COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Review of Auditor-General's reports Nos 7 to 34 (2005-06)

FRIDAY, 2 JUNE 2006

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JOINT STATUTORY COMMITTEE OF

PUBLIC ACCOUNTS AND AUDIT

Friday, 2 June 2006

Members: Mr Anthony Smith *(Chair)*, Ms Grierson *(Deputy Chair)*, Senators Hogg, Humphries, Moore, Murray, Nash and Watson and Mrs Bronwyn Bishop, Mr Broadbent, Dr Emerson, Dr Jensen, Miss Jackie Kelly, Ms King, Mr Laming, Mr Tanner and Mr Ticehurst

Members in attendance: Senators Nash and Watson and Mrs Bronwyn Bishop, Mr Broadbent, Ms Grierson, Mr Laming and Mr Anthony Smith

Terms of reference for the inquiry:

To inquire into and report on:

Review of Auditor-General's reports Nos 7 to 34 (2005-06)

WITNESSES

Committee met at 10.28 am

CHAIR (Mr Anthony Smith)—I declare open today's public hearing of the Joint Committee of Public Accounts and Audit and welcome everyone present. We are going to examine three Australian National Audit Office audit reports today. The first evidence we will be taking will be on Audit report No. 32 2005-06: *Management of the tender process for the detention services contract* and then we will take evidence on Audit report No. 34 2005-06: *Advance passenger processing*. Later on in the day, we will look at Audit report No. 21 2005-06: *Financial statements of Australian government entities.*

I would like to welcome representatives from the Australian National Audit Office and the Department of Immigration and Multicultural Affairs. Firstly, as usual, I would ask participants to remember that only members of the committee can put questions to witnesses if the hearing is to constitute formal proceedings of the parliament and attract parliamentary privilege. If other participants wish to raise issues for discussion, I would ask them to direct comments to the committee. Secondly, given the time available today, statements and comments by witnesses should, as always, be relevant and succinct. Today's hearings are legal proceedings of the parliament and warrant the same respect as proceedings in the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by *Hansard* and will attract parliamentary privilege.

[10.29 am]

CHAPMAN, Mr Steve, Deputy Auditor-General, Australian National Audit Office

LACK, Mr Steven, Acting Group Executive Director, Australian National Audit Office

MANEN, Ms Rebecca, Audit Manager, Australian National Audit Office

ROGALA, Mr Mark, Audit Manager, Australian National Audit Office

WATSON, Mr Greg, Acting Executive Director, Australian National Audit Office

CORRELL, Mr Bob, Deputy Secretary, Department of Immigration and Multicultural Affairs

DOHERTY, Mr David, Assistant Secretary, Detention Services and Development, Department of Immigration and Multicultural Affairs

GILLAM, Ms Lynne, Assistant Secretary, Detention Services Division, Policy and Monitoring, Department of Immigration and Multicultural Affairs

McINNIS, Mr Ken, Principal Legal Officer, Legal Coordination Procurement, Department of Immigration and Multicultural Affairs

McMAHON, Mr Vincent, First Assistant Secretary, Border Security Division, Department of Immigration and Multicultural Affairs

O'CONNELL, Ms Lyn, First Assistant Secretary, Detention Services Division, Department of Immigration and Multicultural Affairs

SCHIWY, Mr Simon Andrew, Assistant Secretary, Detention Services Tender, Department of Immigration and Multicultural Affairs

SIMPSON, Mr Brett, Director, Passenger Movements Policy Section, Department of Immigration and Multicultural Affairs

CHAIR—Welcome. I invite you, Mr Correll, to make an opening statement on behalf of the department and to provide us with an update on any pertinent issues.

Mr Correll—The department has accepted all the recommendations of the ANAO reports into the tender for the detention centre contract and advance passenger processing, and we are taking positive steps to implement them. In the forthcoming retendering of detention services, for example, we have addressed all relevant recommendations made by the ANAO. We have also provided the plan to the ANAO for comment. The ANAO has also accepted an invitation from the department to attend departmental audit and evaluation committee meetings as an observer.

Last year, the department engaged Mr Mick Roche to perform a review of the detention services contract. Mr Roche made a number of recommendations, some of which require changes. In the longer term, Mr Roche's recommendations will be addressed through retendering and development of new contracts to be in place from September 2007.

In relation to advance passenger processing, the department welcomed the ANAO report into APP because it is a critical component of the department's layered approach to border security. The APP system links airlines that fly to Australia with DIMA. It is interactive and provides the border agencies with information about passengers and crew travelling to Australia. Other countries, including New Zealand, have adopted APP, and the US and the United Kingdom are in the process of developing similar systems to enhance their border security.

In addition to directly addressing the ANAO's specific recommendations, the secretary of the department announced in October 2005 a wide range of measures to improve administration within DIMA as part of the government's response to the Palmer and Comrie reports. The measures included significant organisational changes, including the introduction of a centre of excellence for contract management and procurement within the department.

CHAIR—Thank you very much and thank you for your statements on both of those reports. For the benefit of committee members, we will deal with the detention services contract report first.

Mrs BRONWYN BISHOP—I would like to begin with the tender process for the detention services contract, which is obviously of concern to a lot of people. The first question I would like to ask is: have any legal proceedings begun in this matter?

Mr Correll—No. No proceedings have begun at this point. The department has received correspondence which has sought information and has replied to that correspondence, but to date there have been no legal proceedings initiated.

Mrs BRONWYN BISHOP—Lots of things seem to go wrong in this tender process. Do you think it began with the decision not to go to tender but to have the shortened process of inviting people to put forward their proposal?

Mr Correll—In overview with the tender, the planning and preparation for the tender and the initial establishment of the framework of the tender were all quite well done. I think it was in subsequent execution aspects that the issues emerged, and that was associated with some processes and some record-keeping arrangements and, certainly, several errors in administration that occurred.

Mrs BRONWYN BISHOP—Page 51 of the Auditor-General's report says:

In an update brief to its Minister on 12 March 2002, DIMIA advised that rather than an open tender process, it would instead conduct an Expression of Interest (EOI) and select tender process. This was to ensure that only serious bidders took part in site visits—

I find that interesting—

and the subsequent tender process.

It goes on to say:

The inclusion of an EOI was expected to add approximately six weeks to the tender process and it was expected that the final RFT would be released in May 2002 with respondents being notified of the EOI results on 17 May 2002. The slippages in timelines resulted in revised timing for the release of the RFT to 19 June 2002, and 10-24 July 2002 for site visits. The EOI was released in March 2002.

How did those slippages occur? Are the reasons that the Auditor-General has identified the reasons for not going to open tender? How was it that you determined who were serious bidders? How many other people out there could have been involved otherwise?

Mr Correll—I might need to consult with my colleagues on some aspects of this because of the time that has elapsed. I am advised that the slippage was caused by an extended time line for evaluation. The confinement to the four companies reflected the state of play in the marketplace, with service providers with the skills available to provide the full range of services being tendered for, and the judgment that was made at the time that there was only a relatively limited range of providers that were able to provide that full range of services.

Mrs BRONWYN BISHOP—I guess the question I am asking you is about this comment: 'This was to ensure that only serious bidders took part in site visits.' Were you concerned at that stage that there might be people who put themselves forward as people who could carry out this function who would then get access to sites that they otherwise would not have had?

Mr Correll—I would be very surprised if that was the issue that was driving that decision at that time. The issue would have been driven by the availability of potential providers in the marketplace. There is no evidence that I am aware of that the decision was based around the notion of only serious bidders taking part in site visits. I think it would be more around the notion that there were only a limited range of organisations that could realistically be seen to have been serious bidders in this process, given the skills and capacities available within the marketplace.

Mrs BRONWYN BISHOP—The Auditor-General makes the point on page 61:

It is important that those undertaking procurement have a clear understanding of their roles and responsibilities. Clearly specified roles ensure that efforts are directed towards the achievement of defined goals and that accountabilities are understood.

He then says:

The specified roles and related governing arrangements should allow for the separation of evaluation teams and the independence of advisors.

The language is rather soft but the underlying statement is that this simply was not occurring. I am wondering what mechanisms DIMA has in place to ensure that those two very important points made by the Auditor-General are carried out now. As you say, you have accepted the recommendations. What was in place beforehand and why didn't this take place?

Mr Correll—As for the future, there are two key things happening. The arrangements for the next purchasing process for the detention services contract, which have been initiated, have been very clearly defining the framework to be undertaken. If you wish, my colleagues can outline that in further detail. In addition, as part of the organisational changes following the Palmer and Comrie reports, we are in the process of establishing a purchasing assurance committee with an independent external chair role. That committee will have a key role in oversighting all purchasing processes that are being undertaken within the department. So we are focusing on getting the process right up front but, as quality control on top of that, we are also using a purchasing assurance committee with an independent chair to monitor those processes and assure us that those processes are being handled correctly.

Mrs BRONWYN BISHOP—I refer to the comment by the Australian Government Solicitor, who was looking at the RFT for the probity services contract. He said:

It would be appropriate for the Department to have at least a well developed understanding of its requirements.

That is a pretty awful statement for the AGS to make. Do you think you have repaired that situation?

Mr Correll—I do know that, under the processes that we have under way at the present stage for the next purchasing round, the very first step of that is the development of a new detention services delivery model. Work has commenced on the development of that detention services delivery model. So the very first requirement will be to have a very clear and precise understanding of the nature of the services we are purchasing and the clear objectives we want to achieve with those services.

Mrs BRONWYN BISHOP—This one is pretty serious. He was saying you were buying probity services but you did not really know what you wanted them to do.

Mr Schiwy—That is being documented up front in the overarching project plan for the retendering process. There is a clear distinction in roles between a probity adviser—as one of the expert advisers—and a probity auditor, to provide assurance to the delegate that the processes have been followed in the tendering process.

Mrs BRONWYN BISHOP—What is the value of the contract?

Mr Correll—It is around $400 million over four years.

Mrs BRONWYN BISHOP—And we did not know what the probity function was all about, so it is pretty grim.

Mr Correll—Senator, we are taking many measures to ensure that we know what the probity functions are and that those roles are very clear for the future.

Mrs BRONWYN BISHOP—Mr Correll, so that we do not confuse Hansard: I am in the lower house these days but thank you for the courtesy title of ‘Senator’. I have been introduced from time to time as Senator the Hon. Bronwyn Bishop, the member for Mackellar, but I think that does indicate there is some confusion.

Mr Correll—My apologies.

Ms GRIERSON—Sticking to the probity, you have obviously reviewed that and found that there were, as the Audit Office found, great deficiencies. Have you established in any way why a probity auditor was only engaged halfway through the evaluation process?

Mr Correll—Our advice is that initially it was not considered that a probity auditor in addition to the probity adviser role was required. It was only subsequently, through the course of the process, that the decision was made to add a probity auditing role in addition to the probity advising role.

Senator NASH—Who made the initial decision and who made the decision to have the probity included?

Mr Correll—The process at that time was being overseen by a steering committee, and I believe it would have been recommendations to the secretary at that time.

Ms GRIERSON—Audit Office, you might be able to help us clarify who made the decision. Was it the steering committee? Was it minuted?

Mr Lack—Is it appropriate that I answer that now, Chair?

CHAIR—You can answer that if you want.

Mr Lack—In paragraph 3.48 on page 65 of the report, we record that it was a steering committee meeting on 20 August 2002. Those minutes reflect advice from DIMA's then legal adviser. He raised the issue of an independent probity audit and subsequently the steering committee agreed to appoint a probity auditor.

Ms GRIERSON—Thank you. DIMA, it was also clear that the probity auditor then took on and was given additional roles that were basically evaluation plans for the tender process. In your experience, is it appropriate that the steering and evaluation bodies are one and the same?

Mr Correll—In my experience, the evaluation body and the steering body are normally separate bodies. We have accepted the ANAO's recommendation that that, in fact, should have been the case.

Ms GRIERSON—Audit Office, you found that the probity auditor's reports provided only a low level of assurance over the probity of the process. Why was that?

Mr Lack—To be clear, there is obviously a distinction between a probity adviser and a probity auditor. We would expect a probity auditor to have a large degree of independence. The engagement of the probity auditor did limit his ability to a desktop overview. In this case he had access to selected documentation and, appropriately, he qualified his opinion to that extent. In other parts of the audit we found that there were documents that we had findings around that the probity auditor did not have access to.

Ms GRIERSON—Was it always qualified? The probity auditor made that distinction correctly, which you would hope had been done?

Mr Lack—Yes.

Ms GRIERSON—DIMA, in paragraph 32 on page 19, there are two versions of minutes from the 17 September 2002 meeting of the tender evaluation team where the names of the tenderers are identified in one version but not in the other. Can you offer an explanation as to perhaps why the probity auditor was not shown the version of the minutes in which the tenderers were both named?

Mr Correll—The understanding was that the second set of minutes were in fact the final minutes, and those were the minutes that were provided to them at the time, and that is the reason for it. There is no suggestion here of any intention to misinform. Perhaps if there was an issue it was in the clarity and effectiveness of the record keeping.

Ms GRIERSON—Audit Office, did you find that the amendments of these minutes were sanctioned by someone in particular or by a committee or for any other reason?

Mr Lack—That particular finding is demonstrated perhaps more clearly in table 4.8 on page 87. Our main focus was that there were a number of versions of meeting write-up. In table 4.8 we have provided an extract from the probity auditor's report. You can see that he did not have access to both versions and he is giving some credit to the process, having only seen one version, by saying that this was done in order to enhance probity by avoiding any issue arising of irrelevant considerations. We just raised that as an example of where there were versions of minutes and the probity auditor saw one version only.

Ms GRIERSON—And DIMA have already acknowledged that record keeping could have been a great deal better. By February 2003, GSL had sought to adjust its draft contract, putting in for extra costs. They were the workers compensation increases; the overhead fixed costs, with the closure of a detention centre; and that reamortisation of start-up costs. They all therefore impacted on the bid that GSL made. Was the opportunity given to anybody else to adjust their bid according to some of those changed factors?

Ms O'Connell—My understanding is that the contract was signed on 27 August 2003, so the period prior to that that you referred to, in February, would have been the period during final contract negotiations. So it was not a variation to the contract as such, but during final contract negotiations.

Ms GRIERSON—Is it the understanding of the ANAO that it was appropriate that GSL be the only one able to modify their tender at that stage, had it been awarded?

Mr Lack—Following the evaluation phase, there is a contract negotiation phase with a preferred tenderer. Obviously there are discussions around price and deliverables. Our main thought there is that it is appropriate to keep your options open, and it may be necessary at some point to perhaps enter into parallel negotiations with another potential provider if you are getting unsatisfactory results from your contract negotiations.

Ms GRIERSON—Thank you. I will not pursue that further, although I think it is an issue. I refer to page 96, tables 5.1 and 5.2, in terms of value for money analysis. Audit Office, can you explain to the committee why they are different?

Mr Lack—Table 5.1 on page 96 deals with workers compensation insurance. It is not so much at this point that the value for money calculation is wrong; it is the ranking that is wrong. Where it says 'Rank' on table 5.1, you note that the value for money against ACM is 95.58. They are ranked 2. GSL revised is 95.39. They are ranked 1. It should actually be the other way around.

Mr Watson—In the value for money column, ACM are clearly lower than GSL. We have tried to show that in table 5.2.

Ms GRIERSON—DIMA, in your review, how do you explain that? How has that been explained?

Mr Correll—I think we have simply acknowledged that that was an error in the documentation, that the rank was the wrong way around based on the numbers in the table.

Ms GRIERSON—Is it irregular that the adjustments to GSL's fixed costs were not brought into account in the department's value for money calculation, particularly considering the importance placed on value for money in the tender evaluation?

Ms O'Connell—The ANAO's report—and we accept this recommendation and the findings—said that the department, when it entered into sole contract negotiations, allowed variations and did not refer back to a total picture of value for money against the last point for all of the tenderers. We accept that there were variations that were allowed as part of final contract negotiations that were not allowed and referred back into looking at an overall value for money assessment.

Ms GRIERSON—Do you also accept that like with like were not compared, basically?

Ms O'Connell—It was compared up to the point of entering into final contract negotiations. We accept ANAO's finding that it was not then compared following that.

Ms GRIERSON—After the December first draft of the value for money analysis was completed—and I think that was in October 2002—a risk analysis by the department's probity auditor identified that GSL was significantly cheaper than the other two tenderers in remote locations. It was recommended that all tenderers be invited to clarify their pricing for remote locations. Was that pursued? It was recommended that that be done, but did it happen?

Ms O'Connell—We are not clear whether that did take place for all tenderers.

Ms GRIERSON—Audit Office, did you establish whether that was not pursued?

Mr Watson—If it was, it was not documented. In the report we talk about when the pricing change was accepted in November 2002 it was for that reason but there is no evidence that ACM

were consulted. That was for remote location—GSL had asked for a pricing change for remote location. There is no evidence that ACM were consulted at all.

Ms GRIERSON—Was there evidence that GSL did meet a higher technical standard and better value for money? Was that evidence put together?

Mr Watson—GSL had a lower technical worth score than ACM in the initial evaluation. When they divided one into the other, it was the lower price that brought them into the first rank.

Ms GRIERSON—The other point I want to cover is the completion payment of $5.7 million to ACM. Was the department—and I ask you both to answer—actually required to pay ACM $5.7 million as a contract completion payment? Was that a legal requirement in the transition phase?

Mr Correll—There was no component within the contract for such a completion payment, but the notion of a transition from one provider to another is quite common practice. Because there was no provision within the contract, it was handled as an out-of-scope negotiation process over the pricing.

Ms GRIERSON—Who has to authorise an out-of-scope type payment?

Mr Correll—Under the provisions within the contract, the contract administrator negotiates with the service provider on out-of-scope matters. That can happen during the course of the contract as well as for specific issues such as transitioning out.

Ms GRIERSON—Audit Office, did you gain any explanation of how the figure of $5.7 million was calculated or what it was based on?

Mr Watson—Other than the three components we have identified at paragraph 5.62 on page 107, the documentation did not really explain how that number was calculated. The ACM provided a bid of what they thought it was worth, and it was approved in the minute.

Ms GRIERSON—Did you find any evidence of who authorised that payment?

Mr Watson—We think it was paid under the terms of the contract, but we did not find a separate authorisation for the payment.

Ms GRIERSON—Who made the decision or authorised the payment was never minuted in any way?

Mr Watson—The secretary did say in one of the minutes he wrote that it would be authorised through an exchange of letters. But we did not find the exchange of letters.

Ms GRIERSON—You described that payment as ‘doubtful’. What did you mean by that?

Mr Lack—The out-of-scope provisions, when we looked at them, focused on contingencies associated with the provision of detention centres. We could not see that those out-of-scope provisions were focused on payments designed to encourage transition.

Ms GRIERSON—Because of that doubt, because of the doubtfulness of paying the $5.7 million and because the current contract comes to an end next year, have you established that there will be no requirement to pay anything further to this contractor by way of an exit payment or completion payments?

Mr Correll—One issue that we are looking at is the overall transition management strategy that would apply for the next contractual round. We see that as a particular issue that needs to be carefully planned for. We would expect that at the end of the current contract, subject to the outcome of the tender process, there would need to be a clear transition management plan put in place. That may involve some payments being made, both from the point of view of potentially transitioning out and transitioning in. If transition-out and transition-in clauses are not within the existing contract, they have to be handled as an out-of-scope type negotiation, which is very much what has occurred in this case. In the future, I think we will be looking at making specific transition-in and transition-out clauses within our future contracts.

Ms GRIERSON—Have you checked the existing terms of the contract to see what that leeway is, what the risk is to DIMA, what the cost may be and who will make that decision if it does occur again—if GSL claims that at the end of this contract period?

Mr Correll—My understanding is that there are not those transition provisions in the contract. I stand to be corrected if there are. But, under that arrangement, it would be a negotiated process involving the contract administrator and the provider. The delegate would authorise that. The delegate in this case would be the secretary of the department.

Ms GRIERSON—Who currently is the contract administrator within DIMA?

Ms O'Connell—In my position as the First Assistant Secretary of the Detention Services Division, I am the contract administrator for the current contract arrangements that are in place.

Ms GRIERSON—Mr Correll, are you saying that, if that does occur, Ms O'Connell will assess the contract management and implementation and the secretary would sign off on that?

Mr Correll—Yes. Come what may, we will be looking at a type of transitional situation applying for the next contract because, irrespective of the successful provider, we are looking at significant changes to the service delivery model. Even if it were the same provider continuing, a transitional arrangement would need to be managed in moving from the existing service model to a new service model.

Ms GRIERSON—Through your examination of the contract, what do you think are the risks for DIMA at the conclusion of this contract in terms of transition and completion payments?

Mr Lack—For the current contract with GSL?

Ms GRIERSON—Yes.

Mr Lack—We have not specifically looked at that.

Ms GRIERSON—Do you think the $5.7 million sets a precedent? If I had the contract, I would be thinking: 'It might. I'll go for that. It's at least $5.7 million.'

Mr Chapman—There is a matter of public record there, but one would hope that the contractual arrangements and negotiations undertaken by DIMA, with the benefit of our audit report and their own review activity, would see a different arrangement in the future.

Mr BROADBENT—How many people resigned after this report came out?

Mr Correll—No officers resigned.

Mr BROADBENT—It is just that some have not been there since this report. What action have you taken to address all the issues raised in the report?

Mr Correll—In relation to each and every recommendation, we have clear plans in place for follow-up and, in fact, action. Probably the stand-out action at the present stage is what we have in place for advancing the detention services contract. A complete review of that contract was undertaken, decisions have been made to proceed to a new tendering round and new contract arrangements start in September 2007. There is an overall framework and structure for the development of the new services, the purchasing arrangements that will apply and the transitional arrangements. The broad framework has been endorsed and the detailed development is now under way.

In addition, we are in the process of establishing a specialist procurement assurance committee that will operate in the central corporate areas of the department to oversee all procurement practices. We have undertaken a comprehensive records management review undertaken by the National Archives of Australia. As a result of that, we have a major records management improvement program being implemented at the present stage. In particular, that will go into the area of purchasing. We have a wide range of measures currently being implemented to address the issues that were picked up within this report.

Mr BROADBENT—Who are the people responsible for the statement you have just made? Who do you have there to put in place what you have just stated?

Mr Correll—Various people are responsible for the various elements of those actions. In relation to the next contract and purchasing round, the head of the division, Ms O'Connell, and I, as Ms O'Connell's boss, are directly responsible for the success of that program. The specialist purchasing assurance committee has been established within our Legal Division, and our chief lawyer is directly responsible for the establishment of that group. The records management improvement program is the responsibility of the head of our information services branch, who ultimately reports to me. I see myself as having key responsibility for the implementation of that records management improvement program.

Mr BROADBENT—Have you documented your intention?

Ms O'Connell—Yes. We have a project plan for the new tendering arrangements.

Mr Schiwy—There is an overarching plan that addresses all the findings from the ANAO report and puts in place the various government arrangements—the various checks and balances—to ensure that issues that occurred in the past tendering process will not occur in the future. For example, at the time the tender process is completed or the contract negotiations are under way or the contract is to be signed, there is a requirement for assurances to be provided to the secretary that value for money is being monitored and that we are meeting the requirements of the Commonwealth Procurement Guidelines. Another example is the splitting of roles between a probity auditor and a probity adviser. There will be full recognition in the project plan up front of the distinct roles for each type of adviser for the process going forward, and there will be monitoring of any conflict of interest that may develop through that process.

Mr BROADBENT—Is that report yet to come to the secretary of the department or to the deputy secretary of the department?

Ms O'Connell—No. The overall approach has been signed off. We have a document describing that, and we can make it available to you if you would like it.

Mr BROADBENT—Is that going to form part of your response to the Audit Office? How does this work?

Mr Correll—We have already provided our response to the audit report. As mentioned in our opening statement, we have accepted all the recommendations in the report. This represents one of the many actions we are taking to implement the follow-up action in response to those recommendations. Under the framework that has been signed off by the secretary, I will chair the steering committee that will be overseeing the purchasing process this time around. We have already gone out and initiated action to acquire specialist advisers to participate in the next purchasing round.

Ms O'Connell—In addition to that, we have had discussions with ANAO in the preparation of that document and our forward approach to the next tender to ensure that that we have missed nothing in terms of those preparations.

Mr BROADBENT—In regard to what you may or may not have missed, there are only two contractors and you are already contracted to deliver a particular box of what you have decided. If the law of the land changes, the box changes. Do you have a process in place to address that within the contract?

Mr Correll—You would normally address that. It is not uncommon for services or policies to change during the course of a contract. One would normally do that through a contract variation process, and normally those processes are clearly defined within the contract framework. We would certainly expect that any new contract would have those sorts of clauses to cover changes to services and changes to policy situations, and that would normally involve a negotiation with the provider to vary the contract formally.

Mr BROADBENT—Are you satisfied that the new contract and processes cover that?

Mr Correll—No, because the new contract has not yet been developed. There are many aspects of the existing contract that we are not satisfied with. There are many aspects of the

performance management framework in the existing contract that we are not satisfied with. We will want to change the contract very substantially for the next service round.

Ms GRIERSON—Can I just follow up on that point, if that is all right?

CHAIR—I would just like to give Senator Nash a go first, and then we can come back.

Senator NASH—Does DIMA run tender processes very often?

Mr Correll—The answer is yes. DIMA does purchase a wide range of services. Indeed, I think on the latest procurement list it ranks about fourth as a department in the extent of purchasing activity. So, yes, it is a strong purchaser of services.

Senator NASH—I understand it would be for different things, but are there standard criteria that you use or utilise for those? I am asking in the context of the things that you have agreed that you could have done better in this particular process. Are there standard criteria?

Mr Correll—I think there is clearly some good or better practice available in the area of purchasing processes and contract management. The ANAO in fact publishes some guides in that area that are very useful. There is also practice to be learnt from other agencies that are significant purchasers. I am aware that our legal division, which has established a centre of excellence in the area of purchasing and contract management, and is also establishing the purchasing assurance committee, has been in contact with a number of other large purchasing agencies to draw on their better practice in forming that. It is also in the process of developing within the department an overall national contract management framework to ensure better performance management under contracts as well.

Senator NASH—Where was that area of excellence?

Mr Correll—It is within our Legal Division in our corporate area. It is the area that has the responsibility as well for the establishment of the purchasing assurance committee, which will have an independent chair. It will have a representative from the Department of Finance and Administration on it, and its role will be to oversee purchasing activities being run in a range of different line areas within the department to ensure they meet adequate standards.

Senator NASH—Just to clarify: that is a proposed area of excellence not an existing one?

Mr Correll—It has commenced and it is in place. It was established as part of reorganisations within the department that were initiated around October last year as part of the secretary's announcements at that time.

Senator NASH—Obviously, it was not in place before this. After the selection of GSL, the preferred tenderer—and there were quite protracted negotiations—ANAO found that DIMA had not ensured GSL's tender was fully compliant with the insurance liability and indemnity provisions of the request for tender before GSL was recommended as the preferred tenderer. Why is that? Why had DIMA not ensured that GSL, as a tender, was fully compliant?

Mr Correll—It is a little hard to answer that without having been there at the time, but I understand there was information and advice to suggest that there was a need to normalise the overall pricing that was being looked at, and there would have been other factors occurring as well.

Senator NASH—What does 'normalise the pricing' mean?

Mr Correll—Just making sure that everyone's price is being compared on an apples to apples basis so that there are standard provisions applying for the treatment of those costs.

Senator NASH—It does not really answer the question, though, because I understand this talks about insurance liability and indemnity provisions, and that GSL's tender was not fully compliant with those. Why would that not have specifically been addressed by DIMA?

Ms O'Connell—The advice that I have is that GSL proposed a set of insurance and indemnity arrangements at the time which were compliant. It then struggled in the market to find those arrangements to be able to be put in place, and that is the reference. But perhaps ANAO might like to—

Senator NASH—Is that why it ended up being protracted?

Ms O'Connell—Yes.

Senator NASH—Did ANAO want to comment on that?

Mr Watson—I was only going to say on our examination of the negotiation process around that that in table 6.1 we talk a little about the concept of detainee damage. Both tenderers put limitations on what sort of liability they would accept for detainee damage, but they were different in a way. I think that there was confusion in the evaluation and steering committee about whether those two things were the same or not, when in fact they were different. When it finally dawned on them that it was different, I think that is when the negotiations became protracted, because GSL then said, 'We cannot get insurance for detainee damage.' There was an ongoing process then of trying to work out who would carry the risk for detainee damage.

Senator NASH—In your view, if it had been something that had been ascertained earlier, would it have limited the length of time for the negotiations?

Mr Watson—I think I would be safe in saying that, yes.

Mrs BRONWYN BISHOP—I, too, would like to follow up on precisely that line of questioning. I am very concerned about the comments that the ANAO has made, saying basically that the minister was misled by the advice given to the minister, because no proper evidence was ascertained for the letter it wrote to the minister saying:

> It is unlikely that, should we test the market again, any potential provider will be able to insure against detainee damage.

You have already said that the options offered by GSL and ACM were different, despite the fact that they were related entities. Did ACM offer a better solution?

Mr Watson—I will just refer to the report. I think it is in there that we say that ACM's proposal was less risky. In paragraph 6.15 on page 116 we say:

> The conditions being requested by GSL represented a potential arrangement that carried more risks than that offered by ACM.

And that is because of the confusion around detainee damage about major incidence.

Mrs BRONWYN BISHOP—I would have thought that detainee damage would have related to how effective you were in carrying out the job you were being contracted to carry out. To predicate, which seems to be the case here, that GSL is basically saying, 'We do not think we can really do the job, so you had better pick up the risk,' I would have thought would be a reason for them to lose their preferred provider status. Would it be?

Mr Watson—The new tender process assessed them both on the same tender conditions, and when they responded to the conditions—

Mrs BRONWYN BISHOP—Yes, but GSL is the preferred contractor.

Mr Watson—I misunderstood.

Mrs BRONWYN BISHOP—So we then go into negotiations, don't we?

Mr Watson—That is right, yes.

Mrs BRONWYN BISHOP—What normally happens is that, if those negotiations are not successful, you go back to your second one. Then we come to this very quaint version 5.55 on page 105 where it says that, firstly, the department had gone through all the ramifications of saying to ACM, 'Keep your tender open; we might come back to you yet.' That is the normal procedure. Then suddenly a letter comes in and is never responded to. It says here:

> A member of the steering committee has subsequently advised the ANAO that there was a deliberate decision taken not to respond to ACM because it was felt that negotiations with GSL were far enough advanced, that the ACM bid was no longer necessary.

There is a word to describe that—it starts with 'b', and it ends with 't'. Obviously, somebody did not deal with the letter, and that is just plain negligence. Did you find evidence of that?

Mr Watson—We never found a response to the letter.

Mrs BRONWYN BISHOP—The wording here is, 'A member of the steering committee'. Who was on the steering committee?

Mr Correll—Various officers were involved. It was chaired at the deputy secretary level.

Mr BROADBENT—But it changed a lot, didn't it, over time?

Mr Correll—It did.

Mr BROADBENT—Both on that committee and on the oversight committee?

Mr Correll—Yes, it did change part of the way through.

Mrs BRONWYN BISHOP—Did the chair change?

Mr Correll—Yes.

Mrs BRONWYN BISHOP—When did the chair change?

CHAIR—If you are unable to answer that here, it would be useful if you could provide a bit of a chronology for us.

Mr Correll—We may be able to do that after a moment or two of checking some papers here. If not, we will take it on notice and come back to you.

Mrs BRONWYN BISHOP—Who wrote the letter to the minister saying: 'It is unlikely that, should we test the market again, any potential provider would be able to insure against detainee damage'?

Mr Correll—Again, I would need to check the specific author of that letter. It would have come from a senior level within the department.

Ms O'Connell—It would have either come from the then first assistant secretary of the area or the then deputy secretary.

Mr Correll—One of those two sources.

Ms O'Connell—You asked about the membership changes. My attention is drawn to page 59, paragraph 320, which states that in September 2002 the secretary was advised that, owing to the departure of the chair, there would be some changes.

Mrs BRONWYN BISHOP—What was the name of the chair who departed?

Mr Correll—At that point it was Mr Metcalfe.

Mrs BRONWYN BISHOP—Who was he?

Mr Correll—He was a deputy secretary of the department at that time. He moved—I think to another department.

Ms O'Connell—He was the initial chair and the chair was subsequently replaced in September 2002.

CHAIR—If we were to go back a step, taking Mrs Bishop's point, is paragraph 3.16 an accurate representation of the steering committee of August 2001, which had just four senior staff?

Ms O'Connell—Yes.

CHAIR—You had four senior DIMA staff—being a deputy secretary, a FAS for the detention task force, another FAS for border control and compliance and another for corporate governance. Is that right?

Ms O'Connell—That is correct at that point in time.

CHAIR—Can you tell us today who those four were at that time?

Ms O'Connell—Yes.

CHAIR—Since there has been some questioning it would be handy to clarify it.

Mr Correll—I think we would take the specific names on notice to make sure that we are—

CHAIR—Then you could list the subsequent changes. That would be easier.

Mrs BRONWYN BISHOP—And let us know if they are still involved in this sort of thing. ACM's tender offer lapsed on 2 May 2003. I am interested in the period of April and May 2003. Who was the chair then? Presumably, that person had been the chair since September 2002.

Mr Correll—In April and May 2003 my understanding is that the chair would have been the new replacement chair at that time.

Ms O'Connell—That is correct.

Mrs BRONWYN BISHOP—It would have been the new replacement chair? Excuse me, that is bureaucratic speak. Obviously, it was the new replacement chair. Who was it?

Mr Correll—Ms Philippa Godwin.

Mrs BRONWYN BISHOP—What was her position?

Mr Correll—Deputy secretary.

Mrs BRONWYN BISHOP—Where is she now?

Mr Correll—In another department.

Mrs BRONWYN BISHOP—When did she go to another department?

Mr Correll—In July 2005.

Mrs BRONWYN BISHOP—Was that before or after the Auditor-General's report.

Mr Correll—Before.

Ms O'Connell—This report was released on—

Mrs BRONWYN BISHOP—No.

Ms GRIERSON—Not that report. When was the Palmer report released?

Mr Correll—Just before July 2005.

Ms GRIERSON—Was the earlier audit report released just before that or at the same time?

Mrs BRONWYN BISHOP—This audit report was ongoing.

Mr Correll—There was a series of three audit reports in relation to the contract. This third part related to the purchasing process. This third report came out in March 2006.

Mrs BRONWYN BISHOP—But the dirt was being unearthed.

Ms GRIERSON—Absolutely.

Mrs BRONWYN BISHOP—If I can just conclude on this point, I have to say, as a former minister, to receive that sort of letter where the work is not done is awful. The words of the audit report are:

... In preparing advice of this type for the delegate and the Minister, the onus was on DIMIA to ensure its advice was appropriate for the circumstances, clearly expressed and based on a full understanding of all relevant issues and options.

It did not even include the options that were still around from ACM, which had lapsed because nobody bothered to reply to the letter.

Mr Correll—At the time I think it had been concluded that there was a preferred tenderer that contract negotiations were being advanced with and that there was not a need for parallel negotiations.

Mrs BRONWYN BISHOP—I do not believe that. I just do not believe it; it does not happen like that.

Mr Correll—That was the position that appears to have been taken.

Mrs BRONWYN BISHOP—Someone did not reply to the letter—that is what happened—and it lapsed. Then we got all this other stuff to try and cover it up. It seems to me that that is what happened. The report goes on to state:

... lack of appreciation by DIMIA's steering committee of the evidence required to underpin adequate advice to the Government on whether or not to grant the indemnities, or whether or not the option to negotiate with ACM was still open at this time.

There it is. That is a pretty senior committee to have done that.

Mr Correll—I do not believe the audit or any information that we would have within the department would suggest any intention other than proper intentions. I think what the department would acknowledge is that there were some deficiencies in process that occurred here.

Mrs BRONWYN BISHOP—Pardon me for saying it but: good try, Mr Correll, but it doesn't wash.

Ms GRIERSON—Because there have been several reports and because this contract is approaching its end and you as a team are now evaluating it, I hope, and looking at value for money so that it shapes the next contract. I would be very keen for the Audit Office to answer this next question too. When you do that, have you quantified the costs of the flaws in these initial contracts—for things like health service delivery, which has been pointed out, and major damage to detention centres, where the insurance flaws have meant that the department has to pick up the cost? What costs has this added to DIMA's operations—costs that you would have thought might have been covered by the contract? I saw in the paper last week that another person is taking a claim out for $1½ million or something for personal damage. Can you comment on that too, Audit Office?

Mr Chapman—We have not sought to tabulate that information. The focus of the audit was the circumstances of the contract tender and we have left it there.

Ms GRIERSON—DIMA, have you sought to do that, so that when you do put together the next contract you have covered some of these bases?

Mr Correll—Under the existing contract for services there is a performance management regime within that contract for which there are penalties that apply in areas of underperformance, and those penalties have been applied. To be fair to the existing service provider, there are many areas and many ways in which services have been delivered in a very effective manner under the existing contract as well. Where there have been deficiencies under the contract, they have been identified, they have been drawn to the contractor's attention and, under the performance management regime, there are penalty provisions that have been applied.

Ms GRIERSON—Could you provide for the committee the penalty clauses that you invoked and what they have been?

CHAIR—You can take that on notice.

Mr Correll—We will take that on notice.

Mr BROADBENT—The audit report was conducted at a time when two things were happening in the department: firstly, the requirements under the contract were changing due to a circumstantial change in the nation and, secondly, policy changes were being imposed on the

department at the same time. I understand what Mrs Bishop said about letters not being answered and those sorts of things, but the contract just about became irrelevant here because the circumstances at both sides of the contract were changing.

Mr Correll—There were various changes occurring in the environment at the time that would have made for a fairly dynamic process during that contract negotiation phase.

Mrs BRONWYN BISHOP—In all your contract dealings and your negotiations, do you rely, firstly, on your in-house lawyers and, secondly, on the Australian Government Solicitor? Thirdly, do you have a panel of outside lawyers, and, fourthly, do you ever use them?

Mr Correll—Yes, we have a panel of outside lawyers and, yes, we use them. That can be both for legal advice and probity services.

Mrs BRONWYN BISHOP—No. Who did you use on the actual negotiation of this particular contract?

Ms O'Connell—We used the Australian Government Solicitor in this exercise.

Mrs BRONWYN BISHOP—You used the AGS for a $400 million contract. Who did they have acting for them?

Ms O'Connell—It was a member of AGS staff.

CHAIR—Do you want to come back to us with all the details?

Mrs BRONWYN BISHOP—There is a very important point to make here. When outside contractors are going in to negotiate with government, they go in with the best legal expertise in the marketplace. AGS is very good for doing lots of things, but tough negotiating against tough negotiators is not their forte. Have you always had a list of outside panel lawyers and have you ever used them for negotiating contracts?

Mr Correll—Yes, we are using external organisations in some other purchasing processes at the present stage within the department to assist us in negotiations, contract design and a range of those measures.

Mrs BRONWYN BISHOP—Is this a new initiative?

Mr Correll—It did not occur in this process to that sort of role to advise in contract negotiations, although there was an external financial adviser engaged—

Mrs BRONWYN BISHOP—I am not talking about those; I am talking about a team of lawyers to negotiate with you on behalf of the government.

Ms GRIERSON—I would like to know if that was tendered.

Mrs BRONWYN BISHOP—There is a government panel and they can choose whomever they wish with the best expertise in that area. For a big contract like this, it is the sort of expertise you have to have. I want to know who was acting for them.

Mr Correll—We have those sorts of arrangements in place currently for the IT sourcing processes we are going through, for example. We have specialist—

CHAIR—Could you just go to the question. If you have the answer on who was acting, that would be good; if you do not have it with you, provide it on notice.

Mrs BRONWYN BISHOP—Is the utilisation of people from the panel a new practice for the department?

Ms O'Connell—The new practice for the next tender arrangement is that we have gone out to the market seeking legal advisers, and we will have one external provider on board for the next exercise.

Ms GRIERSON—Will they have totally separate and defined roles?

Ms O'Connell—Exactly, separate from any of the other evaluations and advisers and separate from the probity auditor and from the probity adviser—

Mrs BRONWYN BISHOP—In the best interests of the Commonwealth.

Ms O'Connell—Yes.

CHAIR—We are now going to move on to Audit report No. 34 2005-06: *Advance passenger processing*. We will move straight on to this and straight to questions.

Senator WATSON—My first question is about something that is quite serious in terms of the FMA Act. As we know, under regulation 13 of that act, a person must not enter into a contract, agreement or arrangement under which public moneys may become available unless there is approval to spend the money for the proposed contract. That is regulation 9. We understand that DIMA was unable to provide evidence that the proposal to spend public money had actually been approved under the act. Why are you going about letting contracts in breach of the FMA Act, which I regard as a very, very serious breach?

Mr McMahon—As I recall, at that time the contract was in place, but it was about additional expenditure taking place. As the statement says, there is an issue about whether or not the approvals had been documented. We accept that we could not produce the evidence that they had been documented and approved in the proper way, and so we were unable to answer the question, basically, as to whether or not the approvals had taken place in the proper way. They may well have done so, but the evidence is not there.

Senator WATSON—We are talking about $10,804,555. I am surprised that with that amount of money the documentation was not there. If there is no documentation, from my point of view you have not met the requirements of the FMA Act. And that is a very, very serious breach.

Mr McMahon—We will just have to accept that.

Senator WATSON—What are the penalties for breach of the FMA Act? From the Audit Office?

Mr Chapman—This issue is, interestingly, coming up in a number of our audits. The issue is whether there has been an offence under the Public Service Act.

Senator WATSON—Has there been an offence under the Public Service Act?

Mr Chapman—That is a matter for the secretary of the department to consider under the FMA Act.

Senator WATSON—Can I ask the secretary: do you believe you are in breach of the Public Service Act as well?

Mr Correll—My position is not secretary, it is deputy secretary, but I have no evidence to suggest we have any breach of the Public Service Act.

Senator WATSON—You are certainly in breach of the FMA Act. If you are in breach of the FMA Act in a significant way, to the extent of nearly $11 million, ipso facto you are also in breach of the Public Service Act.

Mr McMahon—I think the issue is that where people do not adequately perform their duties there is a capacity to take action under the Public Service Act. As I recall these—and maybe the Audit Office can comment—what we are doing is going back to as early as 1997-98, which is a long time ago, and most of the personnel have long since moved on.

Senator WATSON—That is no excuse. If you are in breach, you are in breach. Did anybody go to the extent of getting legal advice as to obligations at that time, or don't you have any documentation?

Mr McMahon—Seeking advice on the obligation to seek the approval under the FMA Act?

Senator WATSON—In terms of your obligations to seek approvals and the nature of that approval.

Mr McMahon—The essential problem is not whether or not the approvals took place, it is whether or not there is any evidence of it. Certainly, it is clear that the documentation is not there for the evidence of it. I would have thought that those operating at the time would have had an understanding that you cannot enter into substantial financial commitments without relevant approvals.

Senator WATSON—I am delving even deeper now. I am asking: was there any correspondence with lawyers in terms of obligations in relation to the FMA Act or Finance circulars?

Mr McMahon—I do not recall so in the material that I reviewed, but I can say that there were financial instructions in place at the time. The financial instructions under which everyone was operating would have set out the requirements of financial practice within the department.

Senator WATSON—The former were people clearly in breach.

Mr McMahon—No, it is not clear that they were in breach.

Senator WATSON—Obviously they were, if there is no documentation.

Mr McMahon—The issue is that there is no documentation. We concede that not having the documentation is a serious problem, but whether the approvals actually existed or not cannot be established. That is the problem.

Senator WATSON—We can easily establish it. I will ask the committee secretary to contact the department of finance to see whether approval was granted according to their records. The officials are suggesting that perhaps it may have been granted but they are not aware of it being granted, so I think that will clarify that point. You have not answered my question of whether you sought legal advice as to your obligations to Finance circulars or to requirements under the FMA Act in seeking outside legal advice as to what your status was. The position is not all that clear now because of the devolvement, and I am just concerned that devolvement has gone so far as to diminish the impact of the FMA Act and Finance circulars.

Mr McMahon—I am sorry, I did say I reviewed the material and I found no evidence of external legal advice. Are you asking if, since the audit was conducted, we have—

Senator WATSON—No, not since the audit; at the time.

Mr McMahon—The answer is that I could find no evidence that there was legal advice taken. I can take it on notice.

Senator WATSON—Thank you very much. I have a question, perhaps to the Audit Office. You were talking about improving the performance measures in relation to APP on border security. There is an acknowledgment that there is now coverage of about 99 per cent of airline transactions and an availability factor of 99.7 per cent. Those statistics look pretty good to me. Why do you draw that conclusion?

Mr Lack—I may stand corrected, but we were looking at the performance measures of APP in terms of it being operational on the ground, and my understanding is that the outages are actually quite low. There will be periods when the airline, for whatever reason, cannot access APP, so to that extent the IT arrangements are working quite well. The only risk there is that an outage might occur at a critical time, perhaps when a number of 747s land at Sydney airport simultaneously.

Senator WATSON—That is always possible, but if I look at those statistics I am quite impressed.

Mr Rogala—Those statistics are provided to Immigration by its contractor. We found that Immigration has not been able to verify the accuracy of the statistics, and in fact the airlines reported to us that there are quite a number of times when the system appears to be not available. Immigration could clarify this. It may be that the problem with connectivity exists at the airlines' end rather than the contractors making the system available. Certainly, there is a perception issue for Immigration to manage with the airlines as to what the problem is. We suggested that Immigration clarify that system availability with its contractor, clarify those statistics and also manage with the airlines the perception that, if there is a problem, it may be with their own system and not with the contractor.

Senator WATSON—With respect, the audit report does not make it clear that they are contractor statistics. As I understand it, you state that they are DIMA's statistics. Are they your statistics?

Mr McMahon—The statistics are supplied by CPS. Since the audit report we have looked at ways to independently validate them on a regular basis through management reports. The system availability that we are expecting at the moment—and have been for some time—is 99.7 per cent availability. During the relatively brief period of time in which the ANAO audit took place, there were a couple of outages which were quite unusual. It was because we were doing some transition work. From our management interaction with both the airlines and CPS, we believe that the availability of above 99 per cent has been consistently applied. But of course there are some occasions, which are inconvenient for airlines, where the system is not available for short periods of time.

Senator WATSON—So basically it was a coincidence that you were doing some upgrading work when an outage occurred, which I can probably understand. That was at the time the audit conducted its evaluation.

Mr McMahon—Yes. I believe we still would have had 99 per cent or more availability during that period of time, but it was an irritant to some of the airlines. As I recall, we were doing contingency planning.

Senator WATSON—To me it does not appear to be all that unreasonable under those circumstances that there could have been a temporary hiccup, if you were doing some upgrading or modification to your system. Nevertheless you still achieved 99 per cent availability. Are we really just making an issue of something that has a risk factor that the department has to live with? It would be very difficult to overcome such a situation. When you are making some temporary changes you will from time to time have little glitches, but you still achieve 99 per cent availability.

Mr Chapman—Could I offer a response on two levels. Professional pride requires me to make the first comment. At paragraph 3.32 we state quite clearly that an examination of outage statistics for APP provided to DIMA by the contractor shows the high level of availability. So we were making it quite clear these statistics were coming from the contractor to DIMA. The point that we are seeking to raise here is that DIMA did not have an independent process which allowed them to verify whether those statistics were correct or not. As to whether the contractor was telling porkies—and we are not suggesting that they were—there is no mechanism to allow

that to be ascertained. That is the primary message here. We are quite pleased to see that on the face of it there was a very high availability of the system.

Senator WATSON—But Mr McMahon has stated that their subsequent checks have proved that that figure can be sustained from the spot checks and evaluations that they have made. Is that right?

Mr McMahon—Perhaps I can clarify that. We accepted the recommendation that we should have a means of more independently—

Senator WATSON—Better means.

Mr McMahon—validating that.

Senator WATSON—But what you have done is proved that that figure is not really incorrect, although there have been occasions of outages.

Mr McMahon—The way I would put it is that our sampling in our direct feedback with the major airlines would suggest that the data is in fact correct, that we are delivering the 99.7 per cent availability. Notwithstanding that, we accept the view that we should do it independently and we should be able to see it happening. So, rather than getting a report from an airline that there is a problem, we should be able to have the management reporting capacity, or from CPS, to pick it up pretty readily. So we have acted on it, although, as you suggest, the availability is not an issue.

Senator WATSON—I think the audit has to be careful about overemphasising some glitches which, in terms of the overall performance, are probably not all that significant. I think they have to be careful not to dress them up in a way that makes the parliament feel that there are major problems.

Mr Chapman—Thank you for your comments. As you know, we are always very willing to take feedback from the committee on how we can better present to the parliament. Firstly, it was not so much the percentage outcome that we were looking to emphasise but more around the management information systems that were in place. Secondly, at the time, airlines expressed some concerns and it was difficult to ascertain the validity of those concerns. I readily accept Mr McMahon's comments that subsequent checking has proven that these figures may be valid, and we are pleased that DIMA are picking up the thrust of the recommendation and looking to improve the system going forward. If your perception is that we have overemphasised a particular point, I am very happy to take that feedback.

Senator WATSON—From the point of view of the department, there is a risk management issue. If their spot checks show adherence to such a large availability factor, I am not sure that they need a very detailed and convoluted system to day by day check each system. If they are happy from their checks, I think we have to be careful that we do not overload departments in terms of control mechanisms that may perhaps be over the top in relation to the spot-checking information that comes back from the department. I do not want to see an added bureaucracy in an area where I do not think there is a very significant failure. That is what worries me.

Mr Chapman—I accept your comments. We are very conscious of allowing departments to manage as they see fit. It takes quite conscious positions that we will raise issues and, over a period of time, work through with departments about what might be the best way to address those issues. On this occasion, the matter was raised. It was discussed with the department and there was an agreement of the outcome that the recommendation and the outcome were received here.

CHAIR—I think there has been some extensive questioning, which I thank you for. You have covered most of the areas that I know some of the members were interested in. We have got time for a few more questions, if there are any.

Mr LAMING—I have a two-part question to the Audit Office. Is the EU's decision yesterday to stop providing information to the US's equivalent of the APP relevant to this report or not?

Mr Lack—It is something we are unaware of, and we are not in a position to make any comment.

Mr LAMING—The second question was: with these flaws that you refer to in collection of information and its reliability, how much of that was due to your perception that it was simply overwork—that, when there are a number of inbounds at the same time, they are simply unable to process information? How much of the inadequacy was systematic errors as you have listed them here? It appears to me that the first three are systematic errors rather than simply the system being overworked and a random error at particular times if it is overworked. Is there any evidence that these systematic errors have been addressed over the period of your audit?

Mr Lack—They are more on the systematic side rather than being due to peak periods. They are findings that we had during the audit. We have not done any work as to how DIMA has progressed since the audit.

Mr LAMING—DIMA, what work you have done to address the systematic unreliability of the information as listed in the report—code sharing issues, crossing the primary line and charter flights?

Mr Correll—We should put those comments in the report in context. We are very proud of the APP system because it is a genuine world leader, and I think the ANAO would acknowledge that. It is an absolute world-leading system and it provides a very substantive basis for border security to Australia. On the references to percentage numbers coming through and the systemic problems, we want to improve them, in the context of always wanting to improve systems, but it has a solid base and it has been a very solidly operating system. Mr McMahon could probably comment further on the specific action that we are taking to be able to get verification of the performance information and other things.

Mr LAMING—My point is that, no matter how strong the base is, if the errors are systematic and it is public knowledge what those errors are, there is no point in collecting the other 95 per cent of the data if five per cent is a predictable systematic error that people can take advantage of. We only screen 10 per cent of the crates that come into this country, but we do it in a way that targets high-risk areas. If there is a systematic error in your data collection, that will be used by those whom we are trying to pick up and identify.

Mr McMahon—First of all, on your first question about the US and the P and R data, we do not use P and R data for those purposes, so it is not relevant. I am just trying to get to the heart of your question. What systematic error are we talking about?

Mr LAMING—For instance, we have listed charter flights as a possible area of unreliability. Wouldn't it be a security risk if it were well known that charter flights are not completely covered by APP?

Mr McMahon—There will always be some data errors, but the inaccuracies you are referring to are just such a small percentage and really would not be relevant to any particular form of entry that could be exploited. I want to register the fact that, unlike most modern countries, we do not have visa-free entry. Everyone gets a visa before they enter, so the full checks are taking place against the person's right of entry around the visa. What this is about is some of the processing errors about the confirmation of visas before people come into the country. Most countries in the equivalent situation confront people for the first time at the border and do their processing there—these people almost invariably have visas already, but the final check takes place when they actually arrive at the border. So we believe we have 99 per cent actual operational coverage of people before they get on planes. Most countries either have none in respect of particular groups or are limited overall. We are one of the very few countries that makes a decision not to board a person. Most people deal with the issue at the border, in any case.

Senator NASH—I refer to paragraphs 3.13 and 3.14 on the duplicate reporting of airline crew members. DIMA and Customs signed off on the proposed solution for crew processing in July 2002, but it was not implemented until 23 February 2005. Why was there such a long time delay between the agreement on a proposed solution and its implementation?

Mr McMahon—I would have to take that on notice. We did develop an option we called the 'crew travel authority'. We were in a roll-out position where we were trying to get 100 per cent coverage of these people. I do not know what the technical difficulties were in getting that.

Mr Simpson—The delay in that being implemented was because the Australian Customs Service had to change its system to be able to accept the data coming down on crew. There was a further release of APP in January 2004. At that time, because of the system complexities, DIMA and Customs were unable to work together to implement that. That subsequently did occur towards the end of 2004 and, as you have noted, it was implemented in 2005.

Senator NASH—Does the department think two to 2½ years is an acceptable amount of time for it to be implemented, given that there was obviously a solution and it had been agreed to? Is that an acceptable amount of time to implement something like that?

Mr Correll—We want to be able to implement our systems more quickly. This, of course, relies on two lots of departmental system changes being made. That means synchronising priorities for releases across the two agencies and, in the context of constantly changing policy, that is often a challenge. Having said that, we would always be trying to reduce that lead time.

CHAIR—We will accept the document *Detention service tender: project summary* as evidence. I thank DIMA and the Audit Office for your evidence this morning on both of those

audit reports and for making the time to answer some questions. The secretariat will be in touch with you about the items that have been asked for on notice.

Committee adjourned at 12.08 pm