are you telling us that what you are attempting to keep in confidence is intellectual property?

**Mr Peel**—Exactly. Information which if it fell into the hand of a competitor, for example, could have adverse effects on that company.

**Mr COX**—And if people were not going to be able to maintain control of that there would be no reason for them to invest in research?

**Mr Peel**—Yes. It is a matter of balancing all of those things.

**Mr COX**—This is a particularly important area because the committee had evidence yesterday from some witnesses suggesting that we should have very generic controls over what is commercial-in-confidence and what is not. The area that you are operating in is an area where you are in the far upper spectrum of where it is justifiable to not release information without thwarting the whole purpose of the program.

**Mr Peel**—I would say what we are doing in terms of grants for innovation, for research, does not neatly fall into what you might call contracting out. We are not paying a company to provide a service to the Commonwealth. We are providing them with government assistance to develop a new idea. I think there probably are differences between what we are trying to protect as opposed to what a department might regard as commercial-in-confidence in a contractual arrangement to build a building or whatever that might be. I think we are on a different sort of plane to a normal contracting out arrangement.

**Mr COX**—One of the propositions that was put to us yesterday was that everything should be released, except the things that were excluded by the FOI legislation, and it is just a question of precisely what the tests are and how they would impinge. Have you had anybody trying to make FOI requests for information about contractors or contractors' activities in that grant area?

**Mr Peel**—We have had recently FOI requests about the tax concession, trying to discover what companies are undertaking research into. We released information in that case, with the agreement of the company concerned. I am not an expert on the FOI Act, but from my understanding we were required to do that before we could release that sort of commercial information. I am not saying there have not been any on grant agreements but I am not personally aware of any, certainly in the last six months or so.

**Mr COX**—So you have got no reason to believe that the provisions of the FOI Act would not adequately cover the sorts of information you are seeking to protect?

**Mr Peel**—I am not an expert on the FOI Act, but I would be surprised if there were not a provision in that act that would allow us to exempt material that is in these grant agreements.

**Mr COX**—Could you take that on notice because that is going to be a particularly important point if we go down the generic route.

**Mr Peel**—I can, but it is really a question more for the Attorney-General's Department.

**Mr Noonan**—Could I perhaps make two observations. Firstly, the FOI Act will apply to every bit of information about that grant that is held within AusIndustry of its own force, and that is the source of the FOI requests that come into AusIndustry and are dealt with under the FOI Act. The confidentiality agreement that may have been entered into between the department and the company will not stop the application of the act, but to say the FOI Act extends to all the information that the company holds and which the department might possibly be able to get access to if it sought to maximise its use of its powers is really to impose on those companies a new and potentially quite significant burden.

**CHAIRMAN**—Thank you very much once again for coming. We look forward to the receipt of any further information that you might have.

[3.35 p.m.]

**WELBURN, Mr Alan Christopher Garnet, Manager, National Contracts Management Unit, Centrelink**

**CHAIRMAN**—We have received your submission, for which we thank you. Do you by any chance have a brief opening statement you would like to make or shall we proceed to questions?

**Mr Welburn**—Proceed to questions. I have got nothing more to add to the paper I wrote.

**CHAIRMAN**—Thank you. I note that at 30 June you were managing some 1,100 contracts at an aggregated value of \$533 million—that is reasonably significant.

**Mr Welburn**—It is. I personally do not look after all 1,100.

**CHAIRMAN**—I am glad to hear it.

**Mr Welburn**—I look after the contracts that Centrelink lets that have no home with any particular program or area. These contracts are general service contracts which everybody accesses such as travel, transport, copiers, telecommunications and the like.

**CHAIRMAN**—IT?

**Mr Welburn**—No. Our IT contracts are managed by our chief information officer. However, the division in which I work is looking after our outsourcing of IT. I work in the contestability and contracts area.

**CHAIRMAN**—You call yourself a National Contracts Management Unit; is there any dollar value which triggers response to you?

**Mr Welburn**—No, it is usually the nature of the goods and services we are going out to procure. The other half of the organisation in which I work is our National Policy and Contracts Unit, and they do have triggers. They provide the technical and legal advice on the terms and conditions of the contract and the content of the statements of requirement and they get involved in the evaluation reports and in then writing the conditions of contract. All contracts which are worth over \$100,000 are referred to them at the RFT or RFP stage before they are released, and they are also involved in contracts over \$30,000 for consultancies.

**CHAIRMAN**—In terms of writing the specifications for those contracts, do you go through a risk assessment procedure at the time the specification is written and tenders are called or prices are sought?

**Mr Welburn**—Yes, we do. My area works out the statements of requirement. We will go out and see what industry is doing. We visit technological sites in terms of new developments. If we

do not have the advice, we will take on consultants to tell us what the industry is doing, where it is going and what is likely to be out there. At times we do not go to RFT; we go to RFP, so we seek proposals from industry so we can see. We give them the general basis of what we are looking for and we ask them to come back and say how they would propose to do it. The element of risk is then assessed during the technical evaluation of the proposal or the response to the tender.

**CHAIRMAN**—So you do not necessarily look at risk which might be inherent in the way you have written the specification in the first place?

**Mr Welburn**—Yes, we do. We are not risk averse, but I would say that our concentration is probably on value for money because of the nature of Centrelink's work and the fact that we get paid by our customer departments. We are looking to do the best job, but at minimum cost to Centrelink to purchase those services. So, yes, we do look at risk and we look and see what we are asking. The nature of the risk is probably scrutinised by our policy unit and also by an external legal firm, and they come back and say, 'Do you really want to take this avenue? Is this what you are looking for? What are the problems of going down the way that you might have looked at it from—a management point of view or a procurer's point of view?'

**CHAIRMAN**—Okay. Do all or any of your major contracts include a requirement by the contractor for access by the Auditor-General, if required, to contractor records and/or contractor premises where Commonwealth property is held?

**Mr Welburn**—They do.

**CHAIRMAN**—All of them?

**Mr Welburn**—All the national contracts that I look after, and that is 11 contracts which are worth \$135 million annually. All new contracts which are passed by our national policy and contracts unit contain that clause. I cannot speak for some of the smaller contracts that might be let out in our regions for some of the domestic type services that they look for, but we are moving towards those and we have adopted the words that the department of finance recommend.

**CHAIRMAN**—Thank you for that. We appreciate your approach.

**Mr COX**—The other thing we usually ask is: have any of your contractors kicked up about those provisions and said, 'Yes, we will do it, but it will cost you a lot of money'?

**Mr Welburn**—No, they have not. We have had to explain what it means. They are more than happy. We have not been refused.

**Mr COX**—The only people that do find it difficult are Defence.

**CHAIRMAN**—Do you have a question or do you have more statements, Mr Cox?

**Mr COX**—You are in the interesting situation of being both a Commonwealth organisation that contracts for services and a Commonwealth organisation that is contracted to provide services. What is your contractual relationship with the department like?

**Mr Welburn**—We have what are called business partnership arrangements with all our client departments. They manage our relationships, they dictate the terms of payments and the processes and procedures we have to go through to make the income support payments that we deliver through our regional network. We work very closely with Family and Community Services in their contracts area. We share a number of contracts which my unit has let and which have been evaluated and signed by all parties. We also have a very good relationship with a number of other government departments which we do not work with, in terms of our transport contracts: I head up a cluster of four departments for our last travel contract. We meet regularly, we meet with the supplier, we meet amongst ourselves to look at any issues that we might have.

**Mr COX**—Do you get paid on time?

**Mr Welburn**—Sometimes we get paid in lump sums, sometimes we get paid trickle and sometimes we get paid late.

**Ms GILLARD**—Covering the field.

**Mr COX**—How do you pay your employees when you get paid late?

**Mr Welburn**—That is a question I cannot answer.

**Mr COX**—Can you tell us anything about your GST liability?

**Mr Welburn**—We have a number of working parties looking at the GST and its impact on the contracts we have. On the national contracts that I manage there are specific clauses covering GST and we are going through those looking at the ups and downs and what the price increases will be. Each of those contracts will be assessed on a case-by-case basis. A number of them we do not believe will attract GST because they were put in place a number of years ago and there are review periods included in those contracts—I think that puts them outside the GST area. I know that Centrelink is certainly looking at the cost of GST on all the other services it provides. As to a figure for that, it is not in my area.

**Mr COX**—What about your GST liability for the services that you provide to the departments to whom you contract?

**Mr Welburn**—Again, that is outside my area. I manage contracts for which we get goods and services so that we can support our network and deliver income support payments. That is more of a financial resources area.

**Mr COX**—That is a contract related question, so would you be able to take that question on notice—the extent of your GST liability in respect of the services you provide to departments and the cost of administering it?

**CHAIRMAN**—What has that got to do with this inquiry? Nothing; absolutely nothing.

**Mr COX**—It has to do with contracting.

**Ms GILLARD**—In terms of the contracts that you manage in your area, what has been your experience with contractors defaulting on their obligations, whether that has led to litigation, contractual variations or some commercial settlement of the problem?

**Mr Welburn**—With respect to the contracts that I manage, we have in one of our major contracts a set of service level debits and credits where, for late delivery, late lodgment, late supply of services, based on a formula they can accrue debits over a monthly period. They can also accrue credits, so one can wipe out the other. Once the debits exceed 250, we impose percentage penalties on what they would have earned for their services. One of our suppliers was hit with a debit for failure of about \$50,000. That was withheld and they accepted that. In another contract, we have a system of rebates and liquidated damages. That is for failure to deliver services on time, failure to rectify faults. We have exercised both the rebate regime and the liquidated damages and have received payment on those. The only other default I am aware of is for a contract which I do not manage but which will be coming my way. It is where there was unsatisfactory service, including external access to goods produced by that contractor, and that is the subject of litigation now.

**CHAIRMAN**—Have you thought about introducing the carrot and stick approach in your contracts with Commonwealth agencies in terms of payment, since you sometimes get paid late?

**Mr Welburn**—That is a question which I can take on notice and get an answer for you. It is really a matter for our business development unit. I do not have any dealings with the departments in terms of the services that they contract us to provide.

**CHAIRMAN**—The point I am trying to get to is: if you are asking for performance standards from those who contract to you on behalf of the Commonwealth to provide services to the public and you have provision to pay them well if they perform and pay them not so well if they do not, I wondered whether you might not improve the payment response to you if you introduced such a concept in your contracts with the agencies.

**Mr Welburn**—I will put it to them, Mr Charles, and I will see what response—

**CHAIRMAN**—It is all to do with accountability, isn't it?

**Mr Welburn**—It is.

**CHAIRMAN**—Do Centrelink build any buildings?

**Mr Welburn**—No.

**CHAIRMAN**—I cannot find anybody who builds buildings!

**Senator HOGG**—You have drawn a blank on that!

**CHAIRMAN**—I know, and the Master Builders really got us all excited. The Commonwealth is shifting risk and we cannot find anyone who builds any.

**Ms GILLARD**—That's how much they shifted the risk!

**Mr COX**—It is a dirty business, and they have got out of it!

**CHAIRMAN**—Brilliant! Under 'Mechanisms for accountability' your submission states:

Centrelink has developed an internal control framework to provide assurance on the efficiency; effectiveness and ethical management of contracted business support processes.

Do you use internal audit procedures and an internal audit committee?

**Mr Welburn**—We do have an audit board. They made a number of observations about three years ago on contract management issues. We have resolved all those, but as a result of that work and work that was initiated in our financial management unit, we have a regular series of what we call 'road shows' with our network. I have people from my team who go out and conduct risk analysis within the regions. We try and ensure that the people who are accessing the services that we have contracted for know what they are supposed to get, how it is to be delivered, how they are to pay for it, and to answer any other questions. We want to ensure they are making the best use of the goods and services that we provide.

As a result of that work, quite a number of areas have introduced specific contract sections within the area offices rather than giving it as a responsibility to a resource manager. We do go out, and we have even gone out with the suppliers. We have taken out a number of our suppliers with us so they can explain what they see, the deliverables they have to deliver, the problems they have, and how we can help them. So we are looking for a win-win situation on both sides.

**Mr COX**—Do you have any contracts to outsource the provision of information to Centrelink customers in areas where the information that is given to those Centrelink customers might imply a legal obligation on behalf of the Commonwealth?

**Mr Welburn**—Not that I am aware of. In the contracts in which I am involved, if anybody comes in contact with information that is applicable to any single individual receiving a benefit, they all have to sign privacy and confidentiality agreements.

**Mr COX**—I am thinking more in terms of somebody giving someone information. Because they are getting it from or through a Commonwealth agency, they are entitled to rely on it. But subsequently they may discover that it is wrong and they have either an action against the Commonwealth because they have taken certain courses of action that have left them in a financial detriment, or they have been overpaid by the Commonwealth but the Commonwealth has got no comeback to recover the money because they acted on information that they had a right to expect was correct. How do you deal with that?

**Mr Welburn**—We have certainly had a number of detriment actions against us for advice that has been found faulty, or people believe was faulty, but that advice has, as far as I am aware, been given by Centrelink officers. As far as I am aware, we do not employ or contract outsiders to give that sort of advice on benefits and any other income support payments that people can accept.

**Mr COX**—Is it a Centrelink policy not to contract out the giving of that sort of advice, or is it just something that has not happened yet?

**Mr Welburn**—It has not happened, and I could not say whether it was a policy advice. But that is the role of most of our people—to man our customer service centres, of which we have 460 around Australia. That is what they do. We have not contracted that function out. That is the reason for Centrelink's being, I believe; it is the government's contact with all our customers.

**Mr COX**—I think some of us would like it to remain a government activity too. Thank you.

**CHAIRMAN**—Could you tell us a bit about training qualifications of procurement and contract management personnel?

**Mr Welburn**—The staff in the two units with which I am involved fluctuate between about 25 and 30. About 70 per cent of them have qualifications, the majority of which would be the certificate 4 and the graduate certificate in strategic procurement. They all attend various courses run by national legal firms and some of the other private firms which deal with service level agreements, contract law for non-lawyers and contract management. So we have a regular training program for them.

There are a number of people in my organisation who have management, accountancy and economic qualifications. We are aware that the public service education and training authority is proposing a new certificate 4 and a graduate diploma in contract management, so we will be looking to see what that involves and whether we can get people on board.

**CHAIRMAN**—Mr Welburn, thank you very much for coming and talking to us. We look forward to any further information that you have agreed to give us.

**Mr Welburn**—Thank you, Mr Chairman.

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

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

**Committee adjourned at 3.57 p.m.**