



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION  
COMMITTEE

ESTIMATES

**(Budget Estimates)**

WEDNESDAY, 2 JUNE 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE****LEGISLATION COMMITTEE****Wednesday, 2 June 2010**

**Members:** Senator Mark Bishop (*Chair*), Senator Trood (*Deputy Chair*), Senators Farrell, Forshaw, Kroger and Ludlam

**Participating members:** Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Abetz, Barnett, Birmingham, Bishop, Farrell, Forshaw, Hutchins, Johnston, Kroger, Ludlam, McEwen, McGauran and Trood

**Committee met at 9.01 am**

**FOREIGN AFFAIRS AND TRADE PORTFOLIO****In Attendance**

Senator Faulkner, Minister for Defence

Senator Carr, Minister for Innovation, Industry, Science and Research

**Department of Foreign Affairs and Trade****Portfolio overview**

Mr Dennis Richardson, Secretary

Mr James Wise, First Assistant Secretary, Corporate Management Division

Ms Ann Thorpe, Chief Finance Officer, Corporate Management Division

Ms Anne Moores, Assistant Secretary, Executive, Planning and Evaluation Branch

Mr Bruce Gosper, Deputy Secretary

**Outcome 1—The advancement of Australia's international strategic, security and economic interests including through bilateral, regional and multilateral engagement on Australian government foreign and trade policy priorities**

**Program 1.1 Foreign affairs and trade operations**

**North Asia: China, Japan, Democratic People's Republic of Korea, Mongolia, Republic of Korea, Taiwan**

Mr Graham Fletcher, First Assistant Secretary, North Asia Division

**South-East Asia: Brunei, Burma, Cambodia, East Timor, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Vietnam and ASEAN**

Mr Hugh Borrowman, First Assistant Secretary, South-East Asia Division

Mr James Larsen, Ambassador for People Smuggling Issues

**Americas: Canada, USA, the Caribbean, South America (Latin America)**

Mr Bill Tweddell, First Assistant Secretary, Americas and Africa Division

**Africa: South Africa, Sudan, Zimbabwe and all other African countries**

Mr Bill Tweddell, First Assistant Secretary, Americas and Africa Division

**Europe: Western, Eastern and Southern Europe, including Turkey and organisations such as European Union and NATO**

Mr Richard Maude, First Assistant Secretary, Europe Division

**South and West Asia: India, Afghanistan, Bangladesh, Sri Lanka, Nepal, Bhutan, Maldives****Middle East: Gulf States, Israel, Palestinian Territories, Iraq, Iran**

Ms Deborah Stokes, First Assistant Secretary, South and West Asia and Middle East Division

**Pacific: New Zealand, Fiji, Solomon Islands, Papua New Guinea, Tonga, Nauru, Samoa, Kiribati, Vanuatu; Pacific Islands Forum**

Ms Jennifer Rawson, First Assistant Secretary, Pacific Division

**International organisations and legal issues: International law, sea law, environment law, climate change, treaties, sanctions, transnational crime, domestic and administrative law, United Nations, Commonwealth, human rights, Indigenous issues, people smuggling, refugees**

Mr Chris Moraitis, First Assistant Secretary, International Organisations and Legal Divisions

Mr James Larsen, Ambassador for People Smuggling Issues

Ms Caroline Millar, Head, UN Security Council Taskforce

Ms Ruth Adler, Assistant Secretary, Environment Branch

Mr Dominic Trindade, Assistant Secretary, Domestic Legal Branch

Dr Greg French, Assistant Secretary, International Legal Branch

**National security, nuclear disarmament and nonproliferation: Arms control, counterproliferation, counterterrorism, regional and national security**

Mr Allan McKinnon, First Assistant Secretary, International Security Division

Mr Bill Paterson, Ambassador for Counter-Terrorism

**Services to other agencies: Parliament, attached agencies, business, state governments and other agencies overseas and in Australia**

Mr Greg Moriarty, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

**Services to diplomatic/consular representatives: Protocol, privileges and immunities, protection**

Ms Anne Plunkett, Chief of Protocol, Protocol Branch

**Bilateral, regional and multilateral trade negotiations: Free trade agreements, agriculture, services and intellectual property, WTO, trade law, trade policy, trade commitments**

Mr George Mina, Acting First Assistant Secretary, Office of Trade Negotiations

Ms Jan Adams, First Assistant Secretary, Free Trade Agreement Division

Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division

Mr David Dutton, Assistant Secretary, Trade Policy Issues and Industrials Branch

Mr Remo Moretta, Assistant Secretary, Agriculture and Food Branch

Mr James Baxter, Assistant Secretary, WTO Trade Law Branch

Ms Cathy Raper, Assistant Secretary, Trade Commitments Branch

**Trade development/policy coordination and Asia-Pacific Economic Cooperation and Export Finance and Insurance Corporation (EFIC)\***

**APEC, international economy and finance, market information, trade advocacy, trade finance, liaison and analysis, OECD, UNCTAD, EFIC**

Mr Paul Tighe, First Assistant Secretary, Trade and Economic Policy Division

**Hosting 35th Antarctic Consultative Meeting Finance and Insurance Corporation \***

Mr Chris Moraitis, First Assistant Secretary, International Organisations and Legal Division

**Program 1.2 Payments to international organisations (administered)**

Mr Chris Moraitis, First Assistant Secretary, International Organisations and Legal Division

Mr James Larsen, Ambassador for People Smuggling Issues

**Program 1.3 Public information services and public diplomacy (administered): Expositions special account—Shanghai Expo; Australia Network; International Relations Grants Program**

Mr Greg Moriarty, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

Ms Anne Moores, Assistant Secretary, Executive, Planning and Evaluation Branch

**Outcome 2—The protection and welfare of Australians abroad and access to secure international travel documentation through timely and responsive travel advice and consular and passport services in Australia and overseas**

**Program 2.1 Consular services**

**Program 2.2 Passport services**

Mr Greg Moriarty, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

Mr Bob Nash, Executive Director, Australian Passport Office

**Outcome 3—A secure Australian Government presence overseas through the provision of security services and information and communications technology infrastructure, and the management of the Commonwealth's overseas owned estate**

**Program 3.1 Foreign Affairs and Trade operations: Overseas physical security; overseas IT support**

Mr Stuart Page, Acting First Assistant Secretary, Diplomatic Security, Information Management and Services Division

**Program 3.2 Overseas property**

Mr Peter Davin, Executive Director, Overseas Property Office

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**Australian Centre for International Agricultural Research (ACIAR)**

**Outcome 1—To achieve more productive and sustainable agricultural systems for the benefit of developing countries and Australia through international agricultural research and training partnerships**

**Program 1 International agricultural research for development for more productive and sustainable agriculture**

Dr Nick Austin, Chief Executive Officer

Dr Simon Hearn, Principal Adviser, Strategy and Policy

**Australian Agency for International Development (AusAID)**

**Outcome 1—To achieve assist developing countries to reduce poverty and sustainable development, in line with Australia's national interest**

**Program 1.1 Official development assistance: PNG and Pacific**

**Program 1.2 Official development assistance: East Asia**

**Program 1.3 Official development assistance: Africa, South and Central Asia, Middle East and other**

**Program 1.4 Official development assistance: Emergency, humanitarian and refugee program**

**Program 1.5 Official development assistance: Multilateral replenishments**

**Program 1.6 Official development assistance: UN, Commonwealth and other international organisations**

**Program 1.7 Official development assistance: NGO, volunteer and community programs**

**Departmental support**

**Outcome 2: Australia's national interest advanced by implementing a partnership between Australia and Indonesia for reconstruction and development**

**Program 2.1 East Asia**

**Departmental support**

Mr Peter Baxter, Director General

Mr Richard Moore, Deputy Director General, Asia Division

Mr Murray Proctor, Deputy Director General, Program Enabling Division

Ms Catherine Walker, Deputy Director General, Africa, West Asia, Middle East and Humanitarian Division

Mr Blair Exell, Acting Deputy Director General, Pacific and PNG Division

Mr Jamie Clout, Deputy Director General, Corporate Enabling Division

Mr Robin Davies, Deputy Director General, Sustainable Development and Partnership Division

Ms Jane Lake, Assistant Director General, Pacific Branch

Mr Laurie Dunn, Assistant Director General, Operations, Policy and Support Branch IN

Mr John Davidson, Assistant Director General, Office of Development Effectiveness

Ms Lisa Rauter, Chief Financial Officer



**Australian Trade Commission (Austrade)****Outcome 1—Advance Australia's trade and investment interests through information, advice and services to businesses, industry and governments****Program 1.1 Trade and investment development****Program 1.2 Trade development schemes (Export Market Development Grants)****Outcome 2—The protection and welfare of Australians abroad through timely and responsive consular and passport services in specific locations overseas****Program 2.1 Consular, passport services**

Mr Peter Grey, Chief Executive Officer

Mr Peter Yuile, Deputy Chief Executive Officer

Ms Hazel Bennett, Executive Director Finance, Information and Planning

Ms Marcia Kimball, Executive Director, Human Resources

Mr Mike Moignard, Acting Executive Director, Export and Investment Services

Mr Ian Chesterfield, General Manager, Business Policy and Programs

Mr John Angley, General Manager, Government and Communications

Ms Elizabeth Gamin, National Manager EMDG Operations

Mr Peter Gunning, Chief Finance Officer

Ms Helen Monro, Manager, Government, International and Policy Group

Mr Michael Vickers, National Manager, Policy and Scheme Development

Ms Freya Campbell, Group Manager, Building Brand Australia

Ms Kylie Bell, Manager, Client Services

Ms Leanne Joyce, Group Manager Communications

**CHAIR (Senator Mark Bishop)**—I declare open this meeting of the Senate Foreign Affairs Defence and Trade Legislation Committee. I welcome Senator Faulkner, representing the Minister for Foreign Affairs, Mr Dennis Richardson, secretary, and officers of the Department of Foreign Affairs and Trade.

The Senate has referred to the committee the particulars of proposed expenditure for 2010-11 and related documents for the foreign affairs and trade portfolio. The committee must report to the Senate on 22 June 2010, and 30 July 2010 has been set as the date by which questions to questions on notice are to be returned. Senators should provide their written questions on notice to the secretariat by close of business Thursday, 10 June. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised and which I now incorporate into *Hansard*.

*The document read as follows—*

**Public interest immunity claims**

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
- (1) If:
- (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
- (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
- (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
- (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

[9.03 am]

**CHAIR**—Today, the committee will examine the budget estimates for the Department of Foreign Affairs and Trade non-trade programs. The trade program will be heard tomorrow evening. Minister, do you or an officer wish to make an opening statement?

**Senator Faulkner**—No. There will be no opening statements this morning.

**CHAIR**—Are there any questions for the portfolio overview?

**Senator TROOD**—Just before I move to the budget papers, I would like to make some queries regarding answers to questions on notice. Secretary, I am rather alarmed that the answers to the questions which were put on notice at the last estimates, the additional estimates in February, came in a very tardy fashion. Not a single one of them was responded to by the department by the due date. We received answers to two of those questions—questions 15 and 19—on what I would have thought to be important issues only on 1 June. In other words, the responses from the department to those questions were 62 days late. Are you able to provide an explanation to the committee for the delay in responding to these questions?

**Mr Richardson**—No, Senator, I do apologise for that. That is not good work on our part, and we will do it within the timeframe this time.

**Senator TROOD**—Mr Secretary, I am very grateful for that undertaking because the department has been what I might call a ritual performer, or non-performer, in this regard. Just to acquaint you with the record that I have, there was the matter of the estimates from February, where supplementary estimates questions were 12 days late, for the estimates from budget estimates last year the answers were 13 days late, answers to additional estimates questions were eight days late in April last year, supplementary estimates questions in December-January 2008-09 were 50 days late and the responses to the budget 2008-09 questions were 35 days late. So the performance of the department here is, I think, very poor. I think it needs to be addressed, and I am grateful for the fact that you have given an undertaking to the committee that this matter will be addressed, because it makes our work very difficult when it takes so long to receive the responses, particularly on issues which are of considerable importance to the portfolio.

If I might go to budgetary matters, I see that the net total resourcing for DFAT has actually increased somewhat in this budget, is that correct?

**Mr Richardson**—Yes, it has. We have received additional moneys of approximately a bit over \$200 million over the next four years.

**Senator TROOD**—\$200 million?

**Mr Richardson**—\$212 million over the next four years.

**Senator TROOD**—That is for the whole portfolio?

**Mr Richardson**—That is for the Department of Foreign Affairs and Trade.

**Senator TROOD**—I think also there is a projected increase in staff as well, or at least in staffing equivalence.

**Mr Richardson**—That is right, a forecast increase of 59.

**Senator TROOD**—I will get back to staffing in a moment, but I just wanted to dig a little more deeply into the budget and take you to, if I may, in the PBS, table 2.1 on page 22. These are expenses and resources for outcome 1, as I see it. I am seeking clarification of this, because the story here troubles me—at least my understanding of the story in this table troubles me—because it seems to show a decline in expenses for outcome 1 over the 2010-11

year compared to the 2009-10 year; a decline of the difference between \$967 million and \$847 million. Is that an accurate reading of the table?

**Mr Richardson**—It is a difference primarily as a result of currency movements.

**Senator TROOD**—This is about currency, is it?

**Ms Thorpe**—Yes.

**Senator TROOD**—So it is not worse, as it looks?

**Mr Richardson**—No.

**Senator TROOD**—But it is not considerably better, is that fair enough?

**Mr Richardson**—It is not worse, in fact, we were very conscious of the fact that on the surface it looked in some areas as though there was a reduction in moneys when, in fact, that simply reflected adjustments for the fact that the Australian dollar buys more now than it previously did.

**Senator TROOD**—That is across all of these programs?

**Ms Thorpe**—Yes.

**Senator TROOD**—Which areas of the programs are most directly affected by the movements in the dollar?

**Ms Thorpe**—It goes right across all our spend because, as you can imagine, a lot of our spend is overseas in overseas currencies, so it is not really very specific to particular programs. It goes right across because our posts obviously are dealing in foreign exchange.

**Senator TROOD**—Am I right in saying that it is a kind of steady-state budget in that respect?

**Mr Richardson**—There is an increase in the overall funding for the department. As mentioned previously, we got an additional \$212 million over the next four years, so there are some quite specific areas where we have an injection of new funding.

**Senator TROOD**—Perhaps it might be a convenient moment for you to just make that clear to the committee, Secretary.

**Mr Richardson**—Essentially in the areas where we have additional funding we have received \$73 million over four years or \$101 million over six years for improving passport integrity, in other words, enhancing the passport system. We have received \$85 million over two years for the enhanced civilian engagement in Afghanistan and \$52 million over two years to accommodate the transitional security arrangements for the Australian Embassy in Baghdad moving from ADF provided security to our own security contractors. We have received \$14 million over four years for a continuation of the Smartraveller information program. There are a couple of other very minor matters, but they are the four major contributors to that overall increase in funding.

**Senator TROOD**—If I can say so, that is the heart of my concerns about what I understand to be the nature of this budget—that is, that these are allocations of funding for important purposes, but they relate to very specific parts of the portfolio: passports, for example, and the embassy et cetera. Correct me if I misunderstand this, but the part where

there does not seem to be any significant increase in funding is in relation to program 1.1 of the department. In other words, what might be characterised as the engine room of the Australian department of foreign affairs, the place where the activity for representation is undertaken, the place where policy making takes place—what would be, in any department of foreign affairs, the essence of what it is about. That is the major program activity of the department, is that correct?

**Mr Richardson**—That part of it is steady state.

**Senator TROOD**—Is it?

**Mr Richardson**—Yes, it is.

**Senator TROOD**—I am looking at the program 1.1 deliverables, which are set out handsomely on pages 24 to 28 of the PBS. I agree with you that there are many references in these deliverables to what might be regarded as steady-state activities, effectively, with words like ‘effective contribution to advancing Australian climate change’—we will see how that goes—‘supporting Australia’s engagement with the Commonwealth’, ‘effective whole of government efforts to promote stability in Afghanistan’, ‘continued stronger engagement’, ‘effective whole-of-government activity in relation to countering people smuggling’ et cetera.

There are a lot of references to deliverables which are essentially maintaining an existing level of activity, but there are also in these deliverables a large number of references to activities which suggest a dynamic and expanding agenda. I will just explain and suggest those to you: ‘a heightened role for Australia in promoting non-proliferation and disarmament’; ‘an advanced role for Australia in the Asia-Pacific’; ‘a reinvigoration of Australia’s engagement with the Pacific Islands’; ‘further deepening of our important and wide-ranging relationship with New Zealand’—and I guess that is more diplomacy over football; ‘stronger relations with Latin America’; ‘stronger relations with the countries of Africa’; in relation to Latin America, ‘high-level contact’ ‘enhanced engagement with the Arab League and its member states’; ‘closer engagement with the Gulf Cooperation Council’; et cetera. There are, it seems to me as I read these deliverables, a large number of activities which suggest that you are going to be required by the government to do a great deal more than you have been doing in relation to very particular areas: the Gulf council, New Zealand et cetera. How are you going to do that?

**Mr Richardson**—In some of those areas there are some specific increases in funding. In other areas where you are doing more, you can sometimes do more without it costing any more. You can enhance a relationship without spending more money on that relationship by the level of attention that you devote to it and the like. You mentioned Latin America. You will be aware it has been previously announced that this year we will be opening a mission in Lima; that has already been funded and factored in. But, in some of these areas where we are talking about enhanced engagement and doing more, sometimes it is the level at which we are doing it that we are referring to, and not all of these matters cost money. You can also move your priorities around. Organisations do that all the time.

**Senator TROOD**—I see that, but there is an agenda here which is as wide as it is deep, and it involves a department continuing to engage on a large number of fronts and, as I read this, expanding. There is an expectation of expanding activity in areas such as the Gulf, the

Middle East et cetera and in Latin America, where the additional effort is going to require additional resources, is it not?

**Mr Richardson**—Not always. In some cases it does require additional resources; in other cases it does not.

**Senator TROOD**—How are you going to undertake, for example, the heightened role in relation to non-proliferation and disarmament, which presumably involves diplomatic activity? It involves seeking to engage with countries in relation to non-proliferation matters, perhaps with the IAEA, and with our allies that have common views on these matters. Surely these require additional energy and activity by individuals?

**Mr Richardson**—As you know, the government has funded the ICNND. I think that comes to an end around July, with some residual carryover, but effectively around July. There has just been the NPT review conference in New York, which we were very actively involved in. We have the ASNO. We are putting in some small additional resources there but, for the most part, our multilateral engagement will be heightened. We will do more on non-proliferation and disarmament over the next 12 months in New York and in Geneva—not so much in Geneva, because we always do a lot more—but it will have a higher profile in the UN framework over the next 12 months and we will be engaged in that.

**Senator TROOD**—My understanding in relation to the international commission is that the funding is running out.

**Mr Richardson**—That is right.

**Senator TROOD**—There is no additional funding in this budget for a continuation of those activities, so any further funding, unless there is a carryover—maybe there is.

**Mr Richardson**—No, there is a very small carryover, but the basic point you are making is right in respect to the ICNND.

**Senator TROOD**—So you are going to have to fund all the activity you undertake in relation to non-proliferation matters from within the existing budget and you cannot rely upon any serious carryover.

**Mr Richardson**—The ICNND was an add-on to what the department was doing.

**Senator TROOD**—I understand that.

**Mr Richardson**—So when the ICNND—the international commission—ceases after July, the department will have a continuing engagement in non-proliferation matters for which we are funded.

**Senator TROOD**—I do not want to get bogged down in that particular example, but it is I think iconic or instructive as to the kinds of challenges that you seem to be facing—that is to say, you will be furthering, you will be strengthening, you will be enhancing and for all of these activities there is essentially no additional resources, apart from that which you can find from efficiencies within the department. As you have said, and I have heard Mr Wise say this on numerous occasions—he is very good at prioritising and prioritising your activities—but something has got to give, hasn't it?

**Mr Richardson**—Speaking frankly, Senator, I think what you have just outlined is correct. What you have outlined is essentially the challenge that successive governments pose for the Public Service. You have essentially outlined the essence of our business, and I do not think we have more of a bigger challenge in the essence of our business over the next 12 months than what we have had over the last 12 months.

**Senator TROOD**—That is probably true, but would you not say you have a somewhat greater challenge than some other departments of state, perhaps Defence?

**Mr Richardson**—Defence have big challenges. Defence have to find \$20 billion within their own hide in efficiency gains over the next 10 years. We do not have that demand on us. They do have a larger number of ADF personnel on the battlefield, so they have particular challenges. I would not compare us with them.

**Senator TROOD**—Sadly, you do not have their \$26 billion, or thereabouts, either?

**Mr Richardson**—I would be happy to have it.

**Senator TROOD**—Just ask him; I am sure he will give you some of it.

**Senator Faulkner**—That is a very interesting use of a particular adverb there. One could easily make comparisons with Defence or other agencies, but a serious response to your question goes to the constraints and requirements that are on all agencies in the contemporary environment, which I am sure you appreciate. The Department of Foreign Affairs and Trade is not immune to those sorts of challenges either. I am sure you appreciate that. This committee examined over the last two days the estimates for the Department of Defence and the Department of Veterans' Affairs. The same issues arose for those agencies in terms of prioritisation and the necessary focus required to deliver on the government's objectives. As you outline, these are described as program 1.1 deliverables and outlined for all to see in the DFAT PBS. I would not think that the Department of Foreign Affairs and Trade finds itself in some sort of unique circumstance in relation to the challenges it faces as a department of state.

**Senator TROOD**—It is a unique department of state, and I think it is a department facing a particular challenge. That is my view. This PBS, with the statement on deliverables—

**Senator Faulkner**—Senator, you are the one drawing comparisons with other agencies.

**Senator TROOD**—I concede the point that all agencies have to save money, but the point I am making is that—

**Senator Faulkner**—That is the same point that is being made.

**Senator TROOD**—This agency has a particular challenge and it seems to me that it is not being eased by the framework of this budget. It says there is a modest increase in funding for the department, but it is going to very specific areas. But, as I said earlier, the engine room of the department is the place where decisions are made, where representations are made, where policy analysis takes place et cetera and where there is, on the basis of this PBS, an expanding range of deliverables. More is being demanded of the department. Am I correct, Secretary?

**Senator Faulkner**—Let me assure you that no-one is ever going to diminish the importance of the Department of Foreign Affairs and Trade and the critical importance that

this agency has in advancing Australia's national interest. Of course that is true. I would not diminish it, you would not diminish it and I am sure no Australian would. As the PBS makes clear, there is nothing more important than the security and prosperity of Australians. The role of this agency, particularly in the areas of international relations and national security, ought never be diminished by any of us. I know you would not, as I would not, diminish that critical responsibility that this agency has. Having said that, we all understand that, for not just years but for decades, there have been issues relating to all government agencies ensuring that they look at fulfilling these roles and objectives in the most efficient way possible. From time to time, as you know, cost efficiencies and savings are also something that ministers, agency heads and those who work within agencies focus on. This is not unusual; in fact, it is now standard practice and has been literally for decades, as it should be.

**Senator TROOD**—I think it is common ground: we do not want to diminish the role of DFAT, although that is not the story here, it seems to me. Mr Secretary, the burden of these priorities is going to fall on your people, isn't it?

**Mr Richardson**—In terms of the budget, let me say that, in the context of the current fiscal environment, I am comfortable with the outcome of the budget. Would I like more? Of course I would. However, you live within a particular fiscal environment and I respect that. Within that, I am comfortable. The big challenge that we face—and it is difficult to talk about this because it can be misinterpreted—is an historical hangover we have in terms of our resourcing. Unfortunately, there has been a period of time when the fiscal environment was not as difficult as it is now when it would have been good if the department had been able to grow rather than shrink. That is history. We cannot do anything to address that. In terms of the budget, I think, for this year's and last year's budget, there has been an improvement in our own budgetary position, which I welcome.

**Senator TROOD**—This budget essentially does not alleviate that historical hangover, does it?

**Mr Richardson**—It could not. You would not be able to do it in one budget. Where in a period of time you reduce by 100 the number of people you have overseas, you cannot in a single budget turn that around. That does take time.

**Senator TROOD**—I think I have made the point that I wanted to make in relation to program 1.1. I move on to other parts in the budget. In relation to program 1.3, 'Public Diplomacy', on page 32, there is a noticeable and very significant decline in the public diplomacy funding here.

**Mr Richardson**—There is a simple explanation for that.

**Senator TROOD**—I am glad about that. I would be delighted to hear it.

**Mr Richardson**—It is simply that the funding this year includes the Shanghai World Expo. That funding does not carry over to next year, so the difference you see between the funding this year and the funding next year is essentially the Shanghai World Expo.

**Senator TROOD**—This decline in public diplomacy funding is wholly related to Shanghai, is that right?

**Mr Richardson**—Yes.



**Senator TROOD**—Taking that out of the equation, the funding for public diplomacy would essentially be the same as it was last year, is that right?

**Mr Richardson**—Yes. That is right.

**Senator TROOD**—My recollection was that the department was seeking a considerable amount of private self-sponsorship for the Shanghai expo, which has begun, but that funding was not available.

**Mr Richardson**—We got some private funding. We got some private sponsorship, both in terms of dollars and in kind. I have not got the figures immediately in my head, but we did get sponsorship.

**Senator TROOD**—I recollect that, but I think there was a significant shortfall, was there not? The budget was \$40 million or \$60 million and the projected contributions from outside sources were a very large proportion of that amount. The last time I saw these accounts there was a significant shortfall in that outside funding.

**Mr Richardson**—And we were funded for that shortfall.

**Senator TROOD**—You were funded for the shortfall in the previous budget. Is that right?

**Mr Richardson**—I am told that we were funded for any shortfall in the private sponsorship.

**Senator TROOD**—That is not in these papers though, is it?

**Ms Thorpe**—We got funded at additional estimates. You may recall that we got funded an additional \$12 million because it was recognised that the original \$22 million sponsorship was probably very difficult to attain in the current environment. The government actually gave us an additional \$12 million, so our target for sponsorship was only around \$10 million, which I understand the project has achieved.

**Senator TROOD**—You are not required to make up any of the shortfall from general revenue?

**Mr Richardson**—No.

**Senator TROOD**—Let me pick up on the consular service in Program 2.1 on pages 36 and 37 of the PBS. Here again, I am slightly confused, but maybe there is a simple explanation for the figures. You make the point in the deliverables at 2.1—and I think those who look at this are very familiar with the fact that Australians are inveterate travellers. We also expect—and this point is made in the budget—that there will be an increasing number of Australian travellers in the 2010-11 year. We also know that, sadly, they get themselves into a bit of trouble from time to time and they need to call upon the reserves of the Department of Foreign Affairs and Trade to assist their welfare. The framework of consular activity is very clear and it seems to me that consular activity is increasing. Yet you have a decline in the allocations, from \$83 million to \$75 million, in these consular services. This is on page 36.

**Mr Richardson**—Yes. The total program expenses show a decline from \$84 million to \$80 million, which again is for foreign currency movements. There has been no effective reduction in the budget.

**Senator TROOD**—There are no additional funds for consular activities—

**Mr Richardson**—Except for the continuation of Smartraveller.

**Senator TROOD**—I acknowledge that, but that is a very specific program of course. But these are allocations of funding for the conduct of consular activities broadly described. Is that right?

**Mr Richardson**—Yes.

**Senator TROOD**—There are some specific outlays for Smartraveller, for example, or for passports—although they are under a different section. But there will be an increasing number of Australians going overseas—and you have said this—and there is likely to be an increasing demand on your consular services. I think that an increasing demand on consular activities is true of most foreign services and yet, not only do we not have an increase but, allowing for the budget currency movements, we are expecting to do more with the same amount. Is that a fair interpretation of the figures?

**Mr Richardson**—I think the trend line you point to is correct, in the sense there is no question that the demand for consular services is steadily increasing year on year. I think you are right, but when you look out over the next X number of years that will be a pressure point. We believe we will be able to meet what increase in demand there might be this year; we believe we will be able to meet that within the budget that we have been allocated this year, but looking out over the next five-plus years that is certainly a particular pressure point in terms of the department's finances.

**Senator TROOD**—Thank you for that frankness, Secretary, but how are you going to do that? I am just looking at these forward projections and in 2011-12 the figure is less. That may reflect another calculation about currency movements. In fact, all of those forward estimates may reflect judgments about currency estimates, and there is no expectation of increased funding for the field, so how are you going to do that?

**Mr Richardson**—For a start, there are processes in government, as you are aware of, every year. We could go to government with an NPP next year or the year after; we will see. We will see how the trend line continues. We are in fact looking at consular services at the moment. We have one or two little reviews going on internally. We are looking at how we may be able to do it or what we might need. The forward estimates do not preclude the department putting up a case for additional resources where it believes it has strong reasons to do so. If we believe we have strong reasons to do so over the next couple of years then that is what we will do.

**Senator TROOD**—So you acknowledge there is likely to be or, even now perhaps, there is a case for increasing the resources available for consular activities?

**Mr Richardson**—I am not saying there is a case now, but if you go back 15 years or forward 15 years, the trend line you point to is perfectly correct, and there will probably be a need over the next five to 10 years to rebase our funding for consular services. When it will be in that time frame, I do not know. But you have only got to look at the projections of the number of Australians travelling and at the projections that relate back to consular services sought, factor in the things that invariably go wrong, and the demand for consular services is going to continue to grow—I think that is right.

**Senator McEWEN**—I have got a question on consular services if I may. Mr Richardson, you clearly outline there that the projection for consular services will increase in the future. Do you know how many Australians you have provided with some form of consular assistance in the previous year?

**Mr Richardson**—I think Greg could provide you with that.

**Mr Moriarty**—The department managed 27,861 cases involving Australians in difficulty in 2008-09 and provided over 166,000 notarial services. In that particular year that was the case and, as the secretary mentioned, the trend lines are continuing and we will, presumably, provide a similar slightly increased number of support in this current year.

**Senator McEWEN**—Do we have a running total for the current year?

**Mr Moriarty**—No, but I can check that for you.

**Senator McEWEN**—How many staff are working in Canberra in the consular section?

**Mr Moriarty**—In Canberra we have two consular branches, a consular policy and an consular operations branch. At the end of April this year there were 52 staff working in those two branches.

**Senator McEWEN**—Does that number remain constant during the year or does it increase with seasonal allowance?

**Mr Moriarty**—A little bit depending on staff movements, but those numbers are fairly stable.

**Mr Richardson**—Can I add that if there is a particular consular crisis then the staff are, and can be, drawn in from other parts of the department. They are the staff we have on a continuing basis, but in a crisis additional resources are thrown in.

**Senator McEWEN**—Can you tell how many overseas staff are dedicated to consular functions? I know they often do more than one task.

**Mr Moriarty**—That is very difficult. We do have what we assess to be 161 points of consular service delivery. For example, some our posts may be Austrade managed posts, but the consular work is of high priority for those as well.

**Senator McEWEN**—Do you do actual projections of what you expect consular service demand would be in the future. You said that it obviously increases, but would your percentage increase?

**Mr Richardson**—Greg will pick me up if I am wrong, but it has been growing at between five and eight per cent a year, hasn't it?

**Mr Moriarty**—That is correct. Over the last few years growth has been around eight per cent per year.

**Senator McEWEN**—Is the turnover in consular staff higher or lower than in DFAT generally?

**Mr Moriarty**—It is quite stressful work particularly for the staff dealing with it, but it is also very rewarding work and so we do not find that the percentage movements are different across the department. In Canberra people normally come into those positions in the same

way they enter into the other parts of the department. I think our rates of retention and recruitment are very similar.

**Senator McEWEN**—There is a proposal that there should be a freeze on APS hiring for the next two years. How would that affect the delivery of consular services?

**Mr Richardson**—I am not aware of a freeze.

**Senator McEWEN**—The opposition have a proposal that, should they be in government, there would be a hiring freeze for the Australian Public Service for two years. If that was the case, you would not be able to replace staff that leave consular services. How would that affect your delivery of services to in excess of 27,800 Australians who require services?

**Mr Richardson**—It would mean that we would obviously need to prioritise. Depending upon the consular demands we then might have to move resources from some other parts of the department into the consular area.

**Senator McEWEN**—The kind of consular services you provide are often provided in an emergency situation, aren't they?

**Mr Richardson**—They would be retained because, normally, an emergency would demand a response anyway. Again, you would be moving resources from elsewhere.

**Senator McEWEN**—So you would have to take resources from elsewhere in the department to cover the consular services.

**Mr Richardson**—If it was an emergency, yes.

**Senator McEWEN**—Thank you.

**Senator TROOD**—On this point of crises and emergencies, there are a couple of high-profile events coming up in the future: the Commonwealth Games and the World Cup in South Africa. Many Australians are involved. I think 45,000 Australians have bought tickets for the World Cup in South Africa. Can you provide us with any up-to-date information about the security assessments with regard to those events in the first instance?

**Mr Richardson**—With regard to the World Cup in South Africa, the South African authorities have expressed confidence that they have the security situation in hand. They, of course, carry that responsibility. We are putting additional consular resources into South Africa, as you would expect. We will, for instance, have consular services being provided at each of the venues where the Australian team is playing. We do have that in hand. Before the World Cup starts, we will have some senior people visit South Africa to have further discussions on the security arrangements also.

**Senator TROOD**—By what amount or number are you enhancing the consular services available? Can you provide us with that statistic, Mr Moriarty?

**Mr Moriarty**—We are sending additional officers to the post and also utilising our regional consular officer. There are also additional staff from other agencies supporting the mission.

**Senator TROOD**—You are sending additional DFAT staff there, are you?

**Mr Moriarty**—That is true.

**Senator TROOD**—How many are you sending?

**Mr Moriarty**—I will get the exact figure for you. I do not have it on me.

**Senator TROOD**—Do you know when they will be sent to South Africa? The World Cup is imminent, isn't it?

**Mr Moriarty**—Yes. Some staff have deployed already.

**Senator TROOD**—Where have they been drawn from? Have they been sent there from other posts abroad, or have they been sent from Canberra?

**Mr Moriarty**—It is a combination.

**Senator TROOD**—Perhaps you could assist me with the numbers and where the staff have come from.

**Mr Moriarty**—I will get that breakdown for you.

**Senator TROOD**—That would be helpful. Mr Secretary, are the staff from other agencies performing functions related to those agencies, or are they assisting with the consular activities in some way?

**Mr Richardson**—They are primarily performing functions relating to their own agencies, but there is some assistance being provided on the consular front.

**Mr Moriarty**—Four additional staff from Australia are going to South Africa and four are being redeployed from other duties in-country to support our efforts on the World Cup.

**Senator TROOD**—Are the four additional staff from Australia coming from Canberra or from some of the state offices?

**Mr Moriarty**—I do not know. I will have to get a breakdown.

**Senator FORSHAW**—Have you got an indication of how many Australians are likely to be visiting South Africa for the World Cup?

**Mr Moriarty**—We estimate around 10,000 Australians. There have been 43,000 tickets sold, but a number of people go to more than one match.

**Senator TROOD**—I will proceed with my analysis of the PBS, leaving consular issues aside for the moment. I refer you to passports, on page 39. The deliverables make the point that these are high-quality passports and services to Australians and that we all know that they are technologically amongst the most advanced anywhere. Given the fact that there are more Australians travelling, one presumes there are likely to be more passports issued, yet I see a similar situation with regard to the allocations of funding for passports. Is that again a shift in currency matter, because passports are issued in Australia for the most part, aren't they?

**Ms Thorpe**—No. People will buy their passports right around, at all our posts, so it can still have a forex implication, and that is part of what is driving this. You asked whether the number of passports is likely to increase in the out years. At the moment, we are currently under a passport agreement. The lines that you see there are based on the current base assumption of how many passports we will be issuing. What happens is, once we actually know how many passports we will have issued for a year, we will get additional funding to top us up. The passport agreement is very much based on the number of passports we issue.

What you are seeing in there is a flat line impacted by forex. There is a slight increase because of the new funding we have received, but it has basically been driven by the forex and the fact that it is a flat line quantity at the moment. It will be adjusted each year, depending on the number of passports we issue.

**Senator TROOD**—Is the total program expenses likely to shift during the course of the year?

**Ms Thorpe**—If passport demand exceeds the number that the passport agreement has been based on, yes, it will increase.

**Senator TROOD**—But that is not an expense you have to bear?

**Ms Thorpe**—No. We are funded for every passport we issue. There is an agreement with Finance that we will get funding.

**Senator TROOD**—But you cannot make money out of this, can you? To put it crudely.

**Ms Thorpe**—No.

**Senator TROOD**—You have to send the money back. You cannot be more efficient in producing passports and keep the money you might have and put it into the Secretary's treasury so he can have a bit more money to spend on deliverables elsewhere; it is essentially an administered expense, isn't it? Maybe that is not the right term.

**Mr Richardson**—The long and short of it is that, if there is an increase in demand for passports, we will have funding for that. It is not an area where increasing demand and increasing workload will lead to a draw down in other parts of the department to fund.

**Senator TROOD**—Good. Thank you.

**Senator FORSHAW**—The Minister for Foreign Affairs issued a press release on 11 May. I refer to a number of aspects of that. Firstly, he stated that there was \$100.8 million over six years to be used by the APO to enhance safety and security of Australian passports and the prevention of identity theft. He then goes on to also refer to the new system, which will have four key elements: eScan, eFlow, eCase and ePrint. Firstly, can you expand on how this will enhance safety and security in practical terms and then tell us some more about those four key elements?

**Mr Nash**—As you have correctly identified, there are four elements involved in this six-year program. By far the largest and most important element is the eFlow. This goes to the core of our business. This is work-flow technology that takes data from the beginning of the process to the end and in doing so allows us to electronically conduct a number of checks against electoral rolls and a whole bunch of data that is publicly available.

As part of that process we also conduct a facial recognition check and, to the very best of my knowledge, Australia is still the only country in the world that does that for each and every passport application. Clearly that is a major enhancement. We do it now, but we need to do it better and we need to do it faster, which we will be able to do. As you can imagine with 12 million images, one image being checked against that number 8,000 times day needs the very best of technology.

At the beginning of the process we have to get data into the system. What happens currently is that applications forms are completed, they are lodged in the vast majority of cases at Australian post offices, they are transferred to us in manual form at the moment and we are required to scan those into the system to start that eFlow process that I talked about. What we are requiring in order to deal with the volume that we are currently encountering and are anticipating is to get that information into the system more efficiently in a more secure manner so that we can process applications in a way that provides the best possible service.

At the back end of the system we have got ePrint. Currently what we do with printing is that we move the data to a centralised location here in Canberra and we print the passports. What we intend to do is to do that in a more centralised location using state-of-the-art technology which is much more secure, which will enable us to delve more deeply into technologies that we do not currently employ.

**Senator FORSHAW**—Just on that, there is a reference to biometric chip encoding in the press release when it is referring to ePrint. What is that?

**Mr Nash**—That is actually writing data to the microchip that is contained in the passport. That is done in such a way that it has to be covered with public key infrastructure, which is electronic signature, if you like, to ensure that those who subsequently read that data can be guaranteed that it was put there by us and that it has not been changed subsequently. We do that now, but of course the forgers are always active in the background and we need to be thinking quite seriously now about what threats we will face in the future.

**Senator FORSHAW**—Sorry, I interrupted you. Were you going on to say something further?

**Mr Nash**—No, that is essentially it in relation to ePrint. It is a more efficient, more secure way of producing passports but it gives us access to a whole range of technologies that we cannot currently employ. Some of those technologies, incidentally, have not been developed yet but they will be, we are confident of that.

**Senator FORSHAW**—The current series of passports is referred to as the N Series—is that correct?

**Mr Nash**—That is correct.

**Senator FORSHAW**—I assume that is far more secure than what we had previously—the L Series?

**Mr Nash**—In the intervening period there have been two versions of an M Series as well. The sequence runs like this: L, followed by M, followed M with a microchip, followed by N, which is the current document. To answer your question, each and every one of those is an enhancement on the prior series of documentation.

**Senator FORSHAW**—And there are passports in each of those series still in circulation?

**Senator Faulkner**—Only a change to the alphabet, Senator, in case you had not worked that out. It's the trick up the sleeve.

**Senator FORSHAW**—Thank you, Minister!

**Senator Faulkner**—That was an attempt at a droll aside—because of the perplexed look on the faces of committee members as Mr Nash went through the alphabet.

**Senator FORSHAW**—I agree you attempted to be droll, Minister.

**Mr Nash**—There will be no O Series because of the confusion with O and zero.

**Senator FORSHAW**—But each of those passports series—

**Senator Faulkner**—I am very relieved to hear that, Mr Nash, and I am sure other members of the committee are.

**Senator FORSHAW**—Minister, please.

**Senator Faulkner**—I am just assisting you in your questioning, Senator.

**Senator FORSHAW**—You are! Each of those series is still in circulation?

**Mr Nash**—Yes, they are.

**Senator FORSHAW**—How many—you may need to take this on notice—are still in circulation and, in particular, when will the L Series passports expire—in other words, the older ones?

**Mr Nash**—The very last one of the L Series will expire in 2013. They are being replaced on a daily basis.

**Senator FORSHAW**—Are you able to say how many of each series are still in circulation?

**Mr Nash**—I cannot give you exact figures. I can get those for you.

**Senator FORSHAW**—Can you take that on notice?

**Mr Nash**—Yes.

**Senator TROOD**—I asked the secretary a question about the security arrangements for the Commonwealth Games. I do not think I got an answer to that.

**Mr Richardson**—You did not.

**Senator TROOD**—Perhaps Mr Moriarty, if he is the appropriate person, could answer that.

**Mr Richardson**—I can answer that. In respect of the Commonwealth Games being held in India, we have been in almost daily liaison with the Indians about the security arrangements. We are sending a group of senior officials to India in early June to engage directly with the Indian officials on Commonwealth Games security. We are working closely with the Commonwealth Games Association here in Australia. We will be putting additional resources, as will some other agencies, at the time of the games.

**Senator TROOD**—When you say you will be putting additional resources, are they consular resources as you are doing in South Africa?

**Mr Richardson**—There will be additional consular resources and there will also be additional resources from other agencies.



**Senator TROOD**—Will there be any further enhancing of security for Australian athletes or participants provided from Australian sources?

**Mr Richardson**—Yes, there will be.

**Senator TROOD**—Is the nature of that enhancement clear at the moment?

**Mr Richardson**—The framework of it is clear. The detail has not yet been finally decided.

**Senator TROOD**—Is this security largely for our athletes?

**Mr Richardson**—Yes.

**Senator TROOD**—Is it provided on a 24-hour around-the-clock basis?

**Mr Richardson**—I think that it is better not to go into detail, but there is enhanced security for those attending the games, particularly the athletes.

**Senator TROOD**—Is the security from the time they arrive in India for the purposes of the games?

**Mr Richardson**—Yes. Overall security is very much the responsibility of the Indian authorities. They have been very responsive to our interest. Within the framework provided by the Indian authorities, there are some additional arrangements being made from within other Australian agencies.

**Senator TROOD**—Are we the only participant country that is enhancing its security at the games or are other countries doing it as well?

**Mr Richardson**—I would assume that some others would. I do not know the details, but I think that would be a fair assumption in respect of a small number of others.

**Senator TROOD**—So the Indian authorities acknowledge, do they, that it is a reasonable request on the part of the Australian government, at the very least, to take measures which satisfy us about the security of our athletes and participants.

**Mr Richardson**—Within the framework that they provide and recognising that they have the lead for security in their own country.

**Senator TROOD**—Will the security provided be conspicuous? That is to say, Australians can be confident that it is there?

**Mr Richardson**—I do not know. I mean, that is not a judgment for us to make; that is a judgment for other people to make.

**Mr Moriarty**—During the Hockey World Cup the Indians did provide armed security detachments for each team.

**Senator TROOD**—I see and they are proposing to do that again are they?

**Mr Moriarty**—They are working through the arrangements but we assume that they will provide a very extensive security presence.

**Senator TROOD**—But we are not satisfied that is going to be sufficient? Is that right?

**Mr Richardson**—No. It is not that we are not satisfied; it is simply that, given the large number of Australian athletes who will be going, it certainly makes sense to have some people with them if for no other reason than direct liaison purposes.

**Senator TROOD**—I just want to understand this. We are talking about having some, what might be called, operational forces on the ground that will be able to provide security if needed as well as security liaison people?

**Mr Richardson**—It depends on what you mean by operational. I could, if you like, seek approval from the minister to provide you with a separate briefing depending upon how far into it you wish to go.

**Senator TROOD**—I would appreciate that. Obviously when I mean operational I mean are we talking about the deployment of additional Federal Police or state police perhaps?

**Mr Richardson**—Yes but police can be deployed for liaison purposes. When you use the word ‘operational’, that can carry a particular meaning.

**Senator TROOD**—Well indeed it can and that is why I am using the word because I am trying to understand whether or not the additional forces that are being deployed are merely individuals who are going to assist the Indian authorities with arrangements for security—at a kind of planning level—or whether or not we will actually have on the ground perhaps AFP officers or maybe Defence Force officers who will be providing that level of personal security that I think people recognise as being necessary.

**Mr Richardson**—I do not think you would describe the additional resources on the ground as ‘forces’. The prime purpose of additional personnel will be liaison recognising that the Indian authorities will have principal carriage for security in their own country.

**Senator TROOD**—I see, so have we pressed to have—for want of a better word and perhaps you and I can agree on the idea of forces—people on the ground who will provide that extra level of protection?

**Mr Richardson**—Not forces.

**Senator TROOD**—Well it could be in a policing capacity, of course, as well.

**Mr Richardson**—Most countries by and large consider that they have resources within their own country to provide security. In exceptional circumstances there can be supplementation by other countries, but overwhelmingly the security resources deployed always belong to the country in which an event is taking place.

**Senator TROOD**—I am sure you are right—

**Mr Richardson**—And it is primarily for liaison purposes that you send additional resources. You might have some security officers in there as well but all of that needs to be worked through and agreed with the host country. It is not something that we can do unilaterally ourselves.

**Senator TROOD**—I appreciate that and I imagine you are absolutely right that most countries believe they can provide the security necessary, but we also know that it is not necessarily the case that countries can provide security that we would regard as adequate and at a level that we would expect. The question is whether or not we are now comfortable with the level of security that will be provided by the Indian authorities.

**Mr Richardson**—We believe the Indian authorities did a very good job with the Hockey World Cup. I think our own minister made that observation when he attended part of that. We

have been regularly visiting Commonwealth Games sites. We have particular liaison arrangements in place across different agencies. We will have a senior group of officials visit there in early June. They will be specifically interacting with the Indians on security. That is something that we will measure on a continuing basis between now and the games.

**Senator TROOD**—Good. Thank you. I want to move on to some issues relating to staffing, which is part of the general budget matter. Before I head into the details of the change, perhaps I could have a clarification of two answers which were provided to questions on notice from additional estimates in February. Question 2 was asked by my colleague Senator Barnett about staffing numbers having been reduced as a result of the efficiency dividend. The answer to that question was:

... there have been no reductions in staffing numbers in 2009-10 as a result of the efficiency dividend or budget cuts.

I asked question 12:

Has the Department been able to recruit the “additional 110 staff” that Mr Wise mentioned at the October Senate Estimates?

The answer to that question seems to be at odds with the answer you have given Senator Barnett. Perhaps it is not. The answer you gave was:

Since 30 September ... the Department has recruited 74 Australia-based staff on a “full-time equivalent” (FTE) basis and 16.5 locally engaged staff. The target mentioned at the October hearing was reduced following the savings announced through the 2009-10 Mid-Year Economic and Fiscal Outlook.

So, on the one hand, you seem to be advising Senator Barnett that there has been no impact from budgetary activities but, on the other hand, you seem to be advising me that there indeed has been. Am I misunderstanding the responses that you have been providing us?

**Mr Wise**—I think you may be looking at different years.

**Senator TROOD**—Have you not got those questions?

**Mr Wise**—Yes, I have those questions here.

**Senator TROOD**—I am happy for you to take that query on notice.

**Mr Wise**—I am not quite sure of the thrust of your question.

**Senator TROOD**—The thrust of it is that you appear to be responding to Senator Barnett’s question with a confident statement about there being no consequences from the result of efficiency dividends but, on the other hand, when I asked the question—somewhat differently, of course—there seems to be an impact.

**Mr Wise**—As I said in my response your question, there is a net additional number of staff.

**Senator TROOD**—But there was to be an increase greater than took place—is that right? As I understood it, you were going to have 110, which were cut back.

**Mr Wise**—That would have been as a result of the mid-year economic forecast.

**Senator TROOD**—That is absolutely right. The 110 came from the 2009-10 budget, didn't it?

**Mr Wise**—Yes, and that is when we got additional resources for regional enhancement and another measure, which was called regional engagement.

**Senator TROOD**—Your point is that, in relation to the efficiency dividend or budget cuts, there were no reductions. Is that the correct answer to Senator Barnett's question?

**Mr Wise**—In 2009-10 that is the case.

**Senator TROOD**—This may be overcome by what has happened in this budget but perhaps you might look at that more closely, Mr Wise. I think I understand what you are telling me. If you want to revisit it and just make sure that your understanding is clear then that is fine.

**Mr Wise**—Certainly.

**Senator TROOD**—The important thing is that this budget contains a provision for 59 additional staff, is that correct?

**Mr Wise**—That is correct.

**Senator TROOD**—Can you tell me whether or not a decision has been made where the staff will be employed within the department?

**Mr Wise**—Staff will be deployed across a range of activities in the department, some here in Australia and some overseas.

**Senator TROOD**—Have you made decisions about where they will go at the moment?

**Mr Wise**—Decisions have certainly been made.

**Senator TROOD**—Can you please tell me where they are going in Canberra or around Australia and where they are going to be sent overseas?

**Mr Wise**—I should say that the numbers in the yellow book are ASL. They are estimates.

**Senator TROOD**—I know they are not people.

**Mr Wise**—The estimate was that nine of those would be overseas and the balance would be here in Australia. When it comes to where we are deploying staff, you will recall that, in the last budget, we decided to deploy an additional 24 positions overseas, 25 positions here and 17 locally-engaged staff members. Those are almost all now filled so, in broad terms, those measures we mentioned last time have been met. Since then, as recently as this week, the department has made decisions on some further additional staff deployments. I do not have all the details of those with me but, again, there are a number of positions overseas and slightly more here in Australia.

**Senator TROOD**—I recall the fact that there were going to be additional A-based staff overseas, but I also recall that, with equal enthusiasm, there was a withdrawal of staff from overseas, almost simultaneously.

**Mr Richardson**—As a result of additional estimates, there was a decision taken—and the details have been advised to the committee—that seven positions were going to be withdrawn from seven of our largest posts. Over and above that, additional people are going to be

deployed overseas. The net result is going to be an increase in the number of people we have overseas, not a decrease.

**Senator TROOD**—That net result will manifest itself in 2010-11, is that right?

**Mr Richardson**—Yes, it will.

**Senator TROOD**—What is the net overall increase?

**Mr Wise**—The number of positions we have established overseas is currently 554. Those have not all yet been filled. That includes, for example, the positions in our new offices in Chennai, Mumbai, Lima and Addis Ababa, which will be filled in the coming period.

**Mr Richardson**—The number of A-based positions overseas, as of 30 June 2009, was 528. The number of A-based positions overseas as of 14 May 2010 was, as Mr Wise said, 554. Over the next 12 months, there will be a further increase over and above that 554.

**Senator TROOD**—Increased to?

**Mr Richardson**—To about—and do not hold me to the precise figure—but it will be to about 565. In fact, it will be 565 to 570.

**Senator TROOD**—Is that as a result of the opening of these new missions or is that the provision of additional staffing to existing missions?

**Mr Richardson**—It is a result, firstly, of a budget measure in respect of Afghanistan and the enhanced civilian presence there; secondly, a decision to open a post in Addis Ababa; and, thirdly, some reprioritisation within the department itself whereby we are responding to some needs overseas and we will post some additional people overseas to meet those needs.

**Senator TROOD**—Are any of those reprioritisations in relation to posts from which people have been withdrawn in the last 12 months?

**Mr Richardson**—Of the seven largest posts from which we advised one position from each would be withdrawn, none of those positions have yet actually been withdrawn; it was a foreshadow of withdrawing. I will check this and I will come back to you quickly if I am wrong, but I am not aware of us making decisions to send additional people to posts from which people have been withdrawn over the last 12 months.

**Senator TROOD**—Does the fact that those individuals have not been withdrawn from those seven largest posts mean they are now not going to be withdrawn?

**Mr Richardson**—No, because the decision was that they would not be replaced at the end of their posting. So the decision was made to withdraw the position at the end of the current occupant's posting.

**Senator TROOD**—I see. I would be grateful if you were able to provide me with the figures as to where these people are going—the numbers of people and which posts they are being sent to. These are A-based staff. Are all of the 59 A-based staff or are we there additional locally engaged staff in that figure?

**Mr Wise**—It includes LES.

**Senator TROOD**—How many of them are LES?

**Mr Wise**—I would have to check.

**Senator TROOD**—Would you mind doing that for me? I would just like to get a ratio of the numbers of A-based staff and the LES staff.

**Mr Wise**—Yes, certainly.

**Senator TROOD**—Have you made a decision as to how many staff will be in Addis?

**Mr Richardson**—Yes.

**Senator TROOD**—Can you tell me that, please?

**Mr Wise**—We would prefer not to, but for A-based and locally engaged staff the total complement for DFAT would be around seven; Defence and AusAID have also indicated they will be sending staff there as well.

**Senator TROOD**—So there are about seven DFAT, local and otherwise?

**Mr Wise**—Yes. That is right.

**Senator TROOD**—And when will that post open?

**Mr Richardson**—That will open in the second half of this year.

**Senator TROOD**—Thank you.

**Proceedings suspended from 10.29 am to 10.50 am**

**CHAIR**—I reconvene this budget estimates hearing of the Senate Foreign Affairs, Defence and Trade Legislation Committee. We continue with the portfolio overview and budget matters. Senator Trood, you have the call.

**Senator TROOD**—Thank you, Chair. There are a couple of things that I typically follow up on, Mr Wise. What are the latest statistics on staff waiting for security clearance?

**Mr Wise**—There are 69 staff currently awaiting security clearance.

**Senator TROOD**—How long have these 69 staff been waiting for their clearances to be provided?

**Mr Wise**—It can vary. It depends from case to case. Some can take a long time if, for example, people have lived and travelled overseas in a range of countries or if they are slow at getting all their data in for the vetters to check. Some are very straightforward.

**Senator TROOD**—Of these 69 staff, how many of them have been in the system—I think you have told me in the past that there are quite a number of those who are awaiting clearances.

**Mr Wise**—I do not have those specific details, but it is not unusual for a clearance to take three or four months.

**Senator TROOD**—I know. I think that, with some of these 69 staff, we are at least up to that figure, aren't we?

**Mr Wise**—We would be; that is the norm.

**Senator TROOD**—Perhaps you could find out for me—look at the numbers and get back to me on—the time that it has taken for these 69 staff to be vetted.

**Mr Wise**—They have not been vetted yet. But I can tell you how long they have been in the queue.

**Senator TROOD**—I would be grateful if you could tell me how long they have been in the system.

**Mr Wise**—That is fine.

**Senator TROOD**—How many departures have there been from the department? I think you were able to give me figures from quarters.

**Mr Wise**—There were 39 departures.

**Senator TROOD**—In the last quarter you had 39 departures. Is that up to March?

**Mr Richardson**—No, to 14 May: 39.

**Senator TROOD**—Is that for this financial year? What period are we talking about?

**Mr Wise**—The 39 is for this financial year.

**Senator TROOD**—Usually I am able to be provided with an explanation as to where they are going, in general terms—for example, whether they are going to other agencies or are leaving the department—and also the levels at which they are departing; have you got those statistics?

**Mr Wise**—I have those. For 2008-09, resignation accounted for 37.5 per cent; for movement to another APS agency, it was 27.5 per cent; for retirement, it was 29 per cent; for voluntary redundancy it was four per cent; and for deaths, it was a little under two per cent.

**Mr Richardson**—Can I just add one point for clarification: the figure I gave you was for 2010. The figures that Mr Wise has given you were for 2008-09—

**Senator TROOD**—So they are not the same statistics.

**Mr Richardson**—They are not like with like. That is because the broader statistics are available, but the detailed breakdown is not yet.

**Mr Wise**—You also asked about the levels too. It was 22 per cent rounded from broadband level 1 and level 2; 43 per cent from broadband level 3—that is APS6 and executive level 1 staff; 21 per cent from executive level 2; and six per cent from the SES.

**Senator TROOD**—Those figures are for 2008-09?

**Mr Wise**—That is right.

**Senator TROOD**—I would be grateful if you either take on notice or discover from your records the figures for the current financial year.

**Mr Wise**—If it will help you, I can give you figures from the last quarter or the last three quarters—whichever you prefer.

**Senator TROOD**—We do not need to spend time putting that out, but I would like you to table that document or provide it to me by some other means.

**Mr Wise**—That is not a problem. Those statistics are available.

**Senator TROOD**—If it is not in a form, perhaps you could take it on notice.

**Mr Wise**—I will give you those statistics shortly.

**Senator TROOD**—Thank you, Mr Wise. Finally, of the new staff and their allocation to outcomes, were most of them in the public diplomacy outcome? I suppose I am saying that they were not in outcome 1.1 and that the majority of them are in the other programs of the department. Is that correct? I cannot find the figure.

**Mr Wise**—I can tell you the figures.

**Senator TROOD**—Perhaps you could find the page for me, because I seem to have mislaid that.

**Mr Wise**—These figures are for outcome 1, and these are average staffing levels; these are estimates.

**Senator TROOD**—Which page are you on?

**Mr Wise**—Page 22. There was an increase of eight under outcome 1. On page 35, there was an increase of 45 under outcome 2. On page 41 there was an increase of seven.

**Senator TROOD**—Were the allocations to outcome 2 a mix of A-based and LES staff?

**Mr Wise**—They are. They are largely related to increases in the number of staff in the Australian Passport Office.

**Senator TROOD**—I know you are going to provide me with information about the new staff and where they are going, but perhaps you would be good enough to indicate LES allocations to outcomes as well, as you have done here. Is that possible?

**Mr Wise**—We can do that.

**CHAIR**—Senator Farrell, you have the call.

**Senator FARRELL**—You briefly mentioned the Smartraveller program earlier today. I noticed that the government has allocated just under \$14 million over four years for the program. Can you give us a little bit more information about how that money is going to be spent or what it is going to be spent on?

**Mr Richardson**—It is information that seeks to educate the travelling public about the issues they could run into overseas: what they need to watch for and the like. It is information about the provision of consular services and what we can and cannot do. There are also other segments of that information program that I think Mr Moriarty is probably best placed to fill you in on.

**Mr Moriarty**—The proposal seeks to reinforce our message on the need for Australians travelling overseas to understand the safety and security risks that they may face. We are looking as well to encourage them to take responsibility themselves for mitigating those risks, particularly by being aware of the environment they are in, by taking out travel insurance—that is a very strong message from us—and by registering with us so that when they do get into difficulty it makes it easier for us to track them.

We intend for the messages to continue to push subscription and registration services and promote safe travel. In the first two phases of Smartraveller we tried to raise general awareness, including through some television messaging. The research we have done



indicates that there was some take up of that Smartraveller message. What we are looking to do in the next phase is to look at traveller specific channels—perhaps look at backpackers, older Australians who are travelling or people who are travelling for particular types of business.

We will have a more targeted message—and maybe look increasingly at the internet and at extreme sports—for people who travel for particular reasons. We are looking at developing messages in the next phase that will concentrate a little bit more on that rather than in the previous two phases, which have been more about raising general awareness of safety risks.

**Senator FARRELL**—Where do most people get into trouble overseas?

**Mr Moriarty**—The hot destinations? In some ways it is based on number but Thailand and Indonesia are both very big focuses of our caseload. Obviously, a lot of older Australians are travelling now, including back to places that they may have come from. While they are not necessarily getting themselves into trouble, many of them are experiencing health difficulties when they return to their countries of origin. The number of deaths overseas is going up as well. That is particularly a problem when people do not have insurance.

**Senator FARRELL**—Are the number of deaths going up because more people are travelling overseas?

**Mr Moriarty**—More people are travelling, and more older Australians are travelling.

**Senator FARRELL**—Where do you think you might direct the advertising on the internet?

**Mr Moriarty**—At this stage the research is going to have to tell us that, but we know that a lot of travellers go to particular sites or they book their travel through particular sites. More and more people are using online booking services rather than going to travel agents.

**Senator FARRELL**—So you would have a little ad that would pop up when somebody went onto a—

**Mr Moriarty**—Yes, a number of those tools or perhaps have a link on some sites to our Smartraveller website.

**Senator KROGER**—On that website point, is there an increasing trend of users? I know we discussed this at the last additional estimates. What is the incidence of use?

**Mr Moriarty**—I have the figure for you.

**Mr Richardson**—It was over six million hits, wasn't it?

**Mr Moriarty**—Many more than that. I will check the figure but I think it was about 23 million page hits last year.

**Senator KROGER**—That actually is a substantial increase from—

**Mr Moriarty**—It is an increase. I do not know that it is a massive increase. Certainly it is going up. It is visited quite regularly.

**Senator KROGER**—Are we seeing an increase in travellers registering their movements overseas?

**Mr Moriarty**—Not as much as we would like. This is an ongoing problem. Often people will register only when things start to get a little shaky. As we found recently in Thailand during the recent difficulties, the number of registrations went up by several factors. For example, in Haiti during the earthquake I think we had three registered Australians and we found over 30.

**Senator KROGER**—You mentioned the trend away from using travel agents, with a lot more people booking their travel arrangements online directly. There is obviously a need to raise awareness of those booking travel to notify the department of their travel?

**Mr Moriarty**—That is correct. We find it is a key issue for insurance as well. When people are sitting down in front of a travel agent, the travel agent can say: ‘Have you thought about travel insurance? Have you registered?’ When people are doing it online they might just click a box that says ‘remind me later’. They do not pay as much attention to that. One of the real challenges for us with people doing more online travel bookings is how to get them to pause and think to register and get travel insurance.

We have a Smartraveller consultative group where we engage the travel industry to get their ideas and to get information on what they see as the emerging trends. It is a very valuable tool for us. The industry is telling us that online travel bookings represent a challenge to them in a whole range of similar ways.

**Senator KROGER**—I am sure you have considered this then. When people are booking travel online—and this would obviously have to be industry supported—would it be possible to ask them to tick a box to indicate their travel details and have that fed electronically through the system?

**Mr Moriarty**—All of these are options. The technology in future might allow us to do that. Our current online registration system is old technology now. It does require people to go in and enter data for which destinations they going to on what days. We are hopeful that in the future people can simply upload an itinerary and that would give us the information on which countries they are in on what dates.

As you know, many people do change their travel arrangements. If they are away for three weeks, they might decide to stay longer in a country and delay their travel. With our online registration, unless they go back in and change those dates, we are not able to track it. We need to look in the future at these more flexible ways of capturing better information about our travelling public.

**Senator KROGER**—It surely is a challenge that you have before you.

**Mr Moriarty**—It certainly is.

**Senator KROGER**—I would like to turn to the terrorism white paper. I understand that there are new terror measures which require foreign visitors from a handful of nations to undergo increased security screening for visa applications. Is that the case? Or is that proposed to be the case?

**Mr Richardson**—There is a proposal which will be introduced in respect of seven or 10 countries, but I do not think those countries have been selected on the basis of security risk. Someone here will actually provide the detail.

**Mr Moraitis**—As the secretary said, the Department of Immigration and Citizenship is examining this issue. There is a proposal to examine the introduction of biometrics in a series of countries. That has not been finalised as yet.

**Senator KROGER**—Not being a technical whiz, what does ‘biometrics’ actually mean?

**Mr Moraitis**—I am not a technical whiz either, but my understanding of biometrics is that it uses various forms of human data to verify the identity of people.

**Senator KROGER**—So by that I presume it is face scanning and fingerprint scanning?

**Mr Moraitis**—That is my understanding.

**Senator KROGER**—Has a budget been allocated for the development of this?

**Mr Moraitis**—My understanding is it has. It is primarily being handled by DIAC; therefore, I am not privy to the details of that.

**Senator KROGER**—It seems this proposal is at a preliminary stage.

**Mr Richardson**—It is at an early stage, but it is more than preliminary. The lead department is in fact DIAC.

**Senator KROGER**—I understand. So they would be undertaking the scoping discussions presumably with the countries involved.

**Mr Richardson**—They have been discussing it with us and with other departments. We do not have additional money in our budget for that. The additional money for that, if any, will be in DIAC’s budget.

**Senator TROOD**—This is broadly a staffing matter. I am very deeply troubled by this matter. Secretary, are you familiar with the newspaper article written by Niki Savva in the *Australian* on 27 April?

**Mr Richardson**—Not immediately when you say it like that; however, I may have read it.

**Senator TROOD**—I will help you a little further. It is headed ‘Rudd revenge on ALP agenda’. Does that help you recall at all?

**Mr Richardson**—I am not a member of the ALP, so I—

**Senator TROOD**—I must say I would be alarmed were you to be so.

**Mr Richardson**—But constitutionally I could be and legally I could be.

**Senator Faulkner**—I assure you, Senator—and it might come as a relief to you—that I am a member of the ALP and have been for a very long time, so perhaps you should direct your question to me. But I have not read Niki Savva’s article and not many members of the ALP do read her articles.

**Senator TROOD**—That does not surprise me. It pays some attention—I might encourage you to perhaps—

**Senator Faulkner**—I think she writes in the *Age*, does she not, or she used to be a journalist for the *Age*?

**Senator TROOD**—No, you are perhaps being somewhat disingenuous there, Minister. I think you are familiar with her writing, even if you do not read her work.

**Mr Richardson**—If you read out the relevant extract, I am happy to—

**Senator TROOD**—I will get to it, I hope, Secretary. The article deals with many matters, but the particular part which troubles me is that it purports to contain an account of a cabinet's National Security Committee.

**Mr Richardson**—Is that a report which has me walking out of something and using an f-word?

**Senator TROOD**—Yes.

**Mr Richardson**—I have never used it in my life, of course.

**Senator TROOD**—I do not want to say you are under oath! But perhaps one should bear this in mind, Secretary. I would not want to be tested on that point either, I must say. Perhaps I could just remind you of the contents of the article. The account says that a few months ago Rudd called a meeting of cabinet's National Security Committee, and I imagine the minister might even have been invited to attend—

**Senator Faulkner**—I am a member of the committee, so I hope I would have at least been invited to attend.

**Senator TROOD**—The article states:

The most powerful federal bureaucrats, defence chiefs, diplomats and police gathered and waited for the Prime Minister. And waited and waited. Finally, after three hours, the Department of Foreign Affairs and Trade's new head Dennis Richardson decided he couldn't wait any longer and—

it is said—

stalked off. Oh, and Richardson also used the f-word to express his displeasure.

Is that a true account?

**Senator Faulkner**—It is starting to lack credibility now, Senator!

**Mr Richardson**—I did, in fact, read that article and I am not sure what NSC meeting it was referring to. I thought it probably referred to an NSC meeting where ministers—members of the NSC are only ministers—were meeting to discuss a particular matter and officials were waiting outside before being called in. I had a particular engagement, which I think was around seven o'clock at night. I made some inquiries and decided that I could go to that engagement which I thought I should do. On a general point, I first attended—as a note taker—a meeting of the cabinet in this building in 1988 and have attended numerous meetings since, and it is not unusual for officials to have to wait. Prime ministers and ministers are very busy. They can have lots of things that come in over the top of them and I think that is simply part of working in government.

**Senator TROOD**—Thank you for the historical anecdote. Is three hours a typical period of time though to wait?

**Mr Richardson**—I was trying to relate the particular occasion. The occasion that I had in my mind, certainly, did not involve a three-hour wait.

**Senator Faulkner**—I am a member of the NSC, Senator, and I might be able to help you on this. I certainly cannot recall an occasion when an NSC meeting has been delayed for that

length of time. I do not know if Mr Richardson can. I am a member of the NSC and I cannot recall such a thing. Ordinarily, from time to time—particularly if a very urgent issue is being dealt with—the scheduling of such meetings is changed. It is also important to understand that sometimes the NSC is convened as a matter of urgency—as it should be. From time to time, inevitably, this leads to a level of inconvenience for people attending, including ministers. It is, as you would appreciate, a critically important part of the government’s decision-making apparatus to have the NSC meet when is appropriate, and I think all of us who attend understand that. I doubt very much that those sentiments would be unique to the current government. I know from the experience of two governments that it is not unique, and I would be very surprised, frankly, if it is not an approach that has been well understood for a long period of time.

**Senator TROOD**—I am not sure that any of that is in contest.

**Senator Faulkner**—I am not suggesting it is in contest.

**Senator TROOD**—You have elaborated common ground, I think.

**Senator Faulkner**—I thought it might be of assistance to you. I have not actually seen Ms Savva’s article.

**Senator TROOD**—I can oblige you with that. I am sure she would be delighted if you had an opportunity to read it.

**Senator Faulkner**—I am sure she would.

**Senator TROOD**—The critical question here, is it not, is that the most senior officer of the Department of Foreign Affairs and Trade, who is undoubtedly a busy person, was invited to attend a meeting and was—at least on the basis of this article—kept waiting for three hours.

**Mr Richardson**—As I said, genuinely, I do recall the article. For the only meeting that I could identify that the article might have referred to, I do not believe I waited for three hours at all. In fact, I was a bit puzzled by that reference. Whether it is a reference to another meeting I just do not know. I certainly cannot recall a three-hour wait with my ‘stalking off’ and using colourful language. It would not be out of character!

**Senator TROOD**—Thank you for your frankness on that!

**Senator Faulkner**—I am relieved to hear that, since I thought that usually colourful language was limited to me and the football team that I support. So I am very pleased to hear that, Mr Secretary!

**Senator TROOD**—Mr Richardson, obviously you are invited or requested to appear at National Security Committee meetings on a regular basis. Senator Faulkner has helpfully explained to us that he is a member and that it is not usual for officials to be there, other than when they are asked to appear.

**Senator Faulkner**—No, I did not say that. That would be wrong. I do not want you to have that interpretation. What I said is that I cannot bring to mind instances of that sort of delay. I went through the circumstances that do apply from time to time.

**Senator TROOD**—Let me circumvent that, and let us move on.

**Senator Faulkner**—I do not want you to suggest that I said it was not usual for the Secretary of the Department of Foreign Affairs and Trade to attend, because it is usual for that to occur.

**Senator TROOD**—I acknowledge that. I would be surprised if the secretary of the department did not attend frequently. Let us assume that he does. And I assume that on occasion you are asked to wait, Secretary—is that correct?—until you are asked.

**Mr Richardson**—Not all meetings start on time.

**Senator TROOD**—No. But you do not think that on this occasion there was a three-hour wait?

**Mr Richardson**—The occasion that I thought the author was referring to was not an occasion that I waited for three hours.

**Senator TROOD**—This is an occasion in early April of this year, as I recollect. At least, that seems to be the date that is suggested.

**Mr Richardson**—In fact, the occasion that I thought was being referred to was an occasion when the meeting started on time and, at a particular point in the meeting, officials were asked to leave while ministers considered something themselves—and that is not unusual in any government—but we were certainly not waiting for three hours.

**Senator TROOD**—But I assumed you were asked to wait—

**Mr Richardson**—Yes, but of course.

**Senator TROOD**—And you waited and waited and waited.

**Mr Richardson**—No. On the occasion that I have in my mind I would not use those words.

**Senator TROOD**—You cannot think of another occasion when you have been waiting a long period of time before you have been asked to attend the meeting.

**Mr Richardson**—I have seen numerous references in the media to people waiting for lengthy periods of time. Since I have been in my job I have certainly not had to wait for periods which I would consider to be unusual.

**Senator TROOD**—What would be a usual period of waiting—a typical period.

**Mr Richardson**—Over time, I have waited for up to five hours.

**Senator TROOD**—Let us concentrate our attention on the period since you have been the secretary of the department. Have you been waiting five hours since you have been secretary of the department?

**Mr Richardson**—To give you a totally accurate answer I would obviously have to check precise details. When you ask me off the cuff, no occasion comes to mind where I waited that long.

**Senator Faulkner**—You also have to understand, Senator—and this does not apply in Mr Richardson's case—that for cabinet committees, including NSC depending on their agenda, it might be the case that a minister who is not a member of the NSC might be asked to attend for a certain item and it might be that officials from an agency, who ordinarily would not be

seated at the table while the NSC was meeting, might be waiting for such an item to come. Those sorts of periods often can be of quite a significant time. You have got to understand a broader context in relation to this. Sometimes, as you appreciate, also these meetings are suspended depending on what is happening in the parliament. There are a whole range of reasons. It is hard to give a hard and fast rule for this. It is important, if we are going to talk about timing and so forth, to understand a broader context, which I hope you would.

**Senator TROOD**—Thank you Minister. It is not beyond capacity or communications technology, though, to invite you to attend in a timely way, is it, so that you are not made to wait for anything like five hours or even three hours?

**Mr Richardson**—It is unusual to have to wait for any significant period at all. Meetings by and large start on time.

**Senator TROOD**—You are a patient man, are you not?

**Mr Richardson**—I am renowned for my patience.

**Senator TROOD**—I know that to be the case. Since you are renowned for your patience then you would expect the meeting to proceed in a timely way. Perhaps your patience could be tried if there were five hours—I would be surprised if any individual's patience related to five hours; certainly mine would not—but even a lengthy wait would be trying your patience, would it not?

**Mr Richardson**—In my experience since the middle of January the meetings have overwhelmingly started on time. Where meetings have had to be delayed, on 90 per cent of occasions—if not more—I have received prior advice that a meeting is delayed and I have been given a new time to be at the meeting. I have not found attendance at meetings to be an encumbrance to my work.

**Senator Faulkner**—I think I can say that efforts are always made by the cabinet secretariat to inform not only officials of these sorts of circumstances but also ministers. I think it is important for government and ministers to always extend those sorts of courtesies to other members of the committee and to those who might attend. It is not uncommon to receive such a phone call, as you would appreciate. You are right about technology. Ever since Alexander Graham Bell there has been a capacity to get on a telephone and inform a minister or an official's office of any unforeseen circumstances.

**Senator TROOD**—I am concerned about the fact that a busy person in an important position is being mucked around by incompetence and discourtesy.

**Mr Richardson**—I would reject outright any claim by anyone that I am 'being mucked around' and that I have at any time been shown a lack of courtesy by anyone in this building. My experience of officeholders in the parliament has been nothing but positive on both sides of the aisle.

**Senator TROOD**—Would you regard it as a discourtesy or at the very least an inefficiency if you were kept waiting for long periods of time? Or do you take this to be just in the nature of doing the business of government?

**Mr Richardson**—Where I have had to wait it has been for perfectly proper and understandable reasons. I often say to people overseas, ‘You are never too senior to carry someone else’s bag and you are never too senior to have to wait.’

**Senator TROOD**—That may be true.

**Senator Faulkner**—It is really important here to understand and acknowledge the primacy of the decision making role of the NSC itself.

**Senator TROOD**—I think I comprehend that. I never experienced it, of course, but I think I comprehend it.

**Senator Faulkner**—Yes, but let me explain this because I think it is very important. This goes for the portfolio at this table: the Department of Foreign Affairs and Trade, which Mr Richardson is the secretary, and the Department of Defence, for which I am the minister. I think I have had a good insight now for a long period of time into those two agencies and others. The critical importance of the—and I use this word deliberately—primacy the decision making role of the NSC is something that ministers and agency heads and officials respect. I think that is a fair way of reflecting the importance of the NSC’s role in our system of government. I am using the lower case ‘government’ because it is not just the current government but previous governments as well. I hope that gives some perspective.

**Senator TROOD**—Not a great deal.

**Senator Faulkner**—Sorry, it was intended to.

**Senator TROOD**—I think it is understood. I am certainly not questioning the significance or importance of the NSC. The question here is whether or not it is being run efficiently and whether the time of a senior officer of Commonwealth is being used efficiently, given the fact that there are demands on his time and that he has many duties to perform and undertake. The parliament and the people of Australia expect him to do those duties.

**Senator Faulkner**—And, if you are making the point for governments, ministers and parliamentarians to treat officials appropriately and respectfully, you are absolutely right—of course it is. I am very confident that that is the case.

**Senator TROOD**—Secretary, you are unable to confirm the essence of this account so far as it appears in this newspaper?

**Mr Richardson**—I am not. As I have stated previously, I do recall reading the article and I did think about it. I could only relate it to one occasion that might have been within the time frame the author was talking about, but my recollection of it did not accord with the precision of the way it was written up.

**Senator TROOD**—And you cannot recall an incident that was parallel to it or even close to it?

**Mr Richardson**—No. As I said, I would need to go through the diary and check the absolute detail. But, as I said when you asked me off the cuff, since I started my job on 13 January this year my personal experience has been that meetings have by and large started on time and where they have not it has been for good and proper reasons and I have understood it.



**Senator TROOD**—It has only been five months and I imagine an event of this kind might be very much at the forefront of your mind. I am happy to conclude this matter.

**Mr Richardson**—Thank you.

[11.37 am]

**CHAIR**—There being no further questions on the overview, we will turn to outcome 1 and program 1.1, foreign affairs and trade operations. First in our journey around the world we will start with North Asia. I want to have a discussion with you about China because the government has been on the receiving end of some criticism of its handling of our relationship with China over the last 18 months or couple of years. Can you give us a status report on your current view of Australia's relationship with China?

**Mr Fletcher**—The relationship with China is a big relationship. China is an important partner for Australia in a number of fields. At any one time the relationship consists of some very positive things and some less positive things. I think the relationship at the moment is in good shape, but as you would expect there are quite a few things on which we are very happy and a couple of other things which we are not pleased about.

**CHAIR**—I want to ask you some pointed questions about various aspects which received press attention over the last 18 months and ask you to comment on them and give us the government's view or your view on where we are at on each of those issues. Then I might ask you to outline what you see as the pluses, the matters that have been resolved satisfactorily, and the negatives, the problems that need to be addressed as we go forward.

Firstly, there have been a number of pressure points. Last year the Chinese government made a point of asking Australia not to grant a visit to Uygur activist Rebiya Kadeer. Do you think we will continue to see requests from the government of China of that kind in the future?

**Mr Fletcher**—I cannot predict what exactly we are going to find coming our way, but China will have political sensitivity to events in Australia and they will express their views to us on those issues and we will, as usual, take those representations into account and then make up our minds on what we think we should do.

**CHAIR**—But there is no reason to suggest that we would not, as part of those representations, continue to receive such requests as we received concerning the Uygur activist?

**Mr Fletcher**—It is quite possible that there will be future developments of a similar nature, yes.

**CHAIR**—Tibet has been a sensitive issue. What is the Australian government's position in respect of Tibet, and has it changed in the last couple of years?

**Mr Fletcher**—In terms of the basic political situation in Tibet, we certainly agree that it is part of China, part of China's territorial presence so to speak. At the same time we have concerns about the human rights situation in Tibet, and we have made those concerns known to the Chinese government.

**CHAIR**—Do we think the human rights situation in Tibet is improving, going backwards or is much as it has been for many decades?

**Mr Fletcher**—That is a difficult question. If you look over many decades, it is certainly improving, but that is taking a very long-term view. The Chinese government's policies in Tibet have remained fairly constant in the last 30 years. The human rights situation is still of concern to us.

**CHAIR**—You have used the phrase 'the human rights situation is of concern'. What is of concern?

**Mr Fletcher**—It is the actions of the Chinese government in seeking to impose stability on Tibet, which we feel are damaging the rights of people in Tibet. Their cultural, religious activities and suchlike are, we feel, circumscribed by the security agenda that the Chinese government has.

**CHAIR**—That 'security agenda' is code for control of that province, landmass or however it is described?

**Mr Fletcher**—Every government wishes to maintain control, stability and public order in its territories. That is a legitimate objective.

**CHAIR**—But we are concerned that that legitimate objective of seeking to have security, public order and control is being used to wear down the cultural, religious and human freedoms of sections of the population there?

**Mr Fletcher**—I think that is probably a side effect rather than the principal objective, but that is certainly the outcome. Let us not forget it is a difficult situation that the government faces in China. It is a very large country with a lot of poverty. It is seeking to develop the country. At the same time in Tibet itself there are different ethnic groups, including a very large Tibetan population, and it is not a simple matter to have peace and stability as the Chinese want. The way they are going about it we feel is in some respects counterproductive.

**CHAIR**—And it is the position of our government that, where there are new breaches or continuing breaches of religious freedoms, human rights or the right to organise, we will continue to object and make our position known to the government of China on those issues and in that way?

**Mr Fletcher**—Yes, we do.

**CHAIR**—And we will continue to do so?

**Mr Fletcher**—Yes, we will.

**Senator Faulkner**—Don't forget, Senator, that we have a number of channels for this. We have bilateral exchanges with senior political leaders and officials. We have our diplomatic channels, which Mr Fletcher is critically involved in. We have also got an Australia-China human rights dialogue. We do have available to us a number of ways, opportunities or channels in which we can raise these sorts of issues.

**CHAIR**—Thank you, Minister, I understand that. The Chinese do regularly get upset when foreign dignitaries meet the Dalai Lama. When it is public and announced often their representatives go into overdrive to oppose it, stop it or certainly make known the position of

the Chinese government on those sorts of meetings. He does seem to visit Australia quite frequently. Can you put on the record what the government's position is on meeting with the Dalai Lama?

**Mr Fletcher**—The Dalai Lama does visit Australia from time to time. When he visits there are times when there is contact with ministers or the Prime Minister. That has happened on some occasions in the past but not on every occasion. We regard the Dalai Lama as a religious figure only. We do not give him any political status.

**CHAIR**—So presumably as a senior religious figure he will continue to visit this country. If requests are made or it is appropriate to meet with ministers or the Prime Minister, is that done on a case-by-case basis or do we have a policy position there?

**Mr Fletcher**—The policy position is that when we see benefit in arranging a meeting we do so. It does not happen all the time.

**CHAIR**—No. But there is no blanket restriction or denial on the Dalai Lama when he visits this country meeting with ministers or even the Prime Minister?

**Mr Fletcher**—No, there is not. Over the last 20 years the visits were fairly occasional—once every six or so years—and then more recently the visits have been much more frequent. But we have absolutely nothing to do with the frequency or otherwise of those visits.

**CHAIR**—No, and each visit is treated on a case-by-case basis respecting the merit of the application.

**Mr Fletcher**—Yes.

**CHAIR**—Fine. The Chinese government does have significant interests in this country and growing interests right around the world, and a whole range of governments are going to disagree on policy matters with the position of the Chinese government from time to time. Do you believe that the Chinese government understands that Australia will from time to time take a different position on particular issues from that which the Chinese government either advances itself or would like the Australian government to take?

**Mr Fletcher**—Yes.

**CHAIR**—They do?

**Mr Fletcher**—Yes.

**CHAIR**—Do they express that to you in meetings?

**Mr Fletcher**—They have seen very clear evidence of it.

**CHAIR**—All right. Finally, Mr Fletcher, I think it is fair to say that 2009 in particular was a rough year. Parts of this year have been a challenge. The relationship has been complicated by a range of different events, including the arrest, charging, trial and now imprisonment of Mr Hu and a range of other persons. How do you see the ups and downs and the outlook for the remainder of this year in terms of the overall nature of our relationship with China?

**Mr Fletcher**—As a general comment, I think you have perhaps overstated the problems that we had last year. There were a number of irritants in the relationship but fundamentally the relationship remained in very good condition throughout 2009 and remains so today.

There was a period, particularly in the middle of last year, when there was quite a bit of newspaper coverage of some issues but despite all that the day-to-day business of government and diplomacy continued. We had a number of important visits in both directions last year and we will continue that rhythm of high-level contact.

**CHAIR**—Do you characterise the specific matters I raised—Tibet, Dalai Lama, the Uygur activists, the arrest and trial and jailing of Mr Hu—as irritants? That could not be the position of the government given the amount of press attention they received and the amount of diligent attention they have received from Mr Smith and others in that area.

**Mr Fletcher**—Perhaps irritant is one way to describe them. There were certainly problems in the relationship but they did not disrupt the fundamental activity that goes on in trade and foreign policy engagement. We are dealing with China every day on important matters to do with regional stability and international cooperation. Those activities continued. I felt that your initial couple of sentences were pointing to a picture of the relationship as disrupted. Certainly it was affected, but there are a lot of other things going on.

**Senator Faulkner**—I would add to what Mr Fletcher has said. In a relationship that is as complex and as wide-ranging as the one Australia shares with China, of course there are times when differences arise. It is important to say that both China and Australia acknowledge that that is the case. Both Australia and China acknowledge the need to manage those differences constructively in the long term. I think it is important for us to always understand—and particularly as you raise this important issue at this meeting, and it is an important issue—and it is critical that we do say that of course of the foreign policy approach of the government to China is, as it should be, grounded on Australia's national interests and Australia's values. It is always important for us to look at these issues in that context. Yes, we appreciate fully that China's core interests, but we have core interests and we have values and those values I think are understood and have been consistent overtime. So, of course, we put our views to China, as I think you know, in a forthright way on these important matters.

**CHAIR**—Thank you for those comments, Minister.

**Senator TROOD**—While you are at the table, Mr Fletcher, and on this matter of the general relationship, 2009 was a challenging year. Could we describe it as so in our bilateral relationship with China?

**Mr Fletcher**—Yes.

**Senator TROOD**—A difficult year.

**Mr Fletcher**—You said 'challenging'.

**Senator TROOD**—Challenging year, okay. I am happy with 'challenging'.

**Mr Fletcher**—Interesting.

**Senator TROOD**—'Interesting' too. The Dalai Lama visited in December, towards the end of this challenging year. Is that correct?

**Mr Fletcher**—Yes.

**Senator TROOD**—The Prime Minister did not meet the Dalai Lama. That is correct, is it not?

**Mr Fletcher**—I think that is correct, yes.

**Senator TROOD**—Well, he didn't, did he?

**Mr Fletcher**—I am trying to recall.

**Senator Faulkner**—I do not think the Prime Minister did. That is certainly my recollection. Officials can confirm that.

**Senator TROOD**—He didn't. But he has met him in the past. That is true?

**Mr Fletcher**—Yes.

**Senator TROOD**—The Dalai Lama visited in 2008, I think. Do you recall that in your position at that time and if not, can you verify that he did?

**Mr Fletcher**—Yes, he did.

**Senator TROOD**—Am I right in saying that at the time he visited in 2008 the Acting Prime Minister, Senator Evans, met the Dalai Lama?

**Mr Fletcher**—Yes, that is correct.

**Senator Faulkner**—It was very notable because he had a few moments of glory, in the sense of being a short time as Acting Prime Minister, as you recall, Senator Trood—as it was appropriate, I thought, to the Leader of the Government in the Senate getting an appropriate level of public acknowledgement for that important role he took as Acting Prime Minister.

**Senator TROOD**—I think that is true. I think you are probably being slightly ungenerous when you say 'only a moment of glory' but nevertheless—

**Senator Faulkner**—It was a comparatively short time when it turned out that both the Prime Minister and the Deputy Prime Minister were both out of the country that time. When I say 'a moment' it was a high level of glory—don't misinterpret. I am just saying it was a short period of time, as you know, that Senator Evans did very, very well. I don't want you to go and tell Senator Evans I wasn't being very generous.

**Senator TROOD**—I do not think this is in contest. I will leave you to mediate—

**Senator FAULKNER**—There is no need. I just don't want you to suggest to him for a moment that I was underplaying the importance of his role at that time.

**Senator TROOD**—I thought you were a tad, Minister. You have corrected the record. Thank you.

**Senator Faulkner**—You have grievously misinterpreted me. I am shocked!

**Senator TROOD**—If that were the case, justly so. Senator Evans met the Dalai Lama in his capacity as the Acting Prime Minister. Is that correct, Mr Fletcher?

**Mr Fletcher**—He met him and he was Acting Prime Minister at the time. I do not know—

**Senator TROOD**—There was a conjunction of events: he was the Acting Prime Minister and he met the Dalai Lama. Is that correct?

**Senator Faulkner**—Correct.

**Senator TROOD**—Excellent; we are moving forward.

**Mr Fletcher**—Sorry, Senator: what I did not mean to imply—and I thought perhaps you were—was that he met him because he was the Acting Prime Minister.

**Senator TROOD**—He met him as—

**Mr Fletcher**—He is the minister for immigration and in his—

**Senator TROOD**—I do not want this to descend into a discussion about semantics, but he was the Acting Prime Minister at the time—

**Senator Faulkner**—Correct.

**Senator TROOD**—and he met the Dalai Lama.

**Senator Faulkner**—Correct.

**Senator TROOD**—We can agree on that, can we, Mr Fletcher?

**Mr Fletcher**—Yes, and there was a reason for him to meet the Dalai Lama, given his domestic responsibilities.

**Senator TROOD**—Are you putting to the committee that the only reason he met him was because he was at the time the minister for immigration and he had immigration matters to discuss with the Dalai Lama?

**Mr Fletcher**—No, I did not say that. What I was saying was: it wasn't only because he was the Acting Prime Minister that he met him, but I think I am splitting hairs here which I will refrain from doing.

**Senator Faulkner**—I think we have established (a) that he met him, (b) that he was the Acting Prime Minister when he met him, (c) that he was the Minister for Immigration and Citizenship when he met him, and (d) he was the Leader of the Government in the Senate when he met him, so I think we are all sweet.

**Senator TROOD**—That is good, and so we can say by extension that the prestige of the office of Prime Minister was engaged at the time of this meeting—is that right?

**Mr Fletcher**—Yes.

**Senator TROOD**—When the Dalai Lama came in December last year, having the year previously engaged the prestige of the office of Prime Minister, he sought an invitation, did he not, with the Prime Minister?

**Mr Fletcher**—Sorry, I cannot confirm that.

**Senator TROOD**—You do not know of that invitation?

**Mr Fletcher**—No. I can take that on notice.

**Senator TROOD**—That would be helpful. Are you aware of the fact that the Prime Minister's office or did you or your department—

**Senator Faulkner**—In this case, Senator, I suppose—and I will extend the courtesy to you and the committee—it is in a formal sense a responsibility of this committee; it is more a matter for F&PA. We are talking about the Prime Minister's role but let us anyway—I understand what you want to achieve, and we will undertake to get that information through other channels.

**Senator TROOD**—I am happy for Mr Fletcher to take the question on notice.

**Senator Faulkner**—It is not a matter for this committee, Senator, is the point I am making to you, but nevertheless we will take it on notice for you. It would not ordinarily be something that would be dealt with in the examination of this portfolio at estimates. Let us not split hairs; we will do it for you is what I am saying, Senator, even though—

**Senator TROOD**—Always helpful, Minister, and I am grateful.

**Senator Faulkner**—I try to be; sometimes I fear I do not succeed but I certainly try to be.

**Senator TROOD**—The Prime Minister's office may have done—and we will determine this—but did the department or you, Mr Fletcher, on its behalf communicate to the Dalai Lama that the Prime Minister would not be meeting him?

**Mr Fletcher**—No.

**Senator TROOD**—That was not something you undertook.

**Mr Fletcher**—No.

**Senator TROOD**—I see. The department did not have that responsibility—

**Mr Fletcher**—No.

**Senator TROOD**—to communicate that? I see; good. Do you have the date of the Dalai Lama's visit by the way? It was in December is my recollection.

**Mr Fletcher**—I think he arrived here on Sunday, the 3rd—if that was a Sunday; anyway, it was the first week of December. He left Australia on about the 10th and in the middle of his visit to Australia he went to New Zealand.

**Senator TROOD**—And came back again—

**Mr Fletcher**—Yes.

**Senator TROOD**—on his way elsewhere.

**Mr Fletcher**—He arrived in Sydney, went to New Zealand, came back, I think, to Melbourne or Hobart and then left.

**Senator TROOD**—When Chinese officials visit the department, do they typically visit you as the First Assistant Secretary of the North Asia Division?

**Mr Fletcher**—They call on me, they call on the deputy secretary and sometimes they call on the secretary, the assistant secretary and the China section. Various levels within the embassy have contact with the department.

**Senator TROOD**—You see them on occasions?

**Mr Fletcher**—I certainly see them from time to time, yes.

**Senator TROOD**—Would you say that you see them more often than others when the senior officials or the ambassador—

**Mr Fletcher**—Yes. If the ambassador wants to talk to the department he often talks to me, and sometimes he talks to the deputy secretary.

**Senator TROOD**—Can you recall whether or not the deputy ambassador visited you in the department a few days before the Dalai Lama was due to visit Australia?

**Mr Fletcher**—I am sure he did, yes.

**Senator TROOD**—You are sure he did?

**Mr Fletcher**—I had several conversations with the Chinese embassy in the lead up to that visit.

**Senator TROOD**—But you do not recall a specific visit of the deputy ambassador?

**Mr Fletcher**—No. I know I met him on several occasions, but if you know more about that meeting than I do then you will have to remind me.

**Senator TROOD**—I would be very surprised if that were the case, Mr Fletcher, very surprised indeed! But I would like to know whether or not you can recall from one of your meetings in the period running up to the Dalai Lama's visit the deputy ambassador expressing his gratitude to the Australian government for the Prime Minister not meeting with the Dalai Lama?

**Mr Fletcher**—I do not recall that. I can take that on notice.

**Senator TROOD**—So that could have happened?

**Mr Fletcher**—Yes.

**Senator TROOD**—So it is entirely possible that the deputy ambassador and—

**Senator Faulkner**—The official said he is not aware of it, so it is very hard to say. It is one of these questions where if you are not aware of it of course you could never rule such a thing out. It would be ludicrous for anybody to do so, but the critical evidence in terms of what Mr Fletcher is saying to you—and I do not know the substance of this—is that he is not aware of it. Therefore, if you ask a hypothetical question, 'Could it have happened?' Mr Fletcher is not in a position to say that it could not have happened. Whatever your follow up questions may be, I do not intend in any way to limit you from asking them; but it is illogical for Mr Fletcher to respond in any other way than the way that he has to you, given that he is not aware of the actual discussion.

**Mr Fletcher**—I can check the record over lunch.

**Senator TROOD**—That would be helpful. Do you recall whether or not you made it clear to the deputy ambassador that neither the Prime Minister nor the Deputy Prime Minister would be meeting the Dalai Lama when he came?

**Mr Fletcher**—The statement that the Prime Minister would not be meeting the Dalai Lama was made by a spokesman for the Prime Minister in early October, so I did not need to convey that information.

**Senator TROOD**—That was a decision in relation to which you had almost no knowledge—is that right?

**Mr Fletcher**—We had no involvement in that decision.

**Senator TROOD**—Perhaps you would check your record—presumably you keep a memo of conversation when any deputy ambassador visits—



**Mr Fletcher**—We do a record of any substantial conversation.

**Senator TROOD**—So there would be a record of the various meetings you had with the deputy ambassador at this time?

**Mr Fletcher**—Yes.

**Senator TROOD**—Perhaps you would be good enough to check your record to see whether or not the ambassador thanked the Australian government for not receiving the Dalai Lama and, if you can, be clear about the way in which he may have conveyed any message to the Australian government on that point.

**Mr Fletcher**—Yes.

**Senator TROOD**—Just to clear this up—or to finalise it. Can you explain to the committee why it was that the Prime Minister did not see the Dalai Lama?

**Mr Fletcher**—No.

**Senator TROOD**—You do not know?

**Mr Fletcher**—No.

**Senator TROOD**—That is a matter about which you have no knowledge?

**Mr Fletcher**—That is correct.

**Senator TROOD**—That is a matter about which you personally have no knowledge and you have no corporate knowledge on behalf of the department?

**Mr Fletcher**—The decision was not taken by this department or on the advice of this department.

**Senator TROOD**—Secretary, can you help us here?

**Mr Richardson**—We are talking about, when?

**Mr Fletcher**—December last year.

**Senator TROOD**—I think you were still in Washington at the time.

**Mr Richardson**—December of last year. I have no personal knowledge of it. Is it possible that, logistically, they were not going to be in the same city at the same time? I do not know. I do recall one or two occasions in the past where logistically it has not been possible.

**Senator Faulkner**—The difficulty with this is that obviously the only way of this being checked for this agency is through PM&C, Senator, and I am sure you appreciate that.

**Senator TROOD**—No, you make the point, Minister, that—

**Senator Faulkner**—I am not going to labour the point. I know you understand that, but it does mean it is difficult for an official from the Department of Foreign Affairs and Trade—unless, unexpectedly, there is some insight—to talk about matters which ordinarily would be handled by another agency.

**Senator TROOD**—I take that point. I am asking Mr Fletcher about his knowledge and he has given me an unambiguous answer.

**Senator Faulkner**—Sure, I appreciate that. I understand.

**Senator TROOD**—He has not split a hair, he has just said that he does not know, which, in itself, Mr Fletcher, strikes me as curious. It may be that you and your department have not made a decision about whether or not the Prime Minister should see a religious leader, or indeed anyone else that might come to Australia, but I would have expected that you would know the reason why that might have happened. You are, nevertheless, the department of foreign affairs. Do you not know why the Prime Minister did not meet the Dalai Lama?

**Mr Fletcher**—I think I have already answered that question.

**Senator TROOD**—And the department does not know why the Prime Minister did not do that?

**Mr Fletcher**—No.

**Mr Richardson**—I have not said that.

**Senator TROOD**—I know you have not said that, Secretary.

**Mr Richardson**—I simply said that I have no personal knowledge of it.

**Senator Faulkner**—What you can say, Senator, as I hear what is being said by the witnesses at the table, is that the officials at the table certainly have no knowledge of this. Somewhere in the bowels of the department there may be some understanding about who would know, but it would be more likely, I think, to be information known to another agency.

**Senator TROOD**—I am sure, but since the department of foreign affairs conducts our foreign policy—at least in part—I would have expected that it would know why a matter of some—

**Senator Faulkner**—And what is said is that the officials at the table are unable to answer the question.

**Senator TROOD**—Mr Fletcher has been clear on this subject, and I am grateful to him. But I have also asked him whether or not the department has a corporate knowledge in some way of why it was that the Prime Minister did not meet the Dalai Lama. Mr Fletcher has been equally unambiguous about this matter when he says, ‘We do not know’.

**Senator Faulkner**—I have heard what both Mr Fletcher and Mr Richardson have said and I understand where we are, Senator—and I am sure you do too.

**Senator TROOD**—Why am I not entitled to draw the conclusion that the department of foreign affairs has an incomplete knowledge of our relationship with China?

**Mr Fletcher**—The policy of the government is generally to have contact with the Dalai Lama when he is in Australia. A minister met the Dalai Lama during that visit.

**Senator TROOD**—That was Mr Garrett, I think.

**Mr Fletcher**—Yes. The department knows about that. But the fact that the Prime Minister did not meet the Dalai Lama—he meets people and does not meet people everyday—we are not involved in that. Whether it is an issue of scheduling or what, I do not know. That is not our business.

**Senator Faulkner**—That is the point I am trying to make to you. I personally do not think it is reasonable to draw a conclusion. I draw none. To try to establish the facts is a sensible

thing. That is why I have tried to assist you by dealing with it in the way that we can. I could not imagine that I could be more reasonable about this.

**Senator TROOD**—You have been obliging, and I am grateful to you, Minister. In response to your observation, Mr Fletcher, that there are visitors and visitors to Australia, the Dalai Lama is a person of—I think we can all agree—particular distinction. We all recognise his status in that respect. He is not an individual just washing through our shores; he is a person of distinction and a critical person with respect to our bilateral relationship with China. As you have said—I do not wish to put words in your mouth—he had a challenging year and part of the reason he had a challenging year was of course because of the difficulties we had in regard to Tibet. That is true, isn't it? The Dalai Lama is a critical player in that matter.

**Mr Fletcher**—That is not quite correct. Last year most of the difficult issues occurred during the middle of the year; by the end of the year, when the Dalai Lama visited, the relationship was in very calm waters.

**Senator TROOD**—I think we have agreed it was a challenging year.

**Mr Fletcher**—Yes. The Prime Minister has not always met the Dalai Lama when he has visited Australia under successive governments.

**Senator TROOD**—That may be the case but I am not so much interested in the practice with regard to previous Prime Ministers in previous governments. I am interested in knowing why the prime minister did not meet the Dalai Lama in December of last year. You do not know, and your department does not know, apparently.

**Mr Richardson**—I do not think you can correctly draw the conclusion, 'The department does not know.' It is possible that my predecessor, Michael L'Estrange had some knowledge; it is possible that the relevant deputy secretary is aware. I do not know. It is just that I do not have personal knowledge. If I did I would respond but I simply do not.

**Senator Faulkner**—With respect, I think I have made that point to you now on two occasions. In other words, the officials provide as much information as they can. It is possible that there is some knowledge of this elsewhere.

**Senator TROOD**—In relation to the corporate knowledge, I am perfectly accepting of Mr Richardson's position; he was not secretary at the time. I do not expect him to have any firsthand knowledge of these events. You were probably still in Washington at the time. Can you take it on notice to determine whether or not the department has any corporate knowledge, through the auspices of the previous secretary or deputy secretary or whoever, as to whether or not it understands the reasons why the Prime Minister did not see the Dalai Lama in December last year.

**Mr Richardson**—Sure.

**Senator TROOD**—Thank you. I conclude this inquiry by asking is it possible that the Prime Minister did not see the Dalai Lama last year because he thought it was politically ill-advised to do so.

**Mr Richardson**—Senator, you are asking me to speculate about what might have been in someone's mind, and I do not have that gift.

**Senator TROOD**—Let me put it to you that he chose not to do so because he thought it would be incitement perhaps to a further difficulty in the relationship with China?

**Senator Faulkner**—You are entitled to draw whatever conclusions you wish to draw. I have suggested we are better off drawing conclusions based on the factual evidence available. That is a conclusion not drawn from the factual evidence. I make a couple of points to you: it has never been the case that an Australian Prime Minister is required to give reasons for whom he might meet or whom he might not meet, as I understand it. I am in no position to make a judgment about this. I certainly understand that Australian Prime Ministers meet and do not meet a raft of people for a variety of reasons. I have never been aware, for the record, that Prime Ministers of Australia usually publicly provide reasons for meeting or not meeting people, whoever they might be. I think what I have said there is absolutely accurate. I am not talking only about the current Prime Minister; this has certainly been the way it has worked in the 21 years that I have been in the Australian parliament. And my reading of Australian history makes it pretty fair to extend that beyond those years. I make that point. I do not think it is a good idea to have in these fora those sorts of conclusions drawn, but I respect your right to make any political statements that you want to make. The evidence you have received here has been frank and forthright. It is not able to be absolutely complete because of the reasons I have explained to you, which you have accepted. I hope that is some context for you, Senator, given that you have drawn a political conclusion. I just think it is fair for us to identify it as that and leave it at that.

**Senator TROOD**—I do not have any further questions on the matter of the Dalai Lama. I have further questions on China.

**CHAIR**—Let us finish on the Dalai Lama and then we will move to China.

**Senator LUDLAM**—I did have the good fortune, unlike the Prime Minister, to meet His Holiness while he was here in December. He was accompanied by the Tibetan Prime Minister in exile, whom I also had the good fortune to meet. I take it that the Australian government sees His Holiness the Dalai Lama as purely a religious figure. Is that a key point of disagreement between the Australian government and the Chinese government, because clearly they do not?

**Mr Fletcher**—Yes.

**Senator LUDLAM**—The Tibetan parliament in exile is housed in Dharamshala. Are you aware of whether the Tibetan Prime Minister in exile requested a meeting with Australian government officials or ministers?

**Mr Fletcher**—I will have to take that on notice.

**Senator LUDLAM**—Senator Trood has canvassed quite broadly the Australian government's thoughts around meeting with His Holiness the Dalai Lama, but what does the Australian government do when it gets requests from the parliament in exile? What official standing do we accord it?

**Mr Fletcher**—We do not give it any official standing.

**Senator LUDLAM**—In the different provinces in China there are regional assemblies that do have standing. Although there is obviously a disagreement with China about the degree to

which the Tibetans are seeking autonomy versus independence, the Prime Minister in exile, in his discussions with me, indicated that they are seeking autonomy within China; they are not seeking to break away. So for what reason does the Australian government not accord that parliament any status whatsoever?

**Mr Fletcher**—Because it does not represent a government we recognise.

**Senator LUDLAM**—It does not represent—

**Mr Fletcher**—A government or state that we recognise.

**Senator LUDLAM**—So any formal or informal diplomatic overtures by the members of the Tibetan parliament in exile we would rebuff? We would not meet them under any circumstances?

**Mr Fletcher**—We would not do anything which gives them official standing or recognition.

**Senator LUDLAM**—Is it possible to meet with them outside the formal channels? Is it possible to have a dialogue with those folk in a way that does not accord them official status or are they simply unable to meet with Australian officials at all?

**Mr Fletcher**—I think it is possible to have contact with them and that may have happened in the past in India.

**Senator LUDLAM**—In India?

**Mr Fletcher**—Yes.

**Senator LUDLAM**—It sounds like you might want to take on notice whether any contact occurred when he was in Australia. I do not know whether that is the first time he has visited Australia but I think it is certainly quite rare.

**Mr Fletcher**—I will take that on notice.

**Senator LUDLAM**—Yes, if you are able to tell us whether there was any contact at all. I think the minister might have touched briefly on the Australia-China human rights dialogue and I spoke to you about it the last time we were here.

**Senator Faulkner**—I think I mentioned that in answer to one of the Chair's questions.

**Senator LUDLAM**—You mentioned that we have a number of channels and that was one of them. Mr Fletcher, can you please provide us with an update on the dialogue. We spoke about this in February and there was actually very little you could tell us about what was going on there.

**Mr Fletcher**—We are still looking for dates which are convenient to both sides. On our side, the leader would be the deputy secretary, Bruce Gosper. He has had a very busy travel program in the last couple of months and the counterpart on the Chinese side has also been hard to catch. We do not have a date yet but we are hopeful of setting a date in the next couple of months.

**Senator LUDLAM**—So it is not meeting in the next couple of months but maybe setting a date?

**Mr Fletcher**—Yes, setting a date.

**Senator LUDLAM**—What happens to negotiations like that when the Australian government goes into caretaker mode during an election?

**Mr Fletcher**—This is a normal activity of government. We would maintain it regardless of the election.

**Senator LUDLAM**—Okay, that would carry right on through the election cycle?

**Mr Fletcher**—Yes.

**Senator LUDLAM**—You have mentioned that these officials—ours and the Chinese—have busy travel schedules but that is the same for people in your line of work no matter what. I am taking this as an indication of priority and that it is not really seen as much of a priority by the Australian government or the Chinese government.

**Mr Fletcher**—It is certainly a priority of the Australian government. Our normal practice is to say to the other side: ‘This is the window. We are coming to China. How about we do it in such and such month?’ That has been difficult because of our own commitments. We gave them some times earlier in the year and they were not suitable. We are now in the process of identifying more times in the second half of the year to give to the Chinese side.

**Senator LUDLAM**—I am just going to need to take you on your word that the Australian government sees it as a priority but if the Chinese government does not, presumably they can just keep stalling these negotiations indefinitely.

**Mr Fletcher**—That is theoretically possible, yes. But I think the Chinese see value in it as well.

**Senator LUDLAM**—The human rights subcommittee placed quite a strong emphasis on the importance of these dialogues in its report on the recent inquiry into human rights mechanisms in the Asia-Pacific. There is some quite strong language in there about the importance of these sort of bilateral—I do not know if you call them ‘negotiations’—dialogues. Are you aware of the recommendations or at least the substance of that report?

**Mr Fletcher**—Sorry, no.

**Senator LUDLAM**—Maybe I will point you to that if you needed any additional evidence of the importance of getting that dialogue on the table and getting it happening. The committee also calls for regular briefings to parliament by government on dialogue outcomes. Given that it has been quite some time since this last occurred, I wonder whether you could take that on board as well—that it is not enough for the dialogue to occur but that we need to understand where it is going.

**Senator TROOD**—I have questions pertaining to Mr Stern Hu. It is a consular matter about China. Mr Fletcher, perhaps you can quickly summarise for us what has happened to Mr Stern Hu. He has been found—

**Senator Faulkner**—Would you like effectively a consular status report? Is that what you are after?

**Senator TROOD**—I would be grateful for confirmation about the consequences of his situation—what the charges are, what his penalty is and what we are doing to maintain contact with him during his period of incarceration.

**Mr Fletcher**—Mr Hu was convicted in March on two charges—one of bribery and one of stealing commercial secrets. On one charge he was sentenced to five years, on the other charge to seven years. In total, he has been sentenced to a penalty of 10 years imprisonment with a fine and confiscation of property to the value of about A\$180,000.

**Senator TROOD**—Have we had contact with him since his convictions?

**Mr Fletcher**—Yes. The last consular visit took place on 10 May. They will continue on a monthly basis, roughly.

**Senator TROOD**—Is there any prospect of a repatriation of Mr Hu to Australia as a result of any agreement that might exist between Australia and China, anything of that kind or any other arrangement that might be made independently of any particular agreement that might exist?

**Mr Richardson**—Australia and China have negotiated a bilateral prisoner transfer agreement, but it is still going through the ratification process, so it is not yet in force. Once the agreement has been ratified it will be up to Mr Hu to decide whether to lodge an application to transfer under the provisions of the agreement. So we cannot say at this point whether he will transfer or not because, firstly, we need the ratification and, secondly, he will need to make a decision as to whether he wishes to transfer or not. Then a request will have to be made and it will then need to be considered within the framework of the agreement.

**Senator TROOD**—Are you speaking about our ratification procedures?

**Mr Richardson**—No, both.

**Senator TROOD**—I see. So neither side has completed ratification—is that right?

**Mr Fletcher**—Just to clarify, it is our ratification that is still pending. The Chinese have ratified already.

**Senator TROOD**—Is this a matter of going to the Joint Standing Committee on Treaties?

**Mr Fletcher**—It is in the process, yes.

**Senator TROOD**—So it is before the committee at the moment. Is that right?

**Mr Fletcher**—I do not think it has yet made it there, but it will.

**Senator TROOD**—Do you know when it is likely to be on the committee's agenda?

**Mr Fletcher**—No, but I know that the Attorney-General's Department is going through its normal process.

**Senator TROOD**—Can you tell me whether or not the agreement will enter into force on the date of ratification, or is there a date to be determined in relation to that?

**Mr Fletcher**—It only requires our ratification for it to enter into force, and an exchange of notes. I think we have to inform the Chinese side formally of that.

**Senator TROOD**—So once the ratification has taken place and you advise the Chinese that it is actually complete then the provisions of the agreement begin to operate.

**Mr Fletcher**—Yes.

**Senator TROOD**—Then, if Mr Hu chose to do so, he could seek a prisoner exchange under the agreement. Am I right in saying that the determination of that relates to the provisions of the agreement?

**Mr Fletcher**—Yes.

**Senator TROOD**—Are they consistent with the normal prisoner exchange agreements that Australia has signed with other countries?

**Mr Fletcher**—I believe so, yes.

**Senator TROOD**—They can sometimes be complex activities, of course, and they can sometimes be time consuming, in my experience. We do not expect this matter to go before the committee in the near future and it will take some time for the committee's processes to be completed, so it is going to take some time before the ratification is completed and it will almost certainly take some period of time to negotiate a prisoner exchange, if indeed Mr Hu wishes to do that.

**Mr Fletcher**—Yes.

**Senator TROOD**—So we are looking at sometime down the track?

**Mr Fletcher**—Yes.

**Senator TROOD**—So nothing is going to happen in the short term? Is that so?

**Mr Fletcher**—That is correct.

**Senator TROOD**—Thank you, Mr Fletcher.

**Senator KROGER**—On Mr Hu, I understand that consular attendance during the court proceedings was not allowed? Is that right?

**Mr Richardson**—No. It was allowed except that there was one part of the trial where it was not allowed. I think Mr Fletcher has the details of that.

**CHAIR**—We might return to that at 1.30 pm.

**Proceedings suspended from 12.30 pm to 13.31 pm**

**CHAIR**—The committee will resume. We are on program 1.1, North Asia, and Senator Kroger has the call for questions on China.

**Senator KROGER**—We were discussing the consular arrangements in relation to the legal proceedings in relation to Mr Stern Hu. My last question was on what consular access arrangements or access you had during the court proceedings and whether in fact there was consular attendance at those proceedings.

**Mr Fletcher**—Consular officials were present for 1½ days of the three-day trial. All the hearings to do with the bribery charge they were present for.

**Senator KROGER**—Can I clarify that. Of the 1½ days they were present, what was that in relation to?

**Mr Fletcher**—In relation to the bribery charge.

**Senator KROGER**—So the other 1½ days that consular officials were not attending, what was that in relation to?



**Mr Fletcher**—That was on the commercial secrets charge. The court was closed for the hearing of the commercial secrets charge. There were no members of the public or family allowed in to that session, or consular officials.

**Senator KROGER**—Was there dialogue between the consular officials and Chinese representatives prior to the deliberation that it was to be a closed court for that second day and a half? Were there discussions in relation to that?

**Mr Fletcher**—Yes.

**Senator KROGER**—Was there any request from the consul to actually be able to attend or her be apprised of what happened during those proceedings?

**Mr Fletcher**—Yes, we made strong and repeated representations to the Chinese, in Beijing, Shanghai and Canberra, in the lead-up to the trial seeking access to that portion of the trial.

**Senator KROGER**—Was there any sharing of information or disclosure about the trial that second day and a half, subsequent to the findings of the trial?

**Mr Fletcher**—We obtained the court record of the case, which is a rather lengthy document, about 70 pages, which listed all the detail of the charges against the defendants.

**Senator KROGER**—I am not familiar with their legal system. Is your view of that documented account of the proceedings, that it gives you an accurate appreciation of what transpired and what the charges were?

**Mr Fletcher**—It gives us a general outline of the charges but does not give us the detail.

**Senator KROGER**—I am just trying to understand the process here, as you would appreciate. On the basis of that documentation that you received, did you have further discussions in relation to reconciling the documentation and the charges that were laid?

**Mr Fletcher**—No.

**Senator KROGER**—So there was no further discussion about the charges once the trial had finished?

**Mr Fletcher**—Not about the specific charges, no.

**Senator KROGER**—There were discussions following the trial?

**Mr Fletcher**—Yes.

**Senator KROGER**—What were they in relation to?

**Mr Fletcher**—We have continuing concerns about the nature of the charges. We do not think that either the government or the Australian business community has a very clear idea of the boundaries that exist within the Chinese legal system in relation to commercial information. We have made that clear to the Chinese government.

**Senator KROGER**—I am sure it would be very helpful for others conducting business or choosing to conduct business in China to understand what those boundaries and parameters are.

**Mr Fletcher**—Yes.

**Senator KROGER**—Have they given any indication that they would like to work with you in establishing what their guidelines are and being able to give advice to individuals who are pursuing business in China or considering pursuing business?

**Mr Fletcher**—The Chinese have, coincidentally, issued regulations on protection of commercial information.

**Senator KROGER**—Subsequent to the trial?

**Mr Fletcher**—Subsequent to the trial; yes. They are very broad in scope and we do not feel that they provide sufficient certainty.

**Senator KROGER**—So, do you have people asking for DFAT's guidance in relation to what the commercial parameters are in conducting business in China?

**Mr Fletcher**—I am not aware of any specific inquiries following the trial, but we have general discussions about the business environment in China with companies from time to time.

**Senator KROGER**—In relation to visits to Mr Hu, you indicated before the break that the consul has the opportunity to visit him, and does on a monthly basis—is that right?

**Mr Fletcher**—Yes.

**Senator KROGER**—What about other visits, whether from family or friends? Are there restrictions on those visiting rights?

**Mr Moriarty**—While he has been in detention and during the trial period, his family have not been able to visit him. But we understand that now that he has been sentenced, and when he moves to the prison, his family will be able to apply to go and see him.

**Senator KROGER**—Where is he currently being held?

**Mr Moriarty**—At the Shanghai Detention Centre, but we understand that shortly he should be moved to the prison. The prison is called Qingpu, and that is where foreign male prisoners—and others as well—serve their sentences.

**Senator KROGER**—I am not familiar with that prison; is that out of Shanghai? Is it a prison that is close—

**Mr Fletcher**—It is within the municipal boundaries but it is, I think, about a 45-minute drive from the city centre.

**Senator KROGER**—That may be close to the centre of Shanghai, anyway. Have you sought advice on behalf of family or friends in relation to contact visits with Mr Hu, either during his initial detention or subsequent to the trial?

**Mr Moriarty**—It was clear that the Chinese authorities were going to not allow family access during the detention period. That is consistent, I understand, with their law. Our consular officers were able to pass messages from Mr Hu to his family and vice versa and arrange for some personal items to be given to him, which he very much appreciated. I understand that, once he is moved to the prison, the normal Chinese rules will apply and—this does apply to some of our other prisoners—they will be able to apply to visit him through the normal prison authorities.

**Senator KROGER**—Could you furnish me with the details of what their normal rules are that apply to all prisoners?

**Mr Moriarty**—I am not familiar with the Chinese legal system in that detail, but we will see what we can do for you.

**Senator KROGER**—I am more interested in what access family and friends have to him. You mentioned that you were allowed to take in, presumably, letters or personal items. Were you allowed to take books in?

**Mr Moriarty**—On some occasions we took reading material. Obviously the Chinese authorities can look at those things. They always look at letters.

**Senator KROGER**—As we do in our legal system here. Finally, in relation to further access, have you sought and are you expecting advice in the short term in relation to when visits will be allowed? You mentioned that you thought that the normal process would apply once he has been removed, but there is obviously a question mark in the timing of him being moved from detention to that prison.

**Mr Moriarty**—We will be continuing to seek access to him even if he remains in the detention centre for some time longer. We have not had any difficulties securing access to him on that, roughly, once-a-month basis. If he remains in the detention centre for a little while longer, we will ask for another call in the detention centre. If he is moved to the prison, we will ask for that consular visit to take place at the prison.

**Senator KROGER**—How has he been able to receive any legal advice if he has not been allowed any contact with anyone other than a consular official?

**Mr Moriarty**—He was not allowed contact with his family during that detention period, but after a period of time he was given access to a lawyer and we understand the lawyers did visit him in the detention centre to help him prepare the case in the lead-up to the trial.

**CHAIR**—The Chinese legal system in this area is a code system of civil law as opposed to a common law system, is it not?

**Mr Moriarty**—Yes. It is not a common law system.

**CHAIR**—Are the legal processes more akin to an administrative tribunal or an inquisitorial tribunal? There are significant differences.

**Mr Moriarty**—I am sorry but I can not answer that.

**Mr Richardson**—They do ask questions.

**CHAIR**—A civil code system backed up by an inquisitorial system is completely different—I will not say it is better or worse—to a court system in the Anglo-Saxon countries. Different rights and different obligations flow on the part of the prosecutor and defendant. I am just asking: what is it?

**Mr Fletcher**—It is probably more on the European lines, but it would not be identical to the civil system that you would find in France or Germany.

**CHAIR**—In its heart, is it inquisitorial?

**Mr Fletcher**—I do not know.

**CHAIR**—You do not know; no-one knows; so be it.

**Senator TROOD**—I want to go back to Stern Hu's plight. Mr Moriarty perhaps, my understanding is that the consular access and arrangements that we were relying upon in relation to Mr Hu was the agreement on consular relations which was signed in September 1999. Is that right?

**Mr Moriarty**—That is correct.

**Senator TROOD**—There is a clause in that agreement in relation to access—in fact, I think we discussed this on the last occasion we were here, 11 February, and I asked you about the entitlement to attend the trial. You gave—I characterised it as—a hesitant yes and I asked you to be slightly more confident. You were able to do that, and that was good. You read out article 11.1(f). Is that the operative clause here?

**Mr Richardson**—Article 11.2 and 11.1.

**Mr Moriarty**—Senator, you asked me in particular about what the agreement said about consular officials and I will read from the agreement again. It says:

A consular officer shall be permitted to attend the trial or other legal proceedings.

**Senator TROOD**—Indeed it does. That sentence caught my eye, Mr Moriarty. Given that this is an agreement entered into between two sovereign governments on a matter of some importance, and yet it would seem not to have been fulfilled on this occasion, I am interested to know why that is the case.

**Mr Richardson**—I might add on this that I think you will find—and Greg might have further details—that there is another clause in the agreement which refers to rights and obligations—

... shall be exercised in conformity with the laws and regulations of the receiving State ...

I think—but I stand to be corrected—the Chinese authorities denied our access to that part of the trial relating to commercial secrets on the grounds that that was their law and regulations.

**Senator TROOD**—I see. Is that the explanation?

**Mr Moriarty**—That is how the Chinese asserted that. As you can imagine, we vigorously asserted that our interpretation of article 11 meant that our consular officials should have been allowed to attend all parts of the trial. We asserted that on a number of occasions.

**Senator TROOD**—This is the English version that I am looking at. The language is pretty straight forward on that point, is it not?

**Mr Moriarty**—That was our argument. We understood their proposition but our interpretation should have held sway.

**CHAIR**—Does that also include pre-trial proceedings?

**Mr Moriarty**—I am not aware of any.

**CHAIR**—It does not.

**Senator TROOD**—It says 'trial or other legal proceedings'.

**CHAIR**—That is not a bad point. That is why I was asking about whether there was an administrative tribunal, an inquisitorial tribunal or a court of law. If you have got rights for legal access to court but the body that has conducted the pre-trial proceedings and the trial itself is not a court, then by definition the rights conferred in clause 11 and the other clause do not apply.

**Mr Richardson**—Senator, I might add, and I stand to be corrected by the Attorney-General's Department, that I could conceive of legal cases in Australia where we may not allow a representative of a foreign government to attend a closed part of a court. For instance—

**CHAIR**—Mr Richardson, the CCC in Western Australia is an inquisitorial agency where accused persons are not permitted to have counsel present, let alone representatives of foreign governments. We are not clean on this issue.

**Mr Richardson**—For instance, if someone in Australia was charged with espionage I could conceive of a court agreeing to a particular part of a hearing relating to sensitive matters going into closed session and I could conceive in those circumstances that the representatives of a foreign country would not be allowed to be present. That is not making an excuse for the Chinese; I am just saying that I can conceive of situations in our own legal system where we would not automatically agree to the attendance of a representative of a foreign country.

**Senator TROOD**—I think you would agree with me, would you not, that the Australian government would only be entitled to take that course if it was clear from an international agreement that was signed between the two governments that there was, if I could use the phrase, a 'get-out' clause that in fact allowed the Australian government to say, 'Yes, there is an agreement and you are entitled to have your representatives here, but the agreement specifically allows us to close courts, and we need to do so'?

**Mr Richardson**—Yes, and we would point to article 11, which states:

... rights and obligations ... shall be exercised in conformity with the laws and regulations of the receiving State ...

We would then point to the law in our country, which allows for closed sessions. We would say that it is in the hands of the judge, the judge makes the decision, and that is what would happen.

**CHAIR**—What is the receiving state?

**Mr Richardson**—In the case of Hu, the receiving state was China.

**Senator TROOD**—Do you accept that the clause you have cited is in fact a legitimate basis upon which the Chinese can avoid otherwise the import of this agreement?

**Mr Richardson**—That is the basis on which they would claim that. Our difficulty, which has already been commented on, is that here we are talking about something called 'commercial secrets'. We are just uncertain as to where those boundaries are in China. The continuing difficulty that we have is that we do not know precisely where those boundaries are in relation to China. We felt that, given the nature of the charge, we should have been able to have our consular officials present, and we would continue to assert that.

**CHAIR**—In the circumstances where there is clearly a difference of interpretation as to the meaning of the clauses between the government of China and the government Australia which has implications for perhaps like circumstances going into the future—and you refer to uncertainty—are we giving any consideration to trying to re-open the negotiations with a view to eliminating as much as is humanly possible that element of uncertainty so that everyone knows what the law is, what it means and that our view is the same as that of the Chinese government?

**Mr Richardson**—The agreement is clear. What are not clear are the Chinese laws and regulations relating to commercial secrets.

**CHAIR**—Why are they not clear?

**Mr Fletcher**—They are very broad in their scope. The new regulations which come in talk about information which a state owned enterprise has and wishes to protect. In our view that is a very sweeping definition.

**CHAIR**—Yes, I can see that. The problem that I face, which I think Senator Trood is alluding to, is: because this uncertainty faces our citizens and businesses that want to operate legitimately in China, what is a solution to resolve that uncertainty in application of the broadness of Chinese commercial law? Are we giving any thought to that?

**Mr Richardson**—I think we have an interest, don't we, Graham? We have sought to get that clarification and we have stated publicly that that introduces an uncertainty in respect of Australian and other foreign businesses working in China.

**CHAIR**—So if we have sought that and we are awaiting a formal response from the Chinese government—

**Mr Richardson**—I do not know whether we are awaiting a formal response—I will leave that up to Graham—but we have sought it. I simply do not think we have got an answer with which we are satisfied.

**Mr Fletcher**—That is right. Mr Moriarty can talk further about the actual agreement.

**CHAIR**—I am not going to pursue this much further; I do not want to interrupt Senator Trood. I just note that the uncertainty of the uncertainty is somewhat worrying from a business perspective.

**Mr Richardson**—It is.

**Senator Trood**—Mr Moriarty, this was a clause that you were relying upon. You have alluded to that sentence, which seems to be the operative sentence. We are all agreed on that. You pressed that matter on the Chinese authorities?

**Mr Richardson**—Vigorously.

**Senator TROOD**—When was that first done? Do you have a note of when that claim was first made?

**Mr Fletcher**—We were advised of the trial on the Monday before the trial occurred—15 March.

**Senator TROOD**—Monday being a week beforehand?

**Mr Fletcher**—Yes, seven days beforehand. The trial opened on the 22nd and was held on 22, 23 and 24 March. On the 15th, 17th, 18th and 19th, we made representations to the Chinese orally and through formal notes to the court in Shanghai, to the authorities in Beijing, at the ambassadorial level and in Canberra. We basically pulled out all stops to say: ‘This is an important matter to the Australian government. We believe on the basis of the agreement that we should have access. We think it is in China’s interest to grant us access and we would like to have it please.’ They came back on several occasions to say, ‘No, the court has decided that you should not be there, and that is it.’

**Senator TROOD**—So the argument of the Chinese government was that it was not really their decision and the court has decided it will not allow access—they had no capacity to change what the court was doing. Is that essentially the line?

**Mr Fletcher**—Yes.

**Senator TROOD**—I see. You pressed this matter in Beijing and you pressed it through the ambassador in Beijing. At what levels did he press the matter?

**Mr Fletcher**—At the director-general of the North American and Oceania department in the foreign ministry, which is our direct bilateral counterpart. We also called in the acting ambassador here. That would be the secretary level.

**Senator TROOD**—I was about to ask. You said there were representations in Canberra here. Did you call in the ambassador?

**Mr Fletcher**—Yes, the acting ambassador.

**Senator TROOD**—On how many occasions did you do that?

**Mr Fletcher**—I know that on one occasion the deputy secretary summoned him to a meeting and made those representations. There was telephone contact. There were other contacts with the embassy and with the authorities in China.

**Senator TROOD**—What was the nature of these communications? The assertion of the primacy of this clause of the agreement?

**Mr Fletcher**—We said our interpretation of the consular agreement is that we should have access to the whole trial and that, even if China has a different interpretation, we felt it was in their interests and ours to have that access.

**Senator TROOD**—And the response to that was that the court has decided?

**Mr Fletcher**—Yes. There were two issues. One is that they did not agree with our interpretation. The second is that it was a decision of the Shanghai court.

**Senator TROOD**—So there was a disagreement about the terms of the actual agreement. Is that right?

**Mr Fletcher**—Yes. We have a difference of view as to whether or not that is a 100 per cent guarantee of access.

**Senator TROOD**—Was it possible to seek legal clarification of the terms of the agreement in China or elsewhere?

**Mr Fletcher**—We consulted our legal people within the department, who confirmed that the wording was ambiguous.

**Senator TROOD**—It is ‘ambiguous’? It seems pretty straightforward to me.

**Mr Fletcher**—The operation of the different clauses together gave rise to the ambiguity.

**Senator TROOD**—Oh. Not 1F, which seems to be straightforward. It is the totality of the terms of the agreement that raise this element of ambiguity?

**Mr Fletcher**—Yes.

**Senator TROOD**—Did we seek any legal advice in China?

**Mr Fletcher**—No, not at that time.

**Senator TROOD**—Did we contemplate that possibility?

**Mr Fletcher**—No.

**Senator TROOD**—Why did we not contemplate that possibility?

**Mr Fletcher**—We were seeking an answer from the authorities in China who had the ability to grant access. We were not going to argue about their law with them. We were saying what we thought about the agreement.

**Senator TROOD**—Was there or was there not a possibility of arguing about their law in a forum which would have had an impact on the outcome?

**Mr Fletcher**—We do not argue with a foreign government about their law. It is not something we do. It is their responsibility to interpret their law.

**Mr Moriarty**—Under the terms of the agreement, differences of interpretation have to be resolved through consultations. I think what Mr Fletcher is saying is that we tried to consult, to assert and to engage through our diplomatic channels to try to persuade them of our perspective. In the end, that did not work, but the agreement says we have to resolve differences through consultation. We did that and we are going to continue to do that.

**Mr Richardson**—I do not believe in sticking the neck out. I do not believe any Australian government could enter into a consular agreement which unambiguously and without exception allowed foreign nationals to be present in Australian court proceedings. I can think of cases relating to espionage and terrorism. I believe we would require some clause relating to laws and regulations of the receiving state, but we have a representative from the legal area up here.

**Senator TROOD**—What can you tell us about this, Mr Trindade?

**Mr Trindade**—Another aspect that makes this particular provision less than clear is paragraph 2 of article 11. If you read it in full, it says:

The rights and obligations referred to in paragraph 1—

Which is the right to attend trials and proceedings—

... shall be exercised in conformity with the laws and regulations of the receiving State, provided however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.



So on the one hand it grants you a right to access a trial. It then makes that right subject to the laws and regulations of the state but says that that should be interpreted in a way that gives full effect to the purpose for which the right is given. So, in fact, it is a somewhat circular definition of your rights here.

**Senator TROOD**—It is a typical lawyers' clause.

**Mr Trindade**—I do not take personal responsibility for drafting it! But that confusion, I think, goes to the heart of the difference of interpretation between Australia and China on the point. They would argue that they are fully meeting their obligation because the access that they granted was in conformity with China's laws. They would also argue that those laws are not being exercised in a way that does not give effect to the purpose of the clause. The purpose of the clause was to give us consular access. As the secretary said, there are numerous occasions in Australian courts where courts will hear matters in camera. There could also be tribunals. You could have a refugee tribunal hearing where foreign officials are sought to be excluded. You could have matters relating to a victim of a crime who does not want matters to be heard or publicised. I think there is a constitutional issue as well in terms of how a federal law might apply to a state jurisdiction where the court powers that are being exercised are being exercised by a state court or state tribunal, as Senator Bishop has already alluded. So it is a very grey issue legally but, as Mr Moriarty has said, the provision in the agreement on resolution of differences requires it to be done through negotiation and/or consultation between the parties.

**Senator TROOD**—Are the contents of this agreement unique to the Australia-China relationship or is this a formal framework agreement that we use in relation to other consular arrangements that we have around the world?

**Mr Trindade**—I am not sure if we have this in the other consular agreements, but what I can say is that this provision is over and above the provisions of the Vienna Convention on Consular Relations. It is over and above what would be provided in normal diplomatic and consular relations between states.

**Senator TROOD**—Which provisions are you talking about?

**Mr Trindade**—I am talking about article 11 of the agreement.

**Senator TROOD**—The whole of 11?

**Mr Trindade**—Yes. Article 11 is an additional elaboration on consular access rights you would normally assert under the Vienna Convention on Consular Relations.

**Senator TROOD**—In this case it does not seem to have availed us a great deal. We made determined representations here and in Beijing. At what point did we determine that it was futile to continue making these representations? Was that much time before the trial?

**Mr Fletcher**—It was on the Friday afternoon once we had received the final answer back from the foreign ministry.

**Senator TROOD**—How did we know it was the final answer?

**Mr Fletcher**—Because when the ambassador had met with the director-general earlier in the week they had said they would look into it.

**Senator TROOD**—And it was the director-general getting back to the ambassador, was it?

**Mr Fletcher**—I cannot recall exactly who. We followed it up with them and asked, ‘So what is the answer?’ They said, ‘No. This is the final position.’

**Senator TROOD**—Did we make it clear that this was unsatisfactory? Did you contemplate any further action as a consequence of this refusal to accommodate our concerns?

**Mr Fletcher**—I think if you look back at the record you will see that the foreign minister made it quite clear in media conferences that we did not agree with this position and that we were dissatisfied with it.

**Senator TROOD**—Did you contemplate a protest note or anything of that kind—any one of the array of diplomatic instruments that might have been availed of, short of—

**Mr Fletcher**—No.

**Senator TROOD**—Let me finish.

**Mr Fletcher**—We had already made our position very clear. And the trial was about to begin.

**Senator TROOD**—You have said that, and I acknowledged that. But there are other steps you can take once have made your position clear. I do not know the full gamut of them, but I know that a protest note at some juncture might be considered. There are presumably other diplomatic declarations of our determination that can be made. Did you contemplate taking any of those steps or not?

**Mr Richardson**—I think in fact the government did just about the strongest thing it could do—that is, the minister made his comments public. In other words, it was not limited to a protest note through official channels. The minister actually made the Australian government’s position clear publicly. We broadcast our concern not only directly to the Chinese authorities but to the rest of the world.

**Senator TROOD**—When did that occur?

**Mr Richardson**—That occurred at a press conference following—

**Mr Fletcher**—There were several press interviews during that week when this matter was raised. I can check the record for the actual dates. It was a prominent issue at the time in Australia.

**CHAIR**—And in the United States. The comments of the foreign minister were reported in the US press as well.

**Mr Richardson**—His comments were reported widely.

**Senator TROOD**—That was their purpose.

**Mr Richardson**—Yes.

**Senator TROOD**—I would like you to refresh my memory as to what if anything have we learnt from this exercise? Is there room to try to deal with the consequences of our inability to secure the access we want—in other words, by amending the consular agreement? Have you contemplated that? Have you a protocol to the agreement? Have there been any overtures from the Australian government to make sure this situation does not arise in the future or at

least to get rid of the ambiguities that exist so we are clear that the point that Mr Richardson makes about receiving state entitlements is clear?

**Mr Richardson**—If I can I will just turn to domestic legal advice. I do not know whether the Australian government could enter into an agreement along these lines that would bind Australian courts and the freedom of the judiciary.

**Mr Trindade**—I think that the secretary makes a very good point. It is a very good question that I think has constitutional aspects that I do not think have been looked at yet. The degree to which we could seek to bind the judicial power of states and territories through a consular agreement is very complicated.

**Senator TROOD**—It is a while since I have practised law but I think that is a sound assertion of principle. Part of the problem here is not that there is a principle in relation to which we would not wish to be bound but that there is an ambiguity about the circumstances in which it is to be applied. So my question is really: have we contemplated by some means or other clarifying the circumstances so that this ambiguity does not rise again?

**Mr Moriarty**—We do have annual consular talks with China and provision is set out for that under the agreement. We will seek to try and resolve some of those differences of interpretation at that meeting. I think that we are never going to get an assertion of the legal right, but what we will try and do is say, 'Clearly we started out and continue to have a different position to that of the Chinese authorities and we really do want to narrow that.' We want to narrow the differences of interpretation through consultation. One of the key ways of carrying forward those consultations would be through the annual consular talks with China.

**Senator TROOD**—When are they next scheduled?

**Mr Moriarty**—We are seeking to have them in the second half of this year.

**Senator TROOD**—And is this matter on the agenda?

**Mr Moriarty**—It certainly will be and the Chinese accept that we do wish to discuss this at those talks.

**Senator TROOD**—I do not have any further questions about Stern Hu but I have another couple of questions not about China but in relation to this outcome.

**Senator KROGER**—I have just one question on Stern Hu. Under the 10-year sentence he received under the Chinese system, does his period of detention count or is it in addition to it?

**Mr Fletcher**—The period since—I think—5 July last year counts.

**Senator KROGER**—It does count as part of the ten years. Thank you.

**Senator TROOD**—Mr Fletcher, have there been any Rudd government minister visits to Taiwan?

**Mr Fletcher**—No.

**Senator TROOD**—Why is that?

**Mr Fletcher**—We do not have official relations with Taiwan and we do not have official visits to Taiwan. Occasionally from time to time there are unofficial visits by ministers

usually in connection with a significant event in the economic relationship between the two sides and there has not been such an occasion in the recent past.

**Senator TROOD**—So we do have an economic and cultural office?

**Mr Fletcher**—We do have. We do not recognise Taiwan as a country but we have economic and other cultural relations with them.

**Senator TROOD**—So when I ask if there been any visits, you are including within the ambit of that term ‘visits’ both official and unofficial?

**Mr Fletcher**—There are never official visits by Australian ministers to Taiwan. There have been no unofficial visits during the period of the Rudd government.

**Senator TROOD**—I see. As far as you know, are any planned?

**Mr Fletcher**—Not this year.

**Senator TROOD**—So is that a general policy position or is that because there has not been an opportunity?

**Mr Fletcher**—It is the latter. Our policy is to conduct unofficial visits to Taiwan by people in the government from time to time as required or as we see fit.

**Senator TROOD**—And have we received any requests from the Taiwanese government for visits?

**Mr Fletcher**—Not that I am aware of.

**Senator TROOD**—So neither in Canberra nor from Taipei have we received any requests for Australian ministers to visit unofficially perhaps?

**Mr Fletcher**—Not that I am aware of.

**Senator TROOD**—Have we received any representations from the Chinese government that they would not wish us to make any visits to Taiwan?

**Mr Fletcher**—No. But if you asked them to they would make those representations.

**Senator TROOD**—I am sure they would.

**Mr Fletcher**—They oppose visits in any capacity by an Australian representative.

**Senator TROOD**—Yes, but we probably know that, don't we?

**Mr Fletcher**—Yes. The issue of Australian visits to Taiwan has not been discussed.

**Senator TROOD**—So we do not need to solicit that information, I would have thought. But you are telling me there have been no requests?

**Mr Fletcher**—Not that I am aware of. Again, if you ask them to make a request I am sure they would. Australian ministers are in high demand.

**Senator TROOD**—I would be surprised if we are doing that. I do not have any further questions about Taiwan, Chair.

**CHAIR**—Thank you, Senator Trood.

**Senator LUDLAM**—I am taking us back to the mainland. I have got a couple of questions relating to China. Does anybody at the table have any update for us on the situation with

Google? They have now withdrawn some of their staff from the mainland and are operating out of Hong Kong. They have also rerouted their search services through Hong Kong. Has there been anything in the interim about that situation that you are able to tell us?

**Mr Fletcher**—Nothing in addition to what you have just mentioned. I am aware of the media reports.

**Senator LUDLAM**—And the Australian government did not make representations either to the company or to the Chinese government in that regard?

**Mr Fletcher**—Not specifically on Google, no.

**Senator LUDLAM**—I want to draw your attention to the visits of a number of Chinese officials, one whose name I am probably going to mangle. It is that of Xiangba Pingcuo, who is the chairman of the standing committee of the Tibet Autonomous Regional People's Congress. It is the alternative body to the one that I was asking about before, the elected government in exile; this is the Chinese approved government in Tibet. He is one of the more serious party officials in Tibet. He visited Canberra with a delegation in, I think, March this year and met with the presiding officers of this parliament. It was kept very quiet from both the media and other politicians. China have spoken elsewhere about the need to ensure what they call a suitable media environment. I am wondering what you can tell us about the conditions that China puts in advance of such visits by senior officials.

**Mr Fletcher**—That visit was organised by the Chinese government. We became aware of it from a call on one of our ministers, but we were not organising the visit.

**Senator LUDLAM**—So tell me how they work. Are they organised from the Australian side by the presiding officers? What is the role of your department?

**Mr Fletcher**—There are various kinds of visits. I think this one was initiated by the Chinese government and organised by their embassy. At some point we would have received a visa application in Beijing but that was the extent of our involvement as I understand it.

**Senator LUDLAM**—Going to my question about what conditions the Chinese government puts on the visit of senior officials, do they regularly put conditions to you about media access and so on or would such a request go through the Prime Minister's department? How is that arranged?

**Mr Fletcher**—If a visitor is being invited to Australia as a guest of government that is organised by the Prime Minister's department. There may be all kinds of requests that China have in relation to how they want the visit organised but those contacts would generally be directly with the Prime Minister's department.

**Senator LUDLAM**—Do you ever advise the PM's department or are you called on for advice in relation to things like that?

**Mr Fletcher**—Depending on the visit we can get involved quite extensively.

**Senator LUDLAM**—There is a visit later this month, I think, by Xi Jinping, who is being touted by some sources as the future President of the PRC. I am wondering if you can tell us anything at all about his visit and whether you have been involved in briefing the minister.

**Mr Fletcher**—I understand that visit is being organised. It has not yet been announced though.

**Senator LUDLAM**—So, in answer to my question, can you tell us what your involvement has been so far?

**Mr Fletcher**—DFAT has been talking to the Prime Minister's department about the visit, about all aspects of the visit, just to make sure. It is an important visit and we want to make sure it goes well.

**Senator LUDLAM**—Has the Chinese government placed any conditions on that visit specifically relating to media access?

**Mr Fletcher**—Not that I am aware of.

**Senator LUDLAM**—Is that something that you would be able to follow up for us?

**Mr Richardson**—We certainly would not be able to follow that up prior to the visit.

**Senator LUDLAM**—I am sorry?

**Mr Richardson**—The visit is still being organised and we certainly would not be able to follow that up immediately.

**Senator LUDLAM**—Okay. Are there standard conditions that the Chinese government places on the visits of senior officials as they relate to media access in Australia?

**Mr Fletcher**—No, not that I am aware of.

**Mr Richardson**—I might add it is for a visitor to determine what access they do or do not grant to Australian journalists. For instance, when the US President visits Australia it is the US President who determines whether he will grant any interviews with the Australian media. It is for the US President to determine whether he will hold a press conference or whether he will not.

**Senator LUDLAM**—I presume that that reflects the case of any foreign delegation or head of state. What I am interested to know, while we have got you at the table, Mr Fletcher, is whether the Chinese government issues a standard set of terms and conditions—or rules of engagement, if you like—for the Australian press corps or the Canberra press gallery.

**Mr Fletcher**—No. They would decide whether they want to have a press conference or not and if they do how it is organised.

**Senator LUDLAM**—I want to take you to somebody who I asked you about last time—Sun Xiaodi, who was sentenced by the Chinese government to two years, I think, in re-education. I forget what Orwellian phrase they used. I think it was 're-education through labour'. His daughter was sentenced to a year and a half. I presume you know who I mean. He was accused of being a whistleblower on a Chinese uranium mine in the 1990s. I asked you last time if you would follow up his situation and I am wondering if you have had the opportunity to do that.

**Mr Fletcher**—I have not received any further information on that case. We were going to take it up in the course of the human rights dialogue. I think in February I hoped it would have been held by now, but it has not.

**Senator LUDLAM**—Give us an update, if you would like, on the Australian human rights dialogue that we were speaking about this morning. So all conversations about political prisoners or people who have disappeared off the map will wait until such time as that?

**Mr Fletcher**—Sorry, you asked me whether I had any additional information. In fact the last time we made representations on that individual was on 3 March.

**Senator LUDLAM**—So I think that is since we—

**Mr Fletcher**—Yes.

**Senator LUDLAM**—Okay. So tell us how that conversation went, if you could.

**Mr Fletcher**—We make representations about individuals, seeking information about their circumstances, and then we need to wait for a response. We make the representations to the foreign ministry and then they need to go to the relevant judicial authorities to get a response. Often we do not necessarily get a response because there is no change to their situation, but the fact that we make the representations is certainly noted.

**Senator LUDLAM**—I will thank you on behalf of the Australian Greens for doing that. That is welcome. I know it is not something that you do all the time but I greatly appreciate that you have taken up his case and, presumably, that of his daughter. Tell us where that goes from here. Your next opportunity to raise that, as you were saying, will be in the human rights dialogue.

**Mr Fletcher**—Yes, or, depending on how long that is delayed, we can make further representations on any matter that is of concern to us. Often it is in response to developments—publicity in the international media—that then prompts us to take up a particular case or to re-engage on a particular case.

**Senator LUDLAM**—Are you able to tell us how many different individuals you are undertaking that sort of action on on behalf of the Australian government?

**Mr Fletcher**—On 3 March we raised four cases, but there are a couple of dozen cases that are generally ones that we take up from time to time.

**Senator LUDLAM**—Would you be able to table for us, rather than going through them case by case, the instances of the people that you raised?

**Mr Fletcher**—I would prefer not to.

**Senator LUDLAM**—I thought you might say that. I wonder whether it might be possible to arrange a briefing in that case outside of this forum.

**Mr Fletcher**—I think probably after the next dialogue we will give a briefing to the subcommittee, in which we can give a lot of detail on what we have done.

**Senator LUDLAM**—Thank you. Finally, returning to Tibet and going to the case of a particular Tibetan, Dhondup Wangchen, a Tibetan filmmaker. I know the Tibetan community here has made representations to the department on a number of occasions. He has been transferred from a detention centre to a labour camp in Qinghai, which indicates that representations for his release have been unsuccessful. Is there anything that you are able to tell him about his case?

**Mr Fletcher**—No. But he was one of the individuals we raised on 3 March. Sorry, when I said ‘four’ I was reading the wrong paragraph; there were actually 11 cases we raised. Most of them were Tibetans, and there were four who were not. It was the other four.

**Senator LUDLAM**—And Mr Xiaodi was one of those who was not?

**Mr Fletcher**—Yes.

**Senator LUDLAM**—Do you realise that his daughter is being interned at the same time? Would you consider her a separate case?

**Mr Fletcher**—Yes.

**Senator LUDLAM**—So that is two of the four.

**Mr Fletcher**—No, we did not actually. It is not mentioned in my briefing that we raised her case.

**Senator LUDLAM**—All right. Thank you very much. Are you aware of any change at all in the circumstances of either of those two individuals?

**Mr Fletcher**—No.

**Senator LUDLAM**—Okay. Thank you.

**CHAIR**—Thank you. Before we go on to the remainder of North Asia, I seek the committee’s indulgence for a moment while I ask Mr Moriarty a couple of questions about the Yemen part of China. Mr Moriarty, there is a news story running today relating to an Australian woman which has been arrested in Yemen. The AAP report says:

Shyloh Giddens, who grew up in Bankstown in Sydney’s west and has been living in Yemen since 2006, was initially placed under house arrest on May 14 along with her children.

She has since been moved to a detention centre while her children, aged five and seven, are now in the care of a family friend.

Can you provide the committee with an update on the situation of Ms Giddens?

**Mr Moriarty**—Ms Giddens, who is an Australian national, was placed in detention in Yemen on 16 May, following questioning by the Yemen national security board. She and her children had been placed under house arrest on 14 May. Ms Giddens has been living in Yemen since 2006.

**CHAIR**—The report goes on to say:

Ms Giddens’ passport was reportedly cancelled by the Australian government in April.

Can you confirm that is the case and can you say on what basis Ms Giddens’s passport was cancelled?

**Mr Moriarty**—I can say. Ms Giddens’s passport was cancelled on national security grounds by the Minister for Foreign Affairs at the request of the Director-General of Security in accordance with the relevant provisions of the Australian Passports Act 2005.

**CHAIR**—How do you respond to the criticism that the Australian government is not doing enough to support Ms Giddens and her children?



**Mr Moriarty**—That is simply not the case. We have a consular official in Yemen at the moment. Consular officials met her, and they met with her children on 20 May and again on 1 June. We are in regular discussions with the children's carers about their welfare and we are pressing the Yemenis for information about when they might be able to leave, and we are doing what we can—engaging with family friends—to talk about the arrangements for caring for her children while she remains in detention.

**CHAIR**—Thank you, Mr Moriarty. I thank the committee for its indulgence. I will now return to the agenda. Senator Trood, do you have further questions on North Asia?

**Senator TROOD**—I do not have anything further on North Asia, assuming whaling is somewhere else.

**CHAIR**—It is. I have a few questions relating to the sinking of the ship in South Korea in recent months. Is it true that a vessel of the South Korean navy was attacked and sunk, with loss of life, by an arm of the North Korean government? Can you outline the circumstances and facts as we understand them, Mr Fletcher?

**Mr Fletcher**—Yes, we understand that to be the case.

**CHAIR**—And there was considerable loss of life?

**Mr Fletcher**—There were 46 deaths as a result of the sinking.

**CHAIR**—There has been a multiparty or multiperson investigation arising out of those circumstances and that has now become public?

**Mr Fletcher**—Yes.

**CHAIR**—Can you give us a status report of what has occurred and what the findings of that committee were?

**Senator Faulkner**—That was a matter of a whole-of-government consideration. What occurred in relation to that was that, following a formal request from the Republic of Korea, Australia agreed to participate in a Republic of Korea led international investigation into the sinking of the ship, which in fact was an ROK corvette called the *Cheonan*. What did occur, I can confirm, is that initially three Royal Australian Navy accident investigation officers travelled to the ROK in mid-April. They formed part of what is best described as a larger ROK investigation team that, apart from the ROK, included officers from the United States, the United Kingdom and Sweden as well as Australia.

That Royal Australian Navy team, I can assure you, provided expertise in mechanical and electronic engineering, ship operations, submarine operations, weapons systems and the like. I can say to you, of course, that it was able to provide skills, qualifications and expertise in maritime investigations and has had previous experience in numerous maritime accident investigations. I hope that assists, Senator. It is in a sense something that could also have been asked over the previous two days because of the Royal Australian Navy team involvement.

**CHAIR**—The report has now been concluded and made public by the South Korean government?

**Senator Faulkner**—Yes. Not only was a news conference held on 20 May, but also President Lee made a public statement, I believe on 24 May, in relation to the incident.

**CHAIR**—Post that publication and the statements of the President of the Republic of Korea, has South Korea taken any actual steps to respond to the attack on its vessel?

**Senator Faulkner**—I think it might be useful for Mr Fletcher to provide what information he can in relation to the response of the government of the Republic of Korea. This effectively, I think it is fair to say, was the substance of what President Lee announced on the 24th. I do not have that information immediately available to me but I am sure one of the officials at the table will be able to assist you with the elements of that.

**CHAIR**—Are you able to assist, Mr Fletcher?

**Mr Fletcher**—Yes. The Korean president announced a number of measures, including bilaterally between the south and the north that they would prevent North Korean vessels passing through South Korean waters; that they would cease all trade and economic exchanges, except for those conducted through the Kaesong Industrial Complex; and that they would refer the incident to the United Nations Security Council.

**CHAIR**—Has it been so referred?

**Mr Fletcher**—Not as far as we know, but we think it might happen this week. It could have happened this morning but I have not received any advice.

**CHAIR**—This question is probably for you Senator Faulkner: apart from noting the events and providing assistance, as you outlined to the inquiry, has the Australian government responded in any other way?

**Senator Faulkner**—Yes. Both the Prime Minister and the Foreign Minister have made the position of the government clear on this matter, Senator, I can assure you. I am just reminded that the Prime Minister made a formal statement in the House of Representatives on 24 May, which is the same day that President Lee made his public statement. The Prime Minister has also spoken directly to President Lee.

**CHAIR**—I am aware of press reports of those statements. They were in the public domain. If there is nothing further, that covers that off.

**Senator Faulkner**—I think it was a substantive—

**CHAIR**—A considered response.

**Senator Faulkner**—Very much a considered and substantive response to the announcement that was made at the press conference on the 20th. I suspect that I cannot do more justice to it than the words of the Prime Minister in the parliament.

**CHAIR**—That is fine. Mr Fletcher or Senator Faulkner—I do not know which: is there any public commentary on the part of the government of the People's Republic of China or of Japan on the incident and its consequences?

**Mr Fletcher**—Yes. The Japanese government has expressed a very similar view to our own in relation to that incident; it expressed serious concern about it. China has been less forthright. It has expressed condolences for the loss of life and called for restraint on the part of the north and the south.

**CHAIR**—Did the PRC provide a person to the South Korean-led committee?

**Mr Fletcher**—No.

**CHAIR**—And was not asked to?

**Mr Fletcher**—As far as I know, yes, that is correct.

**Senator Faulkner**—In the interests of completeness, I should say to the committee that both I and Foreign Minister Steven Smith spoke to our representative counterparts in our bilateral discussions at the ministerial 2+2 that we had in Japan at the time those announcements were being made, and of course we also had a formal meeting with Prime Minister Hatoyama at that time. I think for the completeness of the record I should indicate that we certainly had those discussions at the ministerial level with our Japanese counterparts and included, of course, as an important element of those discussions were the events which were unfolding during the time of that visit.

[2.39 pm]

**CHAIR**—It is useful to again put that on the public record. Thank you, Minister. As there are no further questions arising out of North Asia, we will now turn to South-East Asia.

**Senator KROGER**—I want to get your advice on how you think things are unravelling, unfolding, in Bangkok—

**Senator Faulkner**—It might be useful for one of the officials to give you a bit of a status report. That would be a really good place to start, if the secretary is comfortable with it. Then if you, Senator Kroger, or other committee members have some issues arising from that then please feel free to ask us. But it is, as you say, obviously an evolving situation and I think it would be useful if the secretary or Mr Borrowman could give us that a status report.

**Mr Richardson**—Just by way of interest, and Mr Borrowman will follow up in more detail, in overall terms the security situation in Thailand has eased since the end of the major protest action. Currently there are no major confrontations between Thai security forces and protesters and services have been largely restored. However, there remains a continuing risk obviously of spasmodic violence. You will be aware that there were about 80 deaths and about 1,900 injuries during the protest activity since the major clashes began on 10 April. The Thai Prime Minister has called for unity, commitment to reconciliation and the like. However, we will have to wait and see just how that progresses. Mr Borrowman might have something more to add.

**Mr Borrowman**—There is little actually to add to the secretary's summary of the situation as it stands now. I think that is a very accurate summary of where we stand.

**Senator KROGER**—I understand our embassy was closed.

**Mr Richardson**—It was not actually closed; there was a media report saying it was closed. It in fact remained open but it was closed for actual visits for consular or passport assistance. There was activity going on in the street out the front of the embassy which would have made it dangerous for Australians to seek to visit the embassy seeking assistance. So the embassy put in place arrangements whereby travelling Australians could bring the embassy and embassy officials could then visit the Australians wherever they needed assistance. That did happen in a few cases. But the embassy was never actually closed.

**Senator KROGER**—How many people work in embassy?

**Mr Borrowman**—I can get back to you with an accurate number very shortly.

**Senator KROGER**—Is it a large embassy?

**Mr Richardson**—Yes, it is. It is one of our seven largest.

**Senator KROGER**—What approach was taken at the embassy in terms of giving proactive advice in relation to Australians there?

**Mr Richardson**—In the consular area here a crisis centre was opened up for a short period of time. Over and above that the travel advisory—

**Senator KROGER**—That is a crisis centre here.

**Mr Richardson**—Yes. It was kept open for a short period of time but the consular area here kept the travel advisory up-to-date at all times, both in terms of what was happening on the ground in Bangkok and also during the course of the protest the consular travel advisory was actually raised up a level to Do Not Travel.

**Senator KROGER**—And was advice directly given to Australians in Bangkok?

**Mr Richardson**—I will pass that over to the good Mr Moriarty.

**Mr Moriarty**—We took a number of steps to try to ensure that Australians were kept informed of the travel advice and the changes to it. It is interesting to notice that the travel advice for Thailand was updated and reissued on 22 occasions since the red shirt protesters became involved in the increasingly violent confrontations from early March onwards, so it was a subject that we watched very carefully.

**Senator KROGER**—Since that first rally on, I think, 14 March or whenever it was—

**Mr Moriarty**—Yes, I think that is right. On 23 April we raised the level of the advice to ‘reconsider your need to travel’, which is level 4 of the five levels we have, for all of Thailand. On 19 May, we raised the level of the advice for Bangkok to ‘do not travel’. That was due to the extreme risk of violence as the Thai authorities intensified military operations. We lowered it on 27 May back to ‘reconsider your need to travel’. During the course of that, we took a number of steps to try to ensure that information was made available to the Australian public. Mr Smith made a number of comments about the situation in Thailand, also highlighting the travel advice. We have a system of alerting registered Australians when we change the travel advice, and those registered Australians do get updates. We also put in place a—

**Senator KROGER**—Presumably by email.

**Mr Moriarty**—Yes, by email. We also put in place a system of SMS and phone contact; a number of people said to us, ‘Please contact us by SMS or phone.’ We also got our Consular Emergency Centre staff in Canberra involved in that, as well as staff in the embassy in Bangkok. The secretary mentioned that we opened the crisis centre here. Our embassy in Bangkok also ran its own crisis centre, drawing together information but also tracking the welfare of Australians.

**Senator KROGER**—It goes back, I guess, to part of our discussion and our questioning earlier on. In times when there is a conflict situation that is significantly and very rapidly evolving, is it the role of the crisis centre here to ascertain and establish what Australians are on the ground in the area, or do the embassies themselves seek to do so?

**Mr Moriarty**—It is both. Obviously we have the online registration of Australians. What we find is that during a crisis the number of registrations goes up very significantly. We will start off with a situation where we might have 1,000 Australians registered in Bangkok. When these demonstrations start and people start to see the television images, the registrations go up very significantly. Also, people ring into our Consular Emergency Centre. It is not for themselves; they say, ‘My cousin or my daughter is travelling in this area.’ They alert us to Australians who may be in the area. Our embassies are also very active. For example, in Thailand our embassy staff rang hotels to check on occupancy rates and also to see whether there were registered Australians in the area that was cordoned. When things deteriorated, we also rang all of the hospitals daily to see whether any Australians had been admitted. So it is both at the Canberra end and at the post end that we put in place these arrangements to more actively find out how many Australians are in the affected area.

**Senator KROGER**—I appreciate that the travel advice was not to travel to Bangkok during that particular week.

**Mr Moriarty**—With the exception of the airport, because the international airport remained unaffected throughout the period. Where we can give granular information that separates out areas, we try to do so, and we thought it was important there. We had no information of trouble there—and our post tried to find out as much as it could about this. There was a good security presence there and no indication from the protesters that they had any intention to disrupt airport operations. So, when we moved to ‘do not travel’ for Bangkok, we specifically excluded the international airport.

**Senator KROGER**—Were you advising people to leave Bangkok or just to stay away from the immediately affected areas?

**Mr Moriarty**—No, when we go to ‘do not travel’ we advise Australians who do not have a very pressing reason to stay there that they should consider leaving.

**Senator KROGER**—What about Australians who were hurt? I remember seeing a young man—or young compared to my age—on the news coverage one night.

**Senator TROOD**—He must have been a whippersnapper.

**Senator KROGER**—He was. He was a babe. But were there many Australians injured other than that gentleman?

**Mr Moriarty**—No. There were, thankfully, very few Australians caught up in it. I think where we were lucky in relation to this particular crisis was that it did take some time to build. It was not one of those crises that just spikes overnight. A number of people were able to see how the situation was developing, think about their travel plans and, if they were living in Bangkok, think about where they might move. So we did not have a particularly high case load.

**Senator Faulkner**—I think, Senator, the specific answer to your question—I will ask officials to correct me if I am wrong—is that a total of three Australians may have been injured. I am going on memory now, but I think that the number of injuries reported—not of Australians—was nearly 2,000.

**Mr Richardson**—1,900.

**Senator Faulkner**—Of those 1,900, my understanding is that there were three Australians. I will just ask officials to confirm that that is right. That is a precise statistic. I said almost 2,000. That is not precise. It was around 1,900 in total, of which three were Australians.

**Senator KROGER**—Were those three residents or tourists?

**Senator Faulkner**—I do not have that information. We can have a look at providing it on notice, if you would like.

**Senator KROGER**—That is fine.

**Senator Faulkner**—We will need to take that on notice.

**Senator KROGER**—That is fine. I understand there was an Australian man who violated his visa and was sentenced for a visa infringement and then, after that, was arrested for being involved in the protest. Is that right?

**Mr Moriarty**—That is correct. Mr Purcell was arrested on 24 May on charges of violating Thailand's emergency decree which was put in place during the troubles. He was detained the previous day on immigration overstay charges.

**Senator KROGER**—It was literally the day before?

**Mr Moriarty**—The day before, he was detained on overstay charges and then, on 24 May, he was arrested on charges of violating the emergency decree.

**Senator KROGER**—Do you have any further information on that particular matter?

**Mr Moriarty**—He is due to face court on again on 4 June. We understand he is under investigation by the police. Our consular officials have been providing him with consular assistance. They visited him at the immigration detention centre on 23 May. They attended the court hearing on 24 May and a further hearing on the same day when he was charged with violating the emergency decree. They attended a court hearing on 27 May and are planning again to visit him before his next court appearance.

**Senator KROGER**—What is the process there—that you assist in organising local legal counsel? What is the role of the consul there?

**Mr Moriarty**—One of our consular roles is to ensure that Australians who find themselves in legal difficulties overseas are able to have access to legal representation. So we have provided him with a list of local lawyers and we understand that he now has a lawyer and that she has visited him in prison. We try to ensure, wherever possible, that those Australians who find themselves involved in legal proceedings overseas get equal treatment under the law to a national of the country that they are in.

**Senator KROGER**—What is the possible sentence for that should he be sentenced?

**Mr Moriarty**—Again, it would really be a matter for the court. My understanding is that he has been sentenced to two months imprisonment, suspended for one year, and a fine of 3,000 Thai baht—that is only about A\$113—on the immigration overstay charge, and I understand he faces a maximum sentence of two years imprisonment and a fine of about A\$1,500 on charges under the emergency decree. I really need to say I am not an expert on the Thai legal system. That is what our officials generally understand to be the circumstances he faces at the moment.

**CHAIR**—Mr Borrowman, I have a couple of questions for you. One of the demands of the protesters was that the government call an early election as a resolution to the matter. Can you advise us on whether their government has made any decision about having an election sometime this year?

**Mr Borrowman**—Our understanding is that, in the course of the end game of that part of the political negotiations, that offer was then, if not formally withdrawn, taken off the table, so we would be looking at the normal timetable for elections, which is towards the end of next year.

**CHAIR**—Do we have a view or do we have any advice as to whether there is likely to be a revisiting of the instability and civil unrest?

**Mr Borrowman**—It less a question of advice than that the fundamental causes that most people would have seen underlying the instability, about disparities in wealth and political influence between the countryside and the city, in particular, are still there, and unless they are addressed in some way then I think it is fair to say that there is a general concern that these issues could come back to visit the Thai polity in some shape or form.

**CHAIR**—Have there been any threats made to the government of Thailand that the civil unrest will be revisited or is there any evidence on the ground that people are organising again to achieve that end?

**Mr Borrowman**—The red shirts have a number of disparate groups within them. There are some old communists and marxists who have come back to Thailand; there are obviously people up from the countryside who have come in; there are people with political grievances. ‘A broad church’ is possibly not the right expression, but certainly it is not a homogeneous group. It is a matter of public record that among those there are some elements who have pledged a return to violence.

**CHAIR**—But nothing at this stage is actually occurring?

**Mr Borrowman**—No.

**Senator LUDLAM**—Can you confirm for us whether or not we have a date for a proposed election in Burma, if I may call it that, and what positioning the Australian government is taking in the lead-up?

**Mr Borrowman**—There is as yet no date fixed by the Burmese authorities for the election in Burma. The general speculation, as you are aware, is that it may well be 10 October because of the numerological symbolism of that date. Australia, for its part, continues to call for the elections to be full and free and allow as much political participation as possible. As the government has equally recognised on a number of occasions, given the situation in

Burma, the conditions to achieve that are essentially not there but, nonetheless, the government will not prejudge the outcome of the election.

**Senator LUDLAM**—Does full and free political participation include the release of political prisoners?

**Mr Borrowman**—Yes it does, and we have consistently called for the release of all political prisoners.

**Senator LUDLAM**—Given that those two things obviously have not occurred and probably are not going to occur, is that not a form of prejudging already? Why don't we just come out and say that we are not going to respect the outcome of the election, given that they have formally prevented pro-democracy campaigners from participating?

**Mr Borrowman**—There are a number of parties that have in fact registered for the election. Almost 40 have applied for registration and some 30 have already been approved. There is no deadline set for the registration of new parties. Several of those parties include ethnically based parties such as the Kachin State Progressive Party and the Karen National Union, which are independent of the authorities. The policy is to give as much space within the admittedly limited political space in Burma for these people to make their own judgments to contest the elections and see what the outcome is.

**Senator LUDLAM**—Could you confirm for us that Australia plans to provide training to civil servants in the Burmese military regime following the elections? What can you tell us about who we are planning on training and why?

**Mr Borrowman**—Do you have a specific proposal in mind or is it a general proposition?

**Senator LUDLAM**—I am asking you if we have a proposal.

**Mr Borrowman**—There are proposals in the context of the increase in the aid announced in the budget to Burma to provide training. AusAID would be in a better position to give you full details of that. Within that context, if you have a specific proposal in mind—

**Senator LUDLAM**—The specific proposal is around training for civil servants, public servants, in Burma post the election. At the moment, apart from what goes on in AusAID, we are having one single agent from the Australian Federal Police doing counternarcotics work. What I am asking is: is it proposed to ramp up that kind of collaboration with the government, specifically regarding training for public servants?

**Mr Borrowman**—Let me take that on notice and get back to you, Senator. I need to have full details of the current planning for the ramping up of the aid budget. I will give you what I can, but I am sure AusAID will be able to give you full details.

**Senator LUDLAM**—That UN Special Rapporteur on Human Rights in Burma released report in March this year which estimated that the government earned almost \$3 billion in revenues and sales of oil and natural gas and that, since 2000, \$4.8 billion, roughly, of \$4.83 billion of the government's revenues on the Yadana Project appears to not have been included in the national budget. Substantial fractions, according to that report, of revenues from the oil and gas industry are not turning up on the balance sheet at all. They then go on to explain how the regime hides the income from oil and gas projects from the people, and so on. It is fairly



familiar story. First of all, have you reviewed that report in the context of oil and gas revenue specifically?

**Mr Borrowman**—No, Senator.

**Senator LUDLAM**—You are aware of it, though, I presume?

**Mr Borrowman**—No, I am not aware of it.

**Senator LUDLAM**—You are not aware of the report of UN Special Rapporteur on Human Rights?

**Mr Borrowman**—In general, I am aware of it, and certainly the department would be aware of it. I have not personally read the report.

**Senator LUDLAM**—Could you review for us what your responsibility is? Are you looking after an entire hemisphere of the planet or just Burma? At different times we have had people at the table with greater degrees of specialisation.

**Mr Borrowman**—I look after all the countries in South-East Asia, which goes from the Philippines, round in an arc, up to and including Burma, and back across to Vietnam.

**Senator LUDLAM**—That is what I thought. Is there anybody in the room this afternoon who works specifically on issues relating to Burma?

**Mr Borrowman**—No, there is not, but I would be very happy to take any specific questions you have on notice.

**Senator LUDLAM**—That is a very specific question: whether the Australian government would reconsider, in the light of that data—and you are acknowledging that you have not seen that report or reviewed what it says specifically on oil and gas revenue—the extent to which it allows Australian companies to invest in oil and gas in Burma, given the circumstances which I have outlined here every time, I think, I have sat here?

**Mr Borrowman**—Senator, as you are aware, the minister announced in his statement in February that there would be no changes to the sanctions regime, which I think is what you are implying by a review, in light of that report, at the present time.

**Senator LUDLAM**—That was in February. What I am putting to you now—and we will move on—is that, in the light of the very clear and detailed picture painted by the UN Special Rapporteur on Human Rights of the specific role of the oil and gas industry in funding the military off the national balance sheet, whether Australia would consider at least targeting sanctions along the lines of the oil and gas industry. That is what I am putting to you now. We had one very welcome development since the last time we were here—and I will commend them again on the record—and that is the government's statement at the Human Rights Council supporting the investigation of 'possible options for the establishment of a United Nations commission of inquiry' into war crimes and crimes against humanity in Burma. That is a significant foreign policy shift in the Australian government which was welcomed I think across the board. What has happened since that announcement?

**Mr Borrowman**—Senator, in answering, I am not certain that I would agree it is a significant foreign policy shift. The government has been on the record as supporting investigating possible options. As you are aware, this is a UN proposal. If I could take you to

the actual intervention that the Australian representative made on 15 March in Geneva, it said—and I will read it, if I may, into the record:

Australia notes the Special Rapporteur's suggestion that UN institutions may consider the possibility of establishing a commission of inquiry to address the question of international crimes in Myanmar. Australia would support investigating possible options for a UN commission of inquiry, although we acknowledge that establishing such an inquiry may face a number of obstacles. We would be interested in how such a commission may be established and the intentions of the Special Rapporteur to conduct further advocacy in support of this idea.

We have not yet had any further information from the UN in response to that request.

**Senator LUDLAM**—When was that statement read in?

**Mr Borrowman**—15 March.

**Senator LUDLAM**—Okay, so three months on, what has the government done since then to progress that agenda? I trust you are not seeking to downplay it. I unambiguously congratulated the government on that move, so I hope you will not downplay it in this forum, because the government had been quite unwilling to provide support because of those obstacles that you mentioned, so I thought it was quite a significant policy shift.

**Mr Borrowman**—Senator, on 12 August 2009 the government supported your motion in the Senate calling for the investigation of all possible options for progressing the UN commission of inquiry into war crimes and crimes against humanity in Burma. That is why I said I was not certain that it was a policy shift—because it has been there for some time.

**Senator Faulkner**—I think probably there is a distinction we should draw here. I agree with you about the significance, Senator; I think it is perhaps not new. Maybe it is not interpreted by some as new, but I suspect these interpretations at the end of the day are in the eye of the beholder—

**Senator LUDLAM**—Okay. The beholder in this case—

**Senator Faulkner**—And many beholders have agreed that this step is a significant one. I personally believe it is an important one too.

**Senator LUDLAM**—I think it is an important one. The text of the motion which was finally agreed to between the Australian Greens and the government—that statement has now been made at the United Nations in an appropriate forum on human rights, and that is the significance that I am attributing to it. It is the first time we have done that. But the question, and I would apply it as well to—

**Senator Faulkner**—I am pretty confident that is true, Senator, but if you are asking for us to confirm.

**Senator LUDLAM**—It is.

**Senator Faulkner**—I am sure we can confirm that for you. I am confident that is the case.

**Senator LUDLAM**—Yes. Sorry, it was a statement not a question.

**Senator Faulkner**—It is, Senator. I just wanted to check with officials. I thought that was the case. Certainly, we can confirm that.

**Senator LUDLAM**—We are talking about beholders; that was the international community in that case, and that is significant.

**Senator Faulkner**—Yes, absolutely.

**Senator LUDLAM**—Also, maybe on a parallel track, can you update us on whether the Australian government has done anything in pursuit of another policy change which we welcomed, which was support for an international arms embargo in addition to the unilateral arms embargo that we have had on that country for quite some time. When we make these statements—and I will ask these as two separate questions because they are two separate issues—what do we do in pursuit of those objectives? What have we done in the case of support for a universal arms embargo?

**Mr Borrowman**—As we have discussed before, we supported the call which has been made by the British government for a UN universal arms embargo. It is not a matter that we actively prosecute. We support it if and when the Brits bring it up. As we have also discussed, there are well-known impediments to the success of any such initiative in the current political climate.

**Senator LUDLAM**—Have we brought it up, for example, in any bilateral dialogues or negotiations with any of our other trading partners? Last time we got hung up on who the largest exporters to Burma are, so I do not propose to revisit that ground. But simply signing on to a statement like this surely commits us to more than just doing that and then moving on. Have we spoken to any other governments who do export arms into Burma and put our position on the record with them?

**Mr Borrowman**—We would regard our position as already being on the record. I am not aware that we have made any specific representations. As I say, it is a policy that we support; it is someone else's policy that we support—

**Senator LUDLAM**—Now it is our policy.

**Mr Borrowman**—Yes.

**Senator LUDLAM**—Are we just trying to deflect attention? Are we just lending our name and then we do not propose to actually do anything?

**Mr Borrowman**—No, it is not a question of deflecting attention. The assessment is that, given the current circumstances, there is negligible to zero possibility of any success for such an initiative. We would support it but it is not practical.

**Senator LUDLAM**—In name only. It is a bit odd to sign on to something that you do not believe has any possibility at all of succeeding. I guess that is a statement as well. It has been revealed that New Zealand taxpayers have been paying for officials from Burma to study English in New Zealand. I can refer you to an article in that light if you need. Can you confirm whether or not this is happening in Australia?

**Mr Borrowman**—I cannot, Senator, I will have to take that on notice.

**Senator LUDLAM**—Since we last spoke have there been any changes to the list of Burmese officials and members of their families who are restricted from travelling to Australia?

**Mr Borrowman**—No, there have not, Senator.

**Senator LUDLAM**—Are there any changes to the list of prohibited imports and exports? Maybe you could provide us with an update, if you have one, of the discussion that we had last time around about the radio equipment that caused a bit of a stir when it was exported, I think, from a Perth company into Burma.

**Mr Borrowman**—On the first part of your question I would have to check with Defence, which manages that list, as to whether there has been any update. I will take that on notice. On the matter of Barrett Communications I do think there is anything we can add to what we discussed last time.

**Senator LUDLAM**—Nothing new. I have a final one on Burma and then I will move on. In regard to the election, is it premature to be talking and are we talking in any multilateral fora about things like election observers or support for that process in Burma, if and when it finally does unfold? Are we participating in any conversations along those lines in the UN or elsewhere?

**Mr Borrowman**—There is no indication whatsoever from the Burmese side that they would accept international observers. Obviously were that to be in prospect it is something we would look at very closely.

**Senator LUDLAM**—So there is no point in me getting hypothetical about whether we would or would not?

**Senator Faulkner**—If something like that develops, I imagine that we would be generally supportive—I will check that with the secretary. Given your interest in it and you have flagged it with the department, I think we can undertake to provide information, obviously outside the normal questions on notice time frame, if information comes to our attention in relation to this. I am very happy to let you know outside the normal constraints that apply. The normal constraints here will not enable us to give you a response in time.

**Senator LUDLAM**—That is fine. Thank you. There are two things I am asking that I am most interested in. For the future, whenever that future session may be, whether we actually intend to do anything to back up the statements in support of the arms embargo or the UN commission of inquiry. I have had two rather frustrating exchanges with you in the last two sessions where we sign on to these initiatives but then you come in here and say that you do not plan on raising it or actually doing anything about it. Given the number of options and levers and channels open to us I find it really peculiar.

**Senator Faulkner**—Progress in the international community as well is relevant to this consideration, as I know you appreciate, Senator.

**Senator LUDLAM**—I am trying to ascertain whether Australia is lending its weight or whether we consider that signing onto the initiatives a couple of months ago constitutes all we need to do in order to pursue those objectives.

**Senator Faulkner**—I think I understand the nuance of your question.

**Senator LUDLAM**—I will leave it there. Thank you for your time.

**Senator TROOD**—I have some questions about Indonesia and there is a connection with people smuggling so maybe Mr Larsen needs to be at the table, thank you. The refugees or asylum seekers that came from Sri Lanka on the *Jaya Lestari* have now been taken onshore at Merak? I think that is right, is it not?

**Mr Borrowman**—I will have to defer to Mr Larsen on that.

**Senator TROOD**—Is he the person, or is it you, who can deal with the MOU that has been signed with the Indonesian government about people-smuggling activities?

**Mr Borrowman**—Mr Larsen.

**Senator TROOD**—These are all Mr Larsen's?

**Mr Borrowman**—That is right.

**Senator TROOD**—I see.

**Mr Richardson**—Here he is; he has just come in.

**Senator TROOD**—Just when you thought it was safe, Mr Larsen! I have some questions about the Sri Lankan asylum seekers that were on the *Jaya Lestari* in the port of Merak and who are now no longer in the port of Merak. At least, they have been taken on shore—is that right?

**Mr Larsen**—That is correct; yes.

**Senator TROOD**—When did that take place? When was the matter resolved?

**Mr Larsen**—The last passengers disembarked from that vessel on 19 April.

**Senator TROOD**—In what conditions are these people now housed?

**Mr Larsen**—My understanding is that most passengers have been transferred to an Indonesian immigration detention facility in Tanjung Pinang in Indonesia.

**Senator TROOD**—Is that far from Merak?

**Mr Larsen**—I would have to take that on notice. I do not know the exact distance.

**Senator TROOD**—How many people were disembarked from the vessel, can you tell me?

**Mr Larsen**—I do not have that number. That is principally because the matter is being entirely dealt with by the Indonesian government.

**Senator TROOD**—Mr Borrowman, do you know that figure?

**Mr Borrowman**—No.

**Senator TROOD**—Perhaps you could take that on notice.

**Mr Borrowman**—I can, but I am not sure that we have that information.

**Senator TROOD**—Well, see what you can find for me; that would be helpful. They are housed; are they in detention?

**Mr Larsen**—Yes, the majority of passengers are in detention. Alternative arrangements have been made for a number of passengers, either on medical grounds or for those who disembarked prior to the main group.

**Senator TROOD**—I see. Are we familiar with the conditions under which they are held? Have we sent anybody to inspect the conditions or anything of that kind?

**Mr Larsen**—Not an Australian official; no.

**Senator TROOD**—What do you understand to be the conditions?

**Mr Larsen**—My understanding is that the passengers from that vessel are being managed by the Indonesian authorities. The Tanjung Pinang detention centre is a centre supported by the International Organization for Migration, with the Indonesian authorities in charge of it. I do not have information regarding the specific individuals.

**Senator TROOD**—Do some of our funds that we provide to the International Migration Organization support that centre?

**Mr Larsen**—Some of our funds would support that centre, yes.

**Senator TROOD**—Does that oblige us in any way to take an interest in the management of the centre?

**Mr Larsen**—The funds are provided to the International Organization for Migration. The International Organization for Migration makes arrangements in relation to that centre. The issue is one which the Department of Immigration and Citizenship would have greater knowledge about than I have. It is something which the Department of Immigration and Citizenship and its staff in Indonesia would follow to a certain extent, yes.

**Senator TROOD**—Apart from those who have health issues, all of the people from the *Jaya Lestari* were taken to this centre. Is that right?

**Mr Larsen**—I understand the majority were, although there was some leakage from the passenger group. You will recall that the vessel was docked in Merak for some time.

**Senator TROOD**—Indeed.

**Mr Larsen**—The security arrangements for the vessel were not entirely tight. There was, I think, some leakage of passengers from the vessel onto the dock and then out into the broader community. But the bulk of the passengers who left on 19 April are in the circumstances I have just described.

**Senator TROOD**—Do you understand, therefore, that men, women and children are all detained in the centre?

**Mr Larsen**—I do not have specific details on that passenger group, nor do I have the breakdown of men, women and children. I would say again that it really is a matter that is entirely in the hands of the Indonesian government.

**Senator TROOD**—So we are washing our hands of the whole exercise are we?

**Mr Larsen**—I do not think that ‘washing our hands’ is the correct terminology. I think it is and always has been a matter for the Indonesian government to manage. It was managed by the Indonesian authorities and the remaining passenger load is being dealt with by the Indonesian authorities.

**Senator TROOD**—If ‘washing our hands’ is not the appropriate phrase, how would you describe any continuing responsibilities or interests that we might have in these passengers?

**Mr Larsen**—I do not think the Australian government has responsibility for those passengers. It is a matter for the Indonesian government. We have an interest of course in relation to irregular migrants generally in Indonesia and we support Indonesian efforts in relation to the management of their irregular migrant case load in a variety of different ways. That is done through our immigration department. We follow and collaborate closely with the Indonesian authorities on irregular migration issues. In relation to these particular passengers, I do not think we have an evident responsibility.

**Senator KROGER**—Can I just cut in there. I am sorry, Senator Trood. This one is not like all the other situations where boats are detained by Indonesia. This one was clearly an incident where our Prime Minister had a discussion with President Yudhoyono, whatever the basis of that discussion was. So we have a situation where Indonesia took responsibility for those on board at Merak. We saw the situation evolve over some time. So I just do not accept that we have no responsibility for those who were on that boat, given that we actually did get involved in the very early days in relation to the destination this boat ended up in. I just do not accept that.

**Mr Larsen**—Clearly we have some information regarding that passenger case load. We do have information on where the majority of them are presently located. We do understand that the Indonesian authorities are dealing with them, including no doubt dealing with them in conjunction with the UNHCR to consider their refugee or asylum seeker claims. But we do not have a direct responsibility for the case load in the sense that you have suggested.

**Senator KROGER**—But surely we have a responsibility to be given status updates on what is happening with the processing of those claims and where they are at. Minister, I do not know whether you can furnish us with any more information on this, but I find it extraordinary. I think my colleague's description—washing our hands of it—is actually a very apt one.

**Senator Faulkner**—I can perhaps assist with some of the background, which might be of assistance to you. It is certainly my recollection that last year the Prime Minister and President Yudhoyono of Indonesia agreed to develop a framework for cooperation for dealing with people smuggling. The status of that framework was that it was agreed and signed. I think it is true to say that both Indonesia and Australia have recognised people smuggling as a shared and regional issue that obviously requires close cooperation.

I think there is a recognition from us all that the trafficking of people is very much a threat to people who are vulnerable. The nature of the agreement or the framework, if you like, was to enhance strong existing bilateral relationships and collaboration on people smuggling and trafficking in persons. That is certainly my understanding of the background to this in terms of the cooperation between Indonesia and Australia. While ever one says that, it would be silly for us not to acknowledge that irregular migration as you know, displacement and people smuggling remain global problems. I think it is appropriate to recognise that.

I am obviously not the minister responsible for these matters, but like all senators in this room I do take a real interest in these issues and that framework, as you know, sits under the Lombok treaty. That governs our security cooperation with Indonesia and it is designed to

deal with a range of mutual challenges. One of those is this issue of people smuggling, Senator, that you are canvassing at the moment.

**Senator KROGER**—It is an issue that I do not think is being addressed properly. I have a colleague who wants to get on with his questions, so I will not take up the time with mine.

**Senator Faulkner**—Over the break, in relation to some of the precise information that is being requested, I will see if we can ask some other agencies. I would have to check with officials as to whether these are matters that ordinarily the Department of Foreign Affairs and Trade might deal with. My understanding is that it is really the Department of Immigration and Citizenship that has the primary responsibilities and is the lead agency. But over the break, which will happen in a couple of minutes, I will see, having heard the questioning, whether there is some information I can provide and officials will also seek to try to at least provide you with what information is available. I do think it would be wrong to think of DFAT effectively as the lead agency on these issues.

**Senator KROGER**—I do not think there was any suggestion that DFAT was the lead agency.

**Senator Faulkner**—I am just saying that some of this information might not necessarily be at the hand of officials, so let us see if we can establish it for you.

**Senator TROOD**—Mr Richardson strikes me as the kind of bloke that could see his territory expand and he would be willingly prepared to take on further ambitions.

**Senator Faulkner**—I could not comment on that!

**Mr Richardson**—I have previously worked in the department of immigration on two occasions.

**Senator Faulkner**—That could be interpreted in a number of ways!

**Mr Richardson**—And I thoroughly enjoyed it.

**Senator TROOD**—Senator Kroger obviously read my mind because the proposition I was going to put to you, Mr Larsen, was that this boat was in Merak as a result of the request made of the Australian government. The fact that we were so unwilling to assist in the resolution of the matter did in fact cause at least irritants in our relationship with Indonesia, did it not?

**Mr Larsen**—I think it is true to say that there was some media commentary about that but in fact it has not been the case in any of the discussions I have been involved in with Indonesian officials that the Merak vessel incident—and I was in Indonesia six or seven weeks ago on general people-smuggling related consultations and I have had regular contact with my Indonesian counterparts in the lead-up to a Bali process senior officials set of meetings to take place next week—has been specifically raised with any sense of particular Indonesian irritation. The very real message I received from those engagements with Indonesian authorities was that they were dealing with this matter and they have done so.

**Senator TROOD**—You perhaps recall the remarks of Mr Sujatmiko, the head of Indonesian diplomatic security, who expressed on more than one occasion, I think I am right



in saying, that he was rather disappointed with the Australian response to Indonesian government requests for assistance. Was that an inaccurate reporting of his position?

**Mr Larsen**—That message was not conveyed to me in my various discussions with Indonesian officials over recent months.

**Senator TROOD**—Can you report on that, Mr Borrowman?

**Mr Borrowman**—I could add that you have referred to a statement by the spokesman of the Ministry of Foreign Affairs. The Minister for Foreign Affairs, Dr Natalegawa, earlier this year in this context said ‘we have simply refused to allow this kind of situation to be a thorn in our bilateral relations’.

**Senator TROOD**—The implication being that it has been a difficulty.

**Mr Borrowman**—It is certainly an issue that has been worked through in the context of the relationship.

**Senator TROOD**—But there has been a difficulty in the relationship?

**Mr Borrowman**—Well—

**Senator Faulkner**—Chair, just before the—

**Senator TROOD**—Can I take that as a yes, Mr Borrowman?

**Senator Faulkner**—No. I am worried about the time, Senator.

**CHAIR**—Where are we at?

**Senator Faulkner**—We are at 3.31, which is worrying me. I do not know about anyone else. But I need to correct the record because I have misled the committee and it is very serious.

**Senator TROOD**—I am happy for you to do that in a moment, Minister. I am sure the chair will indulge you. Can I just—

**Senator Faulkner**—By all means you finish what you want to do, Senator. You will see my concern in a moment. It is not too serious—

**CHAIR**—Have you asked a question, Senator Trood?

**Senator TROOD**—I just want to clarify that Mr Borrowman had responded positively to my proposition about the difficulty this matter had caused in the bilateral relationship between Australia and Indonesia.

**Mr Borrowman**—I am reminded of the discussion with my colleague Mr Fletcher earlier today about characterising issues in the relationship with China. Clearly this has been a difficulty in the relationship but it is one that is managed in the context of a strong, broad bilateral relationship, one which the joint statement of the President and the Prime Minister earlier this year after the visit said has never been stronger and of which, as I have said, the Foreign Minister of Indonesia said that he refused to allow this kind of situation to be a thorn in our bilateral relations.

**Senator TROOD**—Right, thank you.

**Senator Faulkner**—I do have to apologise to the committee, not only this afternoon but I suspect over the previous two days, because I have been reminded by the secretary of the Department of Foreign Affairs and Trade of how old and out of date I am because I have described the Department of Immigration and Citizenship as the Department of Immigration and Multicultural Affairs. It is a serious error on my part. I am surprised that Senator Evans or other people have not got after me with the back of an axe or something. I have not only done it today I am afraid, Chair. I suspect I have done it in the last two days.

**CHAIR**—It is a hanging offence, we think.

**Senator TROOD**—I think the issues are mounting up in your relationship with Senator Evans, from your remarks earlier.

**Senator Faulkner**—Yes, we have gone from one to two but only in your mind, Senator. He will be pleased that I have got his portfolio name right now. You just ask him.

**Proceedings suspended from 3.33 pm to 3.55 pm**

**CHAIR**—We will resume, still on South-East Asia.

**Senator TROOD**—Mr Larsen, I think your colleague dropped you in this—if that is the appropriate colloquialism—while you were out of the room earlier, in relation to the MOU that Australia and the Indonesian governments have signed about people-smuggling activity. Is that—

**Mr Larsen**—Is that, perhaps, the implementation framework document signed in March?

**Senator TROOD**—Yes. Is the implementation framework document, as you call it, an agreement, or a document which would be required to go through the parliament's treaty processes?

**Mr Larsen**—No, it is not a treaty. It is a memorandum of understanding.

**Senator TROOD**—So it is a lesser being—is that right?

**Mr Larsen**—Correct, yes.

**Senator TROOD**—Has that been made public?

**Mr Larsen**—No, it is not a public document, principally because it deals with operational matters. Generally speaking it elevates the cooperation between Australia and Indonesia on people-smuggling matters, and in particular it includes some notification mechanisms between both sides so that we improve the communications between Australia and Indonesia on people-smuggling issues, as well as a suite of general cooperative activities to build up Indonesian capacity in particular and other elements of the relationship.

**Senator TROOD**—It is a secret document?

**Mr Larsen**—The document has not been made public.

**Senator TROOD**—Okay; it has not been made public—perhaps it is secret and perhaps it is not. But it has not been made public, and I take it from your remarks that you are not intending to make it public—is that right?

**Mr Larsen**—That is correct. We would regard the document as confidential between the two parties.

**Senator TROOD**—Has there been any discussion about making it public?

**Mr Larsen**—Not that I am aware of.

**Senator TROOD**—Is there any reason why it should not be made public?

**Mr Larsen**—For the reason I articulated a moment ago, which is that it does deal with some operational capabilities of the two sides for disruption and other activity. I think both sides consider it is better that the details of the arrangement remain confidential.

**Senator TROOD**—I can see the force of that argument; but is there an argument also that the public has an interest in these arrangements, and have you given thought to the possibility that a document—perhaps some kind of less comprehensive account of the document—should be made public? In other words, a document which conveys the sense of the agreement between the two governments with the operational elements excised from it?

**Mr Larsen**—I think that the operational elements are fairly critical to the substance of the document. It is not a particularly long document, and the nature of it is such that it is considered by both the Indonesian authorities and us on the Australian side as better kept confidential.

**Senator TROOD**—This was negotiated or concluded, was it not, prior to the *Jaya Lestari* matter being resolved—is that right?

**Mr Larsen**—If I recall correctly, yes. I signed it on behalf of Australia in early March.

**Senator TROOD**—Does it then assume that between ourselves and Indonesia we have no responsibility for the asylum seekers who might be on ships and might end up in Indonesian ports or is it silent on that subject?

**Mr Larsen**—It does not address the question of responsibility for asylum seekers on vessels in Indonesian waters.

**Senator TROOD**—I am a bit troubled about this notion that we have no particular interest in the individuals who were on the *Jaya Lestari* and ended up in Merak. You resisted my proposition that we had washed our hands of them. Given the fact that they were there is a result of our request, I would have thought that we had at least a very particular interest in their welfare.

**Mr Larsen**—I think that there is an interest on the part of the Australian government in the overall welfare of any individuals in these circumstances. So if welfare issues were brought to our attention, obviously we would pay attention to them. But in this particular instance, the case load—the passenger group—on that vessel were at all relevant times within the responsibility of the relevant Indonesian authorities. The Indonesian authorities were dealing with them in conjunction with the International Organisation for Migration and have done so. The issue has, in that sense, not been brought back to the Australian government.

**Senator TROOD**—But the framework agreement recognises that we have a common interest in this issue, does it not?

**Mr Larsen**—Not just the framework agreement; we have a very active cooperation and collaboration with Indonesia in a very wide range of fields relating to people-smuggling

activity. The department of immigration works very closely with Indonesian authorities, in particular to assist the Indonesian authorities to deal with irregular migration issues.

**Senator TROOD**—Is there anything contained within the agreement or was there anything at the time of the negotiation of the agreement apart from the operational elements about cooperation in dealing with this scourge of people-smuggling? Were there any undertakings given in relation to further financial commitments that the Australian government would make towards assisting Indonesia with regard to the problem?

**Mr Larsen**—Do you mean specifically in relation to the Merak vessel or more generally?

**Senator TROOD**—I mean in relation to the Merak vessel and also in relation to people-smuggling more generally.

**Mr Larsen**—I do not have the text of the memorandum of understanding before me. I do not recall any specific financial commitments, but there were assurances of further mutual cooperation and collaboration on a range of people-smuggling related issues.

**Senator TROOD**—Does that involve, in your view, the expenditure of Australian funds and financial support for the Indonesian government in relation to these matters?

**Mr Larsen**—There is already an active program of collaboration between Australian authorities and Indonesian authorities, and significant Australian financial support goes to entities like the International Organisation for Migration to assist the Indonesians to deal with irregular migration issues. That sort of collaboration and cooperation and the desirability of building further on that cooperation were certainly generally referred to in the implementation framework document.

**Senator TROOD**—So the agreement does not involve any additional financial support for the Indonesian government from Australia, is that right?

**Mr Larsen**—I do not recall. I may have to correct myself, but there was certainly no specific financial figure referred to in that document. The document referred to building to collaboration and cooperation in a variety of areas, but I do not recall any specific financial cooperation—

**Senator TROOD**—Perhaps you would refresh yourself on the subject of any financial commitments we might have undertaken as a part of the agreement. Were any undertakings given about the resettlement of individuals who may have been on the *Jaya Lestari*?

**Mr Larsen**—In the context of the implementation framework?

**Senator TROOD**—Yes.

**Mr Larsen**—Not that I recall.

**Senator TROOD**—So in that agreement, or at the time, there were no undertakings given by Australia that once the individuals on the Merak boat had been processed we would resettle any of them or that we would undertake to resettle them in third countries?

**Mr Larsen**—I do not recall any specific undertakings in relation to the Merak vessel caseload regarding resettlement; although, from time to time there are discussions with the Indonesian authorities regarding the resettlement of asylum seekers from Indonesia to Australia. In fact, Australia has consistently taken a significant number of asylum seekers who

have been assessed to be refugees by the UNHCR in Indonesia. We have consistently taken a proportion of that caseload as part of Australia's humanitarian program.

**Senator TROOD**—Have the provisions of that implementation framework agreement begun already?

**Mr Larsen**—The implementation framework document contemplates a variety of collaborative activities. That collaboration is underway—so in that sense, yes. It also involves a notification and exchange of information element and that has also occurred.

**Senator TROOD**—Does it contain any provisions that might pertain to a similar situation as that which occurred with the *Jaya Lestari* or not?

**Mr Larsen**—The implementation framework is not really a case specific arrangement. It is an arrangement which seeks to elaborate on existing cooperation and collaboration by identifying the next steps in areas of collaboration and cooperation. As I articulated before, it does contain improved information sharing mechanisms.

**Senator TROOD**—I understand that it is not specific to the Merak boat but the Merak situation did create a set of circumstances that could easily be repeated. Does the agreement contemplate what might happen should the Merak circumstances be repeated?

**Mr Larsen**—In the sense that I think you are referring to, no. It does not particularly contemplate specific Merak-type circumstances. What it does is create a platform for further improved collaboration between the Indonesian and Australian authorities in dealing with people-smuggling-related issues.

**Senator TROOD**—I see.

**Mr Borrowman**—I have some information to respond to both Senator Kroger and Senator Ludlam. Senator Kroger asked me the number of personnel at the Bangkok embassy. There are 182. Senator Ludlam asked me whether there were any Burmese studying English in Australia being paid for by the government. The answer to that is no. However, Mr Smith announced in his statement on 8 February that the increased aid program would include a pilot scholarship scheme in recognition of the fact that the decline in Burma's human capital now stretches across three generations.

He also asked me whether there was any program for the training of public servants. Mr Smith's statement also indicated there would be capacity-building elements in the expanded aid program which would involve carefully targeted interaction in the areas of great need like health, education and agriculture. Further questions on that could be directed to AusAID. As far as I am aware, we have not got to the point yet of working out how they would be selected, so that is without prejudice to the fact that that would or would not include Burmese public servants.

**CHAIR**—Thank you, Mr Borrowman. We now turn to questions on the Americas.

**Senator Faulkner**—One thing I will check; Senator—and I do not think I will be able to do it today—for the benefit of the committee the issue of relevant lead agency on the matter that Senator Trood and Senator Kroger have been asking questions on and provide that information on notice to the committee.

**CHAIR**—Thank you, Senator.

**Senator Faulkner**—Obviously, there is an involvement for a range of agencies, and I would like to be clear in my own mind formally now, given the status of that issue, which agency is now considered the lead agency. This may well have changed, so I want to make sure—it is a minor point—that the committee has accurate information in relation to that. One thing I thought I would do over the break is just ensure that I provide that to the committee on notice. I have checked if I can do it now. I am not 100 per cent sure, so instead of asserting which agency it may or may not be—if the concept of lead agency applies, I would like to let the committee know.

**CHAIR**—Thank you, Minister.

**Senator TROOD**—Mr Tweddell, the PBS tells us on page 27—and I referred to it earlier in the day—that we are going to strengthen our relations with Latin America. How are we going to do that?

**Mr Tweddell**—Thanks for your question. A number of steps have been taken in that direction. First of all, by way of background, the government's position on this has been that Latin America and the Caribbean have been areas of the world that have been neglected in the past and they have a determination to redress that. Of the portfolio ministers, Mr Smith has been to the region several times over the past two years. He went to Peru and Mexico in 2008. In August 2009, he visited Brazil and Chile. He visited Cuba in November last year and of course went to CHOGM in Trinidad and Tobago. Earlier this year in May he went to the CARICOM—meaning the Caribbean Community—foreign ministers' meeting in Dominica. He has also met members of the Latin American Rio Group in the margins of the UN General Assembly in New York—that is Mr Smith.

Mr Crean has had two major visits to the region in the past two years. He visited Peru of course for APEC in 2008, and in April this year he went to five countries: Argentina, Brazil, Chile, Mexico and Uruguay—that is, as it were, the bilateral and regional engagement. Also Mr McMullan as the parliamentary secretary went on behalf of Mr Smith to attend the 4th meeting of the foreign ministers of FEALAC—being the Forum for East Asia-Latin America Cooperation—and that was held in Tokyo back in January.

Since 2008 there have been successful visits to Australia by the foreign ministers of Chile and Brazil, and both the foreign and trade ministers of Colombia have visited us as well as a large range of senior officials. That is visits, but we have also been working on a tapestry, as it were—for want of a different word—of bilateral arrangements where our interests align with Latin America and the Caribbean. We have concluded memoranda of understanding on political cooperation with Mexico, Chile and Cuba and have agreed to pursue one with Colombia. With Brazil we are working on a plan of action for an enhanced partnership with that country. That will strengthen relations across a broad range of areas, including trade and investment; energy; science and technology; the environment; climate change and so forth. We have agreed to work on a plan of action with Mexico.

We have got cooperative arrangements underway with Chile on agriculture, mining and education. We have got arrangements on air services with Mexico, rail infrastructure with Argentina, air services with Brazil, and trade and investment with both Colombia and

Uruguay. The Australia-Chile Free Trade Agreement, which came into force in March last year, is a high-quality agreement, as you might know. We also have a double taxation agreement with Chile. We are working on work and holiday arrangements with both Argentina and Mexico. We are talking to a number of the major countries of Latin America about the potential for trilateral cooperation on development issues in the region. Any detail on that of course would be better directed to AusAID. They are looking at opportunities for trilateral cooperation in the region with Chile, Mexico, Colombia and Argentina. There has been a modest scaling up of the development assistance to the region. Also, we are looking at expanding scholarship offerings to that part of the world under the Australia Awards.

We have also boosted the diplomatic and consular presence in the region. Mr Rudd announced at APEC at the end of 2008 that we would be reopening in Lima, because we were there until I think the mid-eighties—although I stand to be corrected. We have posted additional staff to a number of places to boost our presence there—I think Mexico City, Port of Spain and Brasilia; honorary consuls in Panama and Paraguay; and six more in the Caribbean.

At the time that the trade minister went to the Uruguay Cairns Group meeting, we, the New Zealanders and the Mercosur countries resumed at officials level looking at the scope for doing more, by way of relationship between CER, in our arrangements with the New Zealanders on the one hand and Mercosur in respect of the Latin Americans. We are working closer with the countries of Latin America and the Caribbean in global fora. As part of the G20, Argentina, Brazil and Mexico sit with Australia in this group and we work closely with them on that. That of course is the group that has driven the international response to the global economic crisis. We are working closely with the countries of Latin America in the United Nations, and Costa Rica, Guatemala, Mexico, Panama and Chile as well in this group of friends with the responsibility to protect. We work closely in the WTO with a number of them and with the nine Latin American members of the Cairns Group. In the lead-up to COP 16 we will be supporting Mexico as we can as host of COP 16, and working on climate change with countries of the region.

**Senator TROOD**—You have been very busy.

**Mr Tweddell**—Yes.

**Senator TROOD**—When is the Lima mission opening?

**Mr Tweddell**—Later this year. We do not have an exact time.

**Mr Wise**—We expect it will be open in around September.

**Senator TROOD**—In relation to the same question I asked about Addis, do we know how many staff will be there?

**Mr Wise**—I think a total A based and LES, roughly the same size as Addis, about seven. They will be added of course to the Austrade staff who are currently placed in Lima.

**Senator TROOD**—How many UN Security Council votes are in Latin America, Mr Tweddell?

**Senator Faulkner**—You mean how many states.

**Senator TROOD**—How many votes are there and, by definition, how many states are there?

**Mr Tweddell**—I would have to check that.

**Senator Faulkner**—I would not want a cynical question—I am surprised at you putting it in those terms.

**Senator TROOD**—I am surprised you do not have a tally there, Mr Tweddell.

**Mr Richardson**—I think you will find there are just over 30 south of the United States and encompassing the Caribbean.

**Mr Tweddell**—I think it is 34 or 35 if you include Montserrat—but you don't because it is British.

**Senator TROOD**—You know the answer. How many have we secured for our Security Council bid, do you know?

**Senator Faulkner**—Come on!

**Mr Richardson**—We do not provide details—

**Senator TROOD**—I am not asking for the particular states—

**Mr Richardson**—We do not provide numbers.

**Senator TROOD**—You cannot provide me with any numbers?

**Mr Richardson**—No.

**Senator TROOD**—I had some questions about the United States, which is part of your patch as well, I think. Can you tell us when the President will be visiting?

**Mr Richardson**—No, we cannot do that yet, Senator. The visit has not yet been announced.

**Senator TROOD**—Do we know when it may be possible to make that announcement, Secretary?

**Mr Richardson**—No, we do not. Without in any way suggesting anything, I would note that the White House spokesperson was asked overnight whether the President had given any consideration to postponement of the planned visits to Australia and to Indonesia because of the oil spill in the Gulf of Mexico, and the White House spokesperson said that he did not have the answer to that question. I am not reading anything into it—it is just to bring you right up to date.

**Senator TROOD**—Thank you for that. My understanding is that the proposal was that the postponed visit was to take place in June.

**Mr Richardson**—That is right.

**Senator TROOD**—So that is still the likelihood, even though it has not been confirmed?

**Mr Richardson**—That is right.

**Senator TROOD**—Later this month, maybe? Is that the best we can say?

**Mr Richardson**—Yes.



**Senator TROOD**—The Prime Minister was due to visit the United States earlier in the year for President Obama's summit in relation to nonproliferation and related matters. That was April, as I remember.

**Mr Richardson**—It was 13-14 April.

**Senator TROOD**—When did he decide not to undertake that visit?

**Mr Richardson**—I am not quite sure when the actual decision was taken. I think it was in early April, from memory. Maybe it was late March—I cannot give you a precise date.

**Senator TROOD**—I assume you are familiar with the accounts that have been published about this matter with regard to the circumstances under which the United States was advised that the Prime Minister was not actually going to the summit.

**Mr Richardson**—What reports are they?

**Senator TROOD**—The suggestion was that there was a very considerable discourtesy to the United States because we did not advise the President, since it was his invitation, other than a few days before the actual summit. In other words, they were waiting for our advice as to whether or not Mr Rudd was attending, and they did not get that advice.

**Mr Richardson**—No. The US was kept very closely informed as to where we were up to on that one.

**Senator TROOD**—So the United States government understood the point that the Prime Minister might not have been attending. Is that right?

**Mr Richardson**—Totally.

**Senator TROOD**—They were always under that understanding?

**Mr Richardson**—Totally.

**Senator TROOD**—And that he might decide at the very last minute not to undertake the visit?

**Mr Richardson**—Totally. I can state that quite firmly from my own personal involvement in it.

**Senator TROOD**—Can you tell the committee, Secretary or Mr Tweddell, when the United States was advised finally that the Prime Minister would not be attending?

**Mr Richardson**—I have not got a date in my head.

**Mr Tweddell**—Neither do I, Secretary.

**Senator TROOD**—Minister, you cannot help? I think you took his place, did you not?

**Senator Faulkner**—I have some personal knowledge of this because, as you know, I represented Australia at the summit. If you are asking for a precise time and date, we would certainly need to take that on notice. While I have the broad picture in my mind, I do not want to rely on my memory to dredge a specific date out of my memory banks on this.

**Senator TROOD**—Okay. Perhaps you would like to refer to your diary and your records and help us out as you can.

**Senator Faulkner**—I did not think you were asking about me; I thought you were asking about the Prime Minister.

**Senator TROOD**—I am indeed interested. Perhaps one or all of you can respond to this account which purports to represent something of the circumstances with regard to the matter.

Only a few days before the summit, the Americans were still waiting to hear whether Rudd would attend when he popped up at a press conference in Townsville, telling reporters he'd be staying at home to talk about health reform with state premiers. "What I've said all throughout is that my first priority is health and hospitals, and I will not be attending the nuclear summit," Rudd said.

And that was the first occasion upon which the Americans found out.

**Senator Faulkner**—What was that date?

**Senator TROOD**—That was a few days before the summit.

**Mr Richardson**—That is simply wrong. The Americans were kept very closely advised as to where things were up to in terms of the PM.

**Senator TROOD**—So you are confident, Secretary, that the United States did not learn of the Prime Minister's non-attendance by way of a press conference?

**Mr Richardson**—Well, I don't see how they could have done, given that it was a matter of open discussion between us for some weeks in leading up to the meeting. They were very much aware of the factors involved and very much aware of the real possibility of the Prime Minister not being able to attend. They were understanding of that. They would have liked the Prime Minister to have attended, because of his own knowledge and involvement in the matter, but against the background of the President himself having to postpone a visit here because of his own healthcare issues, the President was the first one to understand why the Prime Minister might not have been able to attend.

**Senator TROOD**—And in the circumstances they received a more than adequate substitute.

**Senator Faulkner**—You might say that, but modesty prevents me making any comment.

**Senator TROOD**—Of course, thank you.

**Mr Tweddell**—I think Ambassador Beazley has commented to that effect, hasn't he?

**Senator Faulkner**—I think that Senator Trood might have been saying that tongue in cheek, Mr Tweddell. I think it is possible!

**CHAIR**—That completes questioning on the Americas. We will now move on to 'Africa: South Africa, Sudan, Zimbabwe and all other African countries'.

**Senator TROOD**—I have some questions on Africa. Is that your patch as well, Mr Tweddell?

**Mr Tweddell**—Yes.

**Senator TROOD**—I see. Your domain is also expanding.

**Mr Richardson**—He is an empire builder!

**Mr Tweddell**—Three out of the five continents with which we have relations.

**Senator BARNETT**—How are we going to get on at the World Cup?

**Mr Richardson**—We are going to win it.

**Mr Tweddell**—We are going to acquit ourselves very well.

**Mr Richardson**—We should have won it last time, but that atrocious—

**Senator BARNETT**—Agreed.

**Senator Faulkner**—Mr Richardson has assured me that we are going to do a lot better than the Canberra Raiders are going to do in the NRL.

**Mr Tweddell**—Apparently it is in my performance agreement!

**Mr Richardson**—If we weren't in the parliament I would take legal action!

**Senator Faulkner**—He didn't actually say that, just to protect his reputation. That was a throwaway line from a Tigers supporter.

**Senator TROOD**—I am sure the team will be gratified by that show of support. As with Latin America, we are building stronger relations with Africa. Is that true, Mr Tweddell?

**Mr Tweddell**—Indeed, yes.

**Senator TROOD**—I think the minister has spoken on several occasions on the subject. In fact, he is almost an enthusiast about it.

**Senator Faulkner**—He is an enthusiast about many things. That is just one of them.

**Senator TROOD**—Let us have a look here. He at least has said:

The Australian Government's commitment to broaden and deepen Australia's engagement with Africa has not and will not waver.

It is Australia's national economic, social and strategic interests to pursue such engagement.

Perhaps, Mr Tweddell, you might explain to me precisely how our economic, social and strategic interests are engaged in Africa?

**Mr Tweddell**—Sure. There a number of points to make here about why it is in Australia's economic and strategic interest to engage more with Africa. I think we would say, as a portfolio, that Australia's interests in Africa are growing and cover a wider range of issues than before. Australia has, for example, very significant and growing interests in the mineral and resources sector in Africa. There are more than 150 Australian companies with some 400 separate projects spread across 40 African countries. There is an estimated US\$20 billion in current and prospective investment by Australian companies in the African resources sector. That is a Lowy Institute reckoning. Africa has more overseas mining projects held by Australian companies than any other region in the world—about 40 per cent. The Australian private sector, especially in the petroleum and minerals resources industry, has recognised the importance of Africa, and this is a key driver behind the government's increased engagement. In fact, I think our portfolio ministers have both said that in fact this is an area where government has lagged behind the private sector in attention to an important continent.

African countries also play a very important role in multilateral forums, including the WTO, the UN, the Commonwealth. In fact, African countries comprise more than 25 per cent—I think it is something like 27 per cent—of the membership of the WTO, the UN and

the Commonwealth. The point we would make would be that to solve global problems, Australia will have to engage with the African countries, the African Union and Africa's regional organisations. In one of the statements, to which I think you are referring, Senator Trood, Mr Smith said on 25 May, on Africa Day:

It is difficult to imagine progress on the millennium development goals, trade liberalisation, disarmament, climate change, food security, trans-national crime, international terrorism and United Nations reform without working closely with the continent of Africa, the countries of Africa and the African Union.

It was at that time, in the same speech, that he announced we would be opening a mission in Addis Ababa. This of course has two angles to it: it is the seat of the African Union and it is also the post responsible for Australia's relations with Ethiopia.

Mr Smith is also on record as saying in March:

The cynics who assume Australia's engagement with Africa is simply or only about the question of UN Security Council membership really miss the fundamental point: Australia's re-engagement with Africa is driven by a clear-eyed and pragmatic view of our long-term strategic and economic interests into the future.

That is a quote from a speech he made at Sydney university.

**Mr Richardson**—Just to round it out, I might add that there are about 250,000 African-born people now in Australia.

**Senator TROOD**—I see. Is that the social dimension, in part?

**Mr Richardson**—There are certainly people-to-people links there of a kind that simply did not exist 20 years ago.

**Senator TROOD**—I see. The Governor-General visited Africa last year. Is that correct?

**Mr Tweddell**—Yes.

**Senator TROOD**—I think I am right in saying that she, on behalf of the Australian government, issued invitations to those countries she visited for reciprocal visits from heads of state. Is that right, Mr Tweddell?

**Mr Tweddell**—A number, yes, as I understand it.

**Senator TROOD**—How many of those invitations have been accepted?

**Mr Richardson**—I think you will find they all would have been accepted, it is a question of when people come.

**Senator TROOD**—Let me go further then: how many have been accepted and arrangements made to facilitate those visits?

**Mr Tweddell**—I am trying to see if I have information to hand that I can give you, Senator. If I do not, and I do not want to keep you waiting, then I will try to get back to you with it later. But there certainly have been a number of visits to Australia.

**Mr Richardson**—The President of Botswana.

**Mr Tweddell**—The president of Botswana has been, for example.

**Senator TROOD**—Are there any others planned for later this year?

**Mr Richardson**—We would have to come back to you on that.

**Mr Tweddell**—Can I get back to you on that, Senator? I may well have that among my papers here, but I cannot locate it at the moment. If not, I will come back to you with it.

**Senator TROOD**—So when the President of Botswana visited, did the Australian government pick up the costs for that visit?

**Mr Richardson**—It was a guest-of-government visit, so it was normal guest-of-government facilitation and what is normally—there are certain things that are automatically paid for when you are a guest of the government and it would have been consistent with those rules.

**Senator TROOD**—I see. And is it your expectation, Secretary, that were any other heads of government to visit from Africa, from those places where the Governor-General visited, that they would be on the same basis as that?

**Mr Richardson**—Normally, but not always. When heads of government and heads of state visit, they are normally guests of the government whether they be from the US, Africa, North-East or South-East Asia. There are occasions when that does not happen, but more often than not they are guests of government.

**Senator TROOD**—Do we have a figure for the cost of that visit?

**Mr Richardson**—I do not have one in my head. Prime Minister and Cabinet are responsible for visitors who are guests of the government. They would have the costs of each visit.

**Senator TROOD**—That is not a cost borne by your department?

**Mr Richardson**—No.

**Senator TROOD**—Is Mr Smith planning to be in Africa anytime soon? Does he have an agenda that will take him into Africa in the near term?

**Mr Tweddell**—There is a plan for him to go later this year to the African Union summit, but it is—

**Senator TROOD**—When will that be?

**Mr Tweddell**—From memory, that is mid-July.

**Senator TROOD**—Is he just going to the African summit? Is that in Addis Ababa?

**Mr Tweddell**—Yes.

**Senator TROOD**—Is he going elsewhere?

**Mr Richardson**—It has not been finalised precisely what he will or will not do.

**Senator TROOD**—But he is going?

**Mr Richardson**—He is planning on going, but he is in no different position to all ministers—that is, a range of things can come along to cut across what is planned.

**Senator TROOD**—And is there any plan for Mr Crean to visit Africa later in the year?

**Mr Tweddell**—I do not have any information of a plan to visit this year.

**Senator TROOD**—There is a considerable amount of aid being delivered to Africa. Is that a matter for you, or is that a matter for AusAID?

**Mr Richardson**—It is a matter for AusAID, but aid to sub-Saharan Africa—I mean, our aid to Africa is modest; it is targeted. Sub-Saharan Africa totals about \$164 million, which is about 4.3 per cent of our total overseas development assistance. Next year it will be just over \$200 million and will rise to an estimated 4.6 per cent of total ODA. So it is modest and it is consistent with a growing interest. However, the focus our aid in overall strategic terms remains the closer region like Pacific and South-East Asia. But, obviously, as we expand our interests in Africa, and given the fact that Africa—something like 33 of the 40 poorest countries in the world are in Africa. If you are serious about poverty alleviation and if you are serious about making a global contribution then obviously you do need to give some attention there, and we think we are getting that balance right.

**Senator TROOD**—But we are coming off a low base in aid, aren't we?

**Mr Richardson**—Yes, we are.

**Senator TROOD**—There has been a significant increase in our attention to Africa over the last couple of years, both in relation to activities—

**Mr Richardson**—Yes.

**Mr Tweddell**—It is obviously the poorest continent. That is the first point to make. The secretary has mentioned that 33 of the world's poorest LDCs are there. Half the continent lives in what we judge to be absolute poverty. Sub-Saharan Africa, which is my area, has the highest infant mortality rate in the world. More than one-third of the people are undernourished. Close to one in seven children die before their fifth birthday. The majority of the African countries will not meet their Millennium Development Goals. As you say, it is off a low base, but it is very targeted, as the secretary explained, and more than 30 African countries will receive our bilateral donor assistance this year. That will come to about 40 if you take into account what we are doing through regional and multilateral vehicles.

**Senator TROOD**—Mr Tweddell, you have no doubt seen the statistics that suggest that sub-Saharan Africa is actually looking a bit better in terms of economic growth.

**Mr Richardson**—Growth rates have been better in recent years.

**Senator TROOD**—They have been poor but they are improving.

**Mr Richardson**—They are still very poor. You mentioned the aid off a low base. Their economic growth is off a very low base.

**Senator TROOD**—How many UN Security Council votes are in Africa?

**Mr Richardson**—In Africa all up there are some 50-plus countries.

**Mr Tweddell**—Fifty-three, I think, Secretary.

**Mr Richardson**—Is that sub-Saharan or all of Africa?

**Mr Tweddell**—That is the continent—the African Union membership.

**Senator TROOD**—If I ask you how many of those we have secured, you will give me the same answer as you did in Latin America presumably.

**Mr Richardson**—You will get the same answer. My first posting was in Africa, in Nairobi. Australia's first involvement in Africa was led by Sir Robert Menzies when he was Prime Minister, when the decolonisation movement really got going in the fifties and sixties. He did open it up. Our diplomatic presence in the Africa over the last 40 or 50 years has grown only very modestly. We do have some expanding interests in the continent, as Bill has mentioned. If you do too much, you get criticised for doing too much. If you do too little, you get criticised for doing too little. The government is seeking to pursue a balance. Whether you look at the aid program, whether you look at our diplomatic presence, however you cut it, we are proceeding with some care. It is off a small base, but nonetheless we think we are doing the right thing for the right reasons. To see everything we do in terms of UN Security Council votes—I think it is a little bit less crass than that.

**Senator TROOD**—A little bit less crass?

**Mr Richardson**—I say that as a deliberate understatement.

**Senator TROOD**—But you acknowledge, do you, Secretary, that our significantly increased engagement is related to our efforts to secure—

**Mr Richardson**—No, I do not. I believe that, regardless of the UN Security Council, there are very good reasons to open in Addis Ababa, for instance. Addis Ababa has the fourth or fifth highest number of diplomatic missions of any capital in the world. There are over 150 countries that are represented in Addis Ababa, and we are not one of them. They are there because it is the headquarters of the African Union, which has become an increasingly important body. If you are concerned about the Doha Round, if you are concerned about trade liberalisation, 27 per cent of the membership of the WTO is from Africa. If you seek to do anything globally on big multilateral issues, Africa comes into play. There are strong reasons why we ought to be doing a little bit more, regardless of the UN Security Council. To see everything through the prism of the UN Security Council—I think that is simply not where the advice is coming from and it is not where the government is coming from.

**Senator TROOD**—But there is an alignment of interest, isn't there, by the increased engagement, with Australia's ambition to secure a Security Council seat?

**Senator Faulkner**—I would say that it is a very important symbol of Australia's renewed commitment to Africa. I think it would be hard to sustain an argument that Australia could afford any perception that Australia was ignoring a continent made up of, as we have heard, more than 50 countries of nearly a billion people. That is what I would say to you, which I think is a much less cynical approach. I think it is a much more positive and constructive way to put the—

**Senator TROOD**—Why don't we be frank about it? Why don't we acknowledge that there may be an increasingly important strategic and economic interest there and that there are 53 votes up for grabs in the Security Council vote, which is going to take place in a few years time, and we want some of them? Is it crass to acknowledge the fact that that is a part of our ambition?

**Senator Faulkner**—I am not drawing the conclusion that you are drawing. I think the case has been put to you about the strategic interests of our country, the economic interests of our country and how enhanced engagement with Africa is critical to those interests. Of course,

you or anyone can draw conclusions, but I think the case for enhancing that engagement is very strong, as you have heard the witnesses at the table outline.

**Senator TROOD**—Let us say there is a happy alignment of interest between the Rudd government's commitment to further engagement with Africa and the fact that we are seeking a seat on the Security Council. One could argue that more of the search for support for our Security Council bid is involved in Africa than is the pursuit of some broader strategic interests. That is, at the very least, open to observers of our diplomatic engagement there, is it not?

**Mr Richardson**—I believe the motivation is a little bit more honourable than that. If I look at what governments have done, I see the previous government made commitments in the Sudan to help in Darfur and the like. Successive Australian governments over the years have made contributions in Africa when we have not been pursuing a seat on the UN Security Council. If you look at the number of diplomatic missions we currently have in Africa and have planned, I do not think you will see a rapid escalation to coincide with some campaign for the UN Security Council. Would we like as many votes as possible from Africa for our UN Security Council bid? Of course we would. However, we have strong interests for being in Africa and for doing more in Africa than we have done in the past, and I think the reasoning for that stands alone. If there happens to be a happy coincidence with the UN Security Council, if you want to describe it in those terms, then so be it. It would not be the only happy coincidence that is around.

**Senator TROOD**—It may be the case, but I think it is certainly open to interpretation that the energy we are putting into Africa is a strong reflection of our determination—'bribery' is obviously not an appropriate word—

**Senator Faulkner**—No, it is not an appropriate word, Senator.

**Senator TROOD**—to encourage support for Australia's bid as against those with whom we are competing for this position.

**Senator Faulkner**—I often say on this side of the table and have said when I have been on the other side of the table that one cannot, of course, stop people jumping to conclusions or stop individual interpretations of matters. I think that in relation to this one the evidence that has been provided and the facts themselves speak in a very clear and sensible way about Australia's strategic and economic interests. There may be some debate about it—I am not sure that this is the forum necessarily to have it in—but I hope that at least for you, Senator, the facts about this have been presented.

**Senator TROOD**—I do not propose to debate it any longer. I do not think I have any further questions in relation to Africa, Chair.

**Senator LUDLAM**—Some of these questions I am going to put to AusAID a bit later—I think tomorrow—as well, so I am really seeking advice from your perspective. These questions arise from the Africa inquiry that was undertaken by the Joint Standing Committee on Foreign Affairs, Defence and Trade. I am not expecting you to have this at your fingertips, but submission No. 50 to that inquiry was put to the committee by the Australia Africa Mining Industry Group. Is that a body that you have much knowledge of?



**Mr Tweddell**—Not a great deal. I am aware of it, but I have not had personal dealings with it, no.

**Senator LUDLAM**—Of its existence—all right, that is fine. I will sketch the submission for you, and obviously you can access it on the website. Their submission argues that the Australian government through AusAID should fund community infrastructure promised by mining companies in Africa. Effectively, they are seeking taxpayer support to foot the bill for some of the promises that they have been—

It is an idea that has obviously got the back-up of some of the aid agencies and non-government organisations and indeed local civil society groups in Africa. I am wondering if you can tell me what advice the department has provided or what consideration the department has given to that kind of request, if any.

**Mr Tweddell**—I am not aware of any having been done by the department, but that is not necessarily to say that it has not been done. It is probably a question worth addressing to AusAID when you are speaking to them.

**Mr Richardson**—Certainly it is not a request that has come to us. It is not a request that we have furnished advice on. Simply because they put that in their submission to whatever does not mean to say that they have certainly come to us.

**Senator LUDLAM**—Yes, I understand that. They do not turn up at these sessions, but you folk do.

**Mr Tweddell**—Yes, absolutely.

**Senator LUDLAM**—Could you take on notice to confirm for us that it is the case that you have not provided a brief or that there has been no—

**Mr Richardson**—No, we are confirming it.

**Senator LUDLAM**—You are doing that now?

**Mr Richardson**—We will come back to you if we have misled you.

**Senator LUDLAM**—Thank you. Maybe this falls into the same category. Has the department had formal or informal discussions with that industry group or any other mining industry bodies relating to this public-private-partnership-style proposal?

**Mr Tweddell**—I would have to take that on notice. I am not aware of that, no.

**Senator LUDLAM**—If you are going to search the archives and see if such conversations are occurring, I would appreciate knowing by whom and when and so on. It sounds as though it is unlikely, but, if such dialogue is ongoing, I would like an indication of that. It sounds as though it is unlikely. Who is the relevant contact officer in the department with carriage of this and wider sub-Saharan-African mining issues? Do you have somebody who specialises in that area?

**Mr Richardson**—We do not have a specific person who is a contact person for Australian mining companies dealing in Africa. We have an Africa Branch, but we do not have a contact officer for the mining industry.

**Senator LUDLAM**—I do not suppose you would like to formally put on the record tonight that the Australian government will not be funding aid on behalf of the mining industry to African countries?

**Mr Richardson**—In terms of the detail of aid to Africa, you need to address that to AusAID, and they, of course, will be appearing before you.

**Senator LUDLAM**—They will. Thank you for that. I would like to move to a political debate in Canada and test your knowledge of this. It is legislation called the C300 law. Its title is ‘An act in respect of corporate accountability for activities of mining and gas and oil extraction in developing countries’. It is relating to the government withholding political and financial support from companies—

**CHAIR**—We are discussing Africa.

**Senator LUDLAM**—yes, I know; this is in the context of Africa—and withdrawing such things from companies not complying with local and national standards. The reason I am putting it to you on the Africa desk is that obviously Australian mining companies are quite active in Africa at the moment in the uranium industry and in other sectors. I am just wondering whether you are aware of this policy discourse and whether you have a view about comparable legislation in Australia.

**Mr Richardson**—We are not aware of what is going on in Canada in that particular area. I do not think so.

**Senator Faulkner**—It would be more a matter of a policy issue for me, I suspect, and I do not know the detail of it. I would need to check. Obviously I would need to talk to responsible ministerial colleagues about it. It is not a matter about which I would slash outside the off stump. I can say, however, in relation to your previous line of questioning, that the value at least of you raising it here is that I will ask officials to flag with AusAID your interest in these areas so that when AusAID do come before the committee they are apprised of your interest. If they are able, we will ask them to be prepared for those issues.

**Senator LUDLAM**—Thanks, Minister.

**Senator Faulkner**—I think we can do that. It is quite likely anyway that someone is listening in, given the wonders of modern technology that we were talking about before. Anyway, we will at least flag that with them so that there is some capacity for them to have forewarning of the interest you have in those matters.

But the issue you have just raised is more a policy question. I do not have knowledge of the legislation in Canada that you are referring to. As I say, I would not want to speculate on its applicability or relevance here in Australia or, for that matter, to be frank with you, on the attitudes of responsible ministers to it. The best I can do here is pass this on to the relevant ministers for a response, if you would like me to do it, but I hope you understand that I am just not in a position to speculate on it without any knowledge of it.

**Senator LUDLAM**—That is fine. I appreciate that, and I acknowledge that there are at least four ministers I can think of who I could have put that question to who would have part responsibility for an area like that.

**Senator Faulkner**—I am assuming that one of them is not the Minister for Defence!

**Senator LUDLAM**—That would be a bit of a long bow to draw. Yes, if you are able to take that back and provide us with any information that you can—

**Senator Faulkner**—I am happy to take it on notice. There is a complication inherent in your question and an acknowledgement inherent in your question that it is not just a matter for a minister in this portfolio. However, we have taken it on notice. I would be reluctant to set a sort of make-work task as a result of it, but we will certainly try and help you where we can. I will certainly give you that commitment.

**Senator LUDLAM**—I appreciate that. I will put the rest of my questions to you in regard to this on notice to provide some structure to that debate behind the scenes, if you like.

**Senator Faulkner**—That would help; I appreciate you doing that.

**Senator LUDLAM**—I have no other questions on Africa.

**Senator TROOD**—Can you tell me whether you have debriefed Mr Brennan after Somalia?

**Mr Moriarty**—We are in the process of making arrangements to debrief Nigel Brennan and some members of his family who were very closely involved in his ordeal and in the discussions and negotiations that took place around that. We have been speaking to him since his return. We have proposed a couple of dates. They have not been suitable either to him or to other members of the family. We are looking forward—I am hoping this month—to talk to Nigel and some of his family in Canberra

**Senator TROOD**—Why has it taken so long? It was last year, wasn't it?

**Mr Moriarty**—That is correct; he was released prior to Christmas. I think it is fair to say that for an initial period of time it was very important for Mr Brennan and his family to deal with the issues that were obviously caused by that very traumatic experience. We have for several months sought to put arrangements in place to have a discussion with Mr Brennan and members of his family. We have just been unable to do that. They are keen to do so, and we are keen to put those arrangements in place and have a debriefing session with him.

**Senator TROOD**—I would have thought it would have been preferable to have a debrief on a matter of this kind as close as possible to the actual events.

**Mr Moriarty**—There were certainly discussions with Mr Brennan in Kenya prior to his return to Australia, including with our officials and with law enforcement officials. That sort of hot debrief, if you like, was able to get some information. There are also issues to do with the circumstances that he found himself in, the trauma and the stress. That was also tackled very early. Now we have had time to go over the issues and he and his family have also had time to think about the issues, to think about the messages they want to pass on to us about how the case was handled, their impressions, their feelings, where they think they have something to add to our future approach to these types of issues. That is not something you would want to do in the very early stages after a release. We have had some time. We have sought for several months to put in place arrangements for that longer discussion with Mr Brennan and his family. Those arrangements are being worked through but the meeting has yet to take place.

**Senator TROOD**—He has not been unwilling to assist, has he?

**Mr Moriarty**—No, not at all.

**Senator TROOD**—My understanding is that he has been more than willing to assist to provide information about his circumstances and has been surprised the department has not been in touch with him to arrange a meeting.

**Mr Moriarty**—You are very correct to say that Mr Brennan has been very willing to engage with us and does wish to share his perceptions with us.

**Senator TROOD**—Has he not pressed you, for a time?

**Mr Moriarty**—The last couple of times we have talked about what might be suitable it has in fact been Mr Brennan, for whatever reason, who could not make the time that we suggested.

**Senator TROOD**—But he has been anxious to convey his impressions of his circumstances and provide what could well be quite useful intelligence on his captors and the circumstances in which he was detained, and a range of operational matters which might have been very germane to the activities of those who kidnapped him and those who were involved in his incarceration. The longer that takes to be provided, the less use it will be to you and to any other authority that might be involved in trying to track down these people.

**Mr Moriarty**—We and Mr Brennan are both keen, I think, to get together. It has not been possible to agree to dates, but I am very confident that that meeting will take place very soon.

**Senator TROOD**—Has any other Commonwealth agency spoken with him?

**Mr Moriarty**—A number of agencies have spoken with him.

**Senator TROOD**—Have they had extensive debriefings with him as well, of the kind you are proposing?

**Mr Moriarty**—There have been some discussions. We and the AFP are certainly looking forward to the next meeting as a time to look at his impressions and his family's impressions of how the case was managed. The discussions to date have been more directly focused on the circumstances that he found himself in—his impressions of who was involved in his capture and holding him. What we are interested in doing at this next session is talking about his perceptions and his family's perceptions of the case management.

**Senator TROOD**—I am glad to hear that, but it seems to me there has been a lack of diligence in pursuing this matter, which is unfortunate.

**Senator KROGER**—I want to refer to an article in relation to Greece that I saw in the *Australian Financial Review* on 22 May. It reported that under an agreement that took effect from October 2008, Australia pays a full or part pension to Greeks who retire to Australia, depending on how long they have worked in Australia. It says that Greece is supposed to pay pensions to people who work part of their lives in Greece, and retired here, as part of an austerity and antifraud drive forced on it in exchange for a European bail-out package, and that Greece has cut pensions and raised the pension age. Do you think that the current financial crisis that Greece is facing will bring into question the agreement that was negotiated by the two governments in relation to pensions, and whether that agreement will need to be renegotiated?

**Mr Maude**—You are referring to the social security agreement we have between Australia and Greece. I am not aware of any intention or thought about renegotiating that agreement. However, I believe it is FaHCSIA who are the custodians of that agreement and to whom questions on the agreement would be better addressed.

**Senator TROOD**—I want to catch up on the progress we are making with the Holy See.

**Mr Maude**—The new chancery project is proceeding well.

**Senator TROOD**—I think you told me that last time! Every time you say that, it costs us another half a million dollars.

**Mr Maude**—No, there is no extra cost. In fact, I think the project is going to come in well within the revised budget that was discussed at last estimates—that is, \$4.3 million. I think at last estimates we also said that the project would be completed by July, and the project will be finished by July; it is running on schedule and we expect the chancellery to be fully operational by that date.

**Senator TROOD**—Which date in July are we talking about—1 July, or a date in July?

**Mr Maude**—I do not think we have a specific date in July, but it will be in July.

**Senator TROOD**—I assume that until that time we are still paying rent on both of these premises—the place from which the ambassador is working and the new premises which are being fitted out—is that right?

**Mr Maude**—We are. That is correct.

**Senator TROOD**—And those figures are as you gave them to us last time, I assume? They have not changed?

**Mr Maude**—I believe they are unchanged. For the current chancellery, the rent is 2,600 per month, or approximately A\$5,112. The lease there is being extended on a month-to-month basis. For the new chancellery, the rent is 7,170 per month, or approximately A\$14,100.

**Senator TROOD**—So we are paying approximately \$12,000 for both of these premises at this stage. Is that right?

**Mr Maude**—In Australian dollars, it would be closer to \$19,000.

**Senator TROOD**—I beg your pardon. I thought I had—

**Mr Maude**—It is \$5,112 and \$14,100.

**Senator TROOD**—Oh, I beg your pardon; I put down the wrong figure. So it is \$19,000 a month for both of these places, is that right?

**Mr Maude**—That is correct.

**Senator TROOD**—Hasn't that blown the budget a bit in relation to the allocation which was received for the establishment of the mission in the Holy See?

**Mr Maude**—As we have discussed in the past, there was an initial budget estimate of \$3.4 million. That was revised to \$4.3 million, which is the figure we discussed last estimates. The project is currently within that revised estimate.

**Senator TROOD**—Perhaps Mr Wise can remind me of the figure in the 2008-09 budget, I think, in relation to the establishment of the mission in the Holy See. Was there a figure in relation to the establishment of the chancellery, the provision of accommodation for His Excellency and the costs associated with staff et cetera? I think I am right on that, am I not, Ms Thorpe?

**Ms Thorpe**—Yes. We received operating funding for the Holy See. We received \$8.185 million over four years and, as was already indicated, the capital side for the chancellery received \$3.429 million.

**Senator TROOD**—Are the overall expenses about where we thought they might be—that is, \$11 million?

**Ms Thorpe**—Yes, they are. It was just the capital that became the issue, in terms of the fit-out of the chancellery, but in terms of everything else we are on track.

**Senator TROOD**—So the capital costs have increased by \$1 million or so. Is that eating into operating expenses et cetera?

**Ms Thorpe**—No. We are using our capital funds for it. Operating and capital funds are separate. We are using our capital funds to pay for the chancellery.

**Senator TROOD**—It is gratifying, Mr Maude, to know that His Excellency will be accommodated, finally, in his new premises. Can you tell me how many times he has visited Australia since his appointment?

**Mr Maude**—I would have to take that on notice. He has certainly been back on a number of occasions, both for personal travel—including to see family members—and on official business, but I would have to take on notice the exact number.

**Senator TROOD**—Has he travelled back and forth or back to Australia more frequently than would normally be the case for a head of mission?

**Mr Maude**—I do not believe so.

**Senator TROOD**—Would you take on notice the frequency of his visits and whether or not they are consistent with the arrangements that were first agreed when Mr Fischer was appointed to the post. As I have said on numerous occasions, he is in many ways a most admirable appointee for this post, but it is a dubious post as far as I am concerned.

**Mr Wise**—As far as I know, and I will come back if this is not accurate, he has been back on one official visit, which was in association with the parliament of religions. I think it was in Melbourne late last year. He has taken leave and come back to see his family on one or two occasions. If it is more than that I will let you know.

**Senator TROOD**—Does he bear the leave costs himself?

**Mr Wise**—Yes.

**Senator TROOD**—Apart from, presumably, any provision in his—

**Mr Wise**—There is provision for him, like all heads of mission and all staff posted overseas, at the midpoint of his posting to have a home leave fare. He has not exercised that yet because he is not at that stage.

**Senator TROOD**—So for any occasion on which he has come back to Australia, other than for official visits, he has borne the costs?

**Mr Wise**—Indeed.

**Senator TROOD**—Is that consistent with the arrangements of his contract?

**Mr Wise**—That is right.

**Senator TROOD**—Is the time that he has taken consistent with his obligations to the Commonwealth as an ambassador?

**Mr Wise**—Yes.

**Senator TROOD**—Mr Maude, are you able to provide me with a brief account of the ambassador's activities over the last six months—perhaps since February, when we last met?

**Mr Maude**—Yes. Mr Fischer has been very active, as he has been since he has been there. He is doing an excellent job for Australia. He has continued his work in building relationships amongst the Vatican Curia and amongst his fellow diplomatic colleagues. He has been advocating for Australia on policy issues of interest to us of the sort that we have discussed before, Senator: things like religious freedoms, human rights, disarmament, the Middle East peace process and so on. He has been particularly active on issues of interfaith dialogue and has represented the Minister for Foreign Affairs, Mr Smith, at two international interfaith dialogue meetings, one in Manila and one in Madrid. He has also been doing some liaison and planning for the canonisation of Mary McKillop, which will occur in October this year.

**Senator TROOD**—I see. That is it?

**Mr Maude**—I can give you more if you would like more.

**Senator TROOD**—I think that conveys sufficient of what we need. Obviously, until his appointment Mr Fischer has not been an employee of the department. I assume he is under a specific contract with the department for the term of his appointment. Is that right, Mr Wise?

**Mr Wise**—That is right.

**Senator TROOD**—Tell me, is it normally the case that these contracts are made public?

**Mr Wise**—He is appointed under section 39(2) of the Public Service Act, like other non public servants who take on head-of-mission roles. The contract can be made available.

**Senator TROOD**—So it is a public document if needed.

**Mr Wise**—It can be made available. The conditions of service of any government employee can be made available.

**Senator TROOD**—Would you make it available to me?

**Mr Wise**—Certainly.

**Senator TROOD**—Thank you. I have no further questions on this subject.

**Senator Faulkner**—Mr Tweddell is going to make a very minor correction—to the name of a city, I believe.

**Mr Tweddell**—Chair, I have to confess to a senior moment. During my comments earlier I think I said that the African Union summit in July is in Addis Ababa. In fact, it is in Kampala.

**CHAIR**—Thank you. Are there any further questions on Europe?

**Senator TROOD**—Chair, Senator Abetz was here and wanted to ask some questions on Europe. I appreciate the fact that he is not here at the moment. I am not sure whether he is coming back to the committee or not. If you wish to move on can we allow Senator Abetz—

**Senator Faulkner**—Senator, if it suits the committee, we will ask the relevant witnesses to stay behind if you want to move on to the next program.

**Senator TROOD**—I am happy to clarify whether Senator Abetz is coming back. If he is, would you mind allowing him to—

**Senator Faulkner**—Until you inform us, the relevant people will stay behind.

**Senator TROOD**—Thank you.

**CHAIR**—We will move on to South and West Asia and the Middle East.

**Senator LUDLAM**—I would like an update on the Gaza situation with the flotilla in international waters.

**Senator Faulkner**—You are interested in an update in relation to any Australians involved; is that right?

**Senator LUDLAM**—Partly that. I recognise that, even since I talked to you, Minister, the Prime Minister of Australia has spoken to the Prime Minister of Israel. I understand things are moving pretty quickly, but if you can give us a snapshot of your understanding of the situation currently and then I will ask a couple of specific questions.

**Senator Faulkner**—I will ask the relevant official to deal with the snapshot for you and then I will deal with your other questions.

**Mr Richardson**—What precisely do you want in terms of the snapshot?

**Senator LUDLAM**—The status of the vessel, the status of Australian citizens on board and what diplomatic overtures the Australian government has made either in the United Nations or directly to Israel or other foreign governments.

**Mr Richardson**—In terms of diplomatic initiatives, I think both the foreign minister and the Prime Minister have made comments. The Prime Minister had a press conference this morning at which he spoke about his telephone discussion last night with Prime Minister Netanyahu. The minister and the Prime Minister have referred to the UN and the like.

We are aware of five Australians travelling on the vessels—four Australian citizens and one Australian permanent resident. It is simply worth noting that, one of the two journalists—Paul McGeough from the *Sydney Morning Herald*—is constantly referred to as an Australian. In fact, he travels on an Irish passport. He registers as Irish when he travels; however, the *Sydney Morning Herald* asked us, very understandably, to take an interest and to do some work in respect of him. He is an Australian permanent resident. So, while he is not a citizen, we have been rendering him consular assistance along with the other four. For details beyond that, I will refer to Mr Moriarty.

**Mr Moriarty**—We have been granted access to the Australians and the permanent resident. On 1 June an embassy official made a second consular visit to the Australian in an



Israeli hospital. The man had undergone surgery on 31 May for a gunshot wound to his leg. We are also seeking further visits. We have been advised by the Israeli authorities that consular access will be provided again today to all of those individuals that we are taking an interest in at the Beersheba detention centre. Obviously the situation is fluid. We are still waiting to see what is happening with deportations and how that might proceed, but we are working on the assumption that we will be given consular access again today. That is the latest information that we had from the Israeli authorities—certainly before I came in.

We are continuing to seek confirmation that no other Australians were involved. Apart from the initial swirl of rumours about numbers, we have been able to identify no firm information that would suggest that any other Australians were involved. So we have been in contact with people, relaying information to their next of kin. We have certainly emphasised to the Israeli officials that it is our expectation that all of those detained will be treated humanely in accordance with Israeli law and international humanitarian norms. But I think it is true to say that the Israeli officials have put no impediments in our way in terms of fulfilling our consular role.

**Senator LUDLAM**—So when you have sought access it has been granted?

**Mr Moriarty**—We have sought access. They have restricted access to the Beersheba facility, but we met with all of the Australians yesterday and we have been told by the Israeli officials that we can hope to do so again today. We have also been told that the Australians will, if they have a need, be able to contact our consular officials by phone.

**Senator LUDLAM**—What is your understanding of the total casualty toll from the incident overall?

**Ms Stokes**—The latest figure that we have indicates that the death toll is around 10. We still do not have great precision on that number.

**Senator LUDLAM**—Thanks, Ms Stokes.

**Senator Faulkner**—Obviously details are still emerging on this incident, including total casualties—hence you have heard the answer provided to the committee in the way that you have.

**Senator LUDLAM**—It is approximate. I just figure that most of us are getting our news on this one from the media. We have a good opportunity with the officers here at the table today to get that unfiltered. That is fine.

**Senator Faulkner**—That is perfectly understood.

**Senator LUDLAM**—What about the number of injured in total?

**Senator Faulkner**—I think the same principle applies in the broad, but we will give you as much of an update as we can on the figures. We will come back to you in a moment if there is an update in relation to that.

**Senator LUDLAM**—That is fine.

**Senator Faulkner**—The last figures I have seen have gone to the fact that there is a loss of life in relation to at least 10 civilians. In relation to casualties, I think some 44 have been injured. That is the most recent figure.

**Ms Stokes**—This is data from the Israeli Ministry of Foreign Affairs from yesterday. There are 44 injured and 10 Israel Defence Forces personnel injured.

**Senator LUDLAM**—So of those 44—

**Senator Faulkner**—The 10 are not included in the figure of 44.

**Senator LUDLAM**—So there are 44 civilians and 10 IDF injured. I will take these figures as approximate; that is fine.

**Senator Faulkner**—I want to state again the qualification that, as I have said, the details are still emerging in relation to this. I would appreciate you treating this as, if you like, a current status report on the situation.

**Senator LUDLAM**—Fine. How big is our diplomatic mission in Israel?

**Mr Wise**—Senator, I will have to take that on notice.

**Senator LUDLAM**—Can you tell us, from an Australian government perspective, whether we have called in the Israeli Ambassador at this time?

**Mr Richardson**—No.

**Senator LUDLAM**—My understanding is that, within a couple of hours of the massacre on board the ship, nine nations—and I can give them to you if you like—has summoned their Israeli ambassadors. Why has Australia not done so?

**Senator Faulkner**—Let us be clear here, Senator. Australian Prime Minister Rudd spoke to Israeli Prime Minister Netanyahu late last evening. I can assure you he was able to convey Australia's views. In other words at this head-of-government to head-of government-basis Prime Minister Rudd sought Prime Minister Netanyahu's reassurances that Israel will provide consular access and assistance to the Australians that have been caught up in this instance.

I have been advised that, as we speak, Minister Smith is giving a press conference on the developments in relation to this matter. I understand that it is possible, as far as some Australians are concerned, that they are currently being deported, and that is the information that has been handed to us, as you can see, in a note. This committee is as apprised as it can be of the most recent information that is available.

Because we are in a committee room here and the Minister for Foreign Affairs is speaking publicly on this matter there might be a little delay in information. Obviously we will provide as much up-to-date and contemporary information to the committee as we possibly can. I do want to indicate there is a caveat because, as I have said, the minister is speaking about these matters, literally, as we are here in this committee room dealing with these matters in this forum.

**Senator LUDLAM**—Thank you. Minister, if it is appropriate and with leave of the committee we might come back later once the statement that the minister made is clear, and we can revisit it later.

**Senator Faulkner**—Yes, Senator. I will not be at the table for the committee from 7.30 to 9.30 pm; I will be here from 9.30 to 11 pm. One of my colleagues will be in the chair at that time. I do not think this in any way, Senator, should preclude you from asking the questions that you wish to ask now or at any time in the future as this program is before us now. I just

think it is proper that you understand, and I do not want there to be any misinterpretation, given that Minister Smith is making some public statements about some of these matters.

**Senator LUDLAM**—Thank you. That has been made clear. I have a policy question going back to matters that are not current events. Can you state for us in plain language the Australian government's policy on the siege of Gaza?

**Ms Stokes**—The Australian government's consistent position has been that restrictions on humanitarian access to Gaza should be eased. We have made that position known on a number of occasions. In a statement to the UN Security Council on 14 October last year we reiterated that view and described the situation as unacceptable.

**Senator LUDLAM**—Easing restrictions on aid is not the same as lifting the siege, so would it be incorrect to say that the Australian government supports the immediate lifting of the siege of Gaza?

**Ms Stokes**—The Australian government's position is that it wishes to see improved access for humanitarian goods. We also are very mindful of Israel's security concerns.

**Senator LUDLAM**—Are you aware of the prevailing view in international legal opinion that the siege of Gaza is, in fact, illegal under international humanitarian law?

**Ms Stokes**—I think I am aware of differing views.

**Senator LUDLAM**—But that there is a very strong view within an international legal community that Israel is in violation of repeated UN Security Council resolutions and then that siege, in plain language, is unlawful. I put that question to you.

**Ms Stokes**—I am aware of differing legal views.

**Senator LUDLAM**—Does the Australian government have a view as to the lawfulness or otherwise of the blockade of Gaza?

**Ms Stokes**—I am not aware that the Australian government has a view.

**Senator LUDLAM**—We do not have a view. Okay. This might go to the matters that the minister was raising a moment ago: I wonder whether the government is reconsidering that sitting on the fence, effectively, in the light of recent events?

**Ms Stokes**—I think the recent events underline the very difficult situation that is faced in Gaza. You have these humanitarian needs which are really quite acute and you also have Israel's security, and you have illegal arms movements and arms coming into Gaza that threaten Israel. They have genuine security concerns about the arms smuggling that goes on.

**Senator LUDLAM**—Do you have any information that you could present to us that would suggest that the aid convoy that was travelling toward Gaza included arms?

**Ms Stokes**—I do not have information one way or the other. We do not have enough information about the events of this week, and that is why there needs to be a full investigation.

**Senator LUDLAM**—By leave of the committee, I am wondering whether it would be possible to revisit these issues again once we have a copy of what the foreign minister has actually put on the record as we are speaking.

**CHAIR**—No, we have a program.

**Senator LUDLAM**—We have a program but we are asking about issues that are occurring right as we speak.

**CHAIR**—We have a program; we are working through it sequentially. We are currently dealing with South and West Asia and the Middle East. You have the floor and you may ask as many questions as you like.

**Senator LUDLAM**—That kind of did not answer my question. As Minister Faulkner just identified, these are issues that are occurring right as we are speaking.

**CHAIR**—They might be, and you have the floor to ask questions now.

**Senator LUDLAM**—So should I just hold out for a couple of hours with the floor until we get a comment from the foreign minister?

**CHAIR**—The foreign minister is making a comment, Senator. That is that.

**Senator LUDLAM**—I will let it go.

**CHAIR**—Further questions on South and West Asia and the Middle East?

**Senator Faulkner**—We are in the hands of the committee on these things, Chair. What I have been trying to indicate, so there is absolute transparency and understanding from committee members, is that something else is happening relevant to this outside this meeting.

**CHAIR**—And we appreciate your advice, Minister.

**Senator KROGER**—I would like to turn to the issue of the use of Australian passports—so in the same geographic lie of the land, in a manner of speaking. Could you firstly take me through the timeline, from the assassination, firstly, of Mahmoud Al-Mabhouh, when you first became aware that there was a concern in relation to the possible use of Australian passports. Take me through a bit of a timeline of what happened.

**Mr Richardson**—I have not got all the dates in my head, but the minister's statement to the parliament Monday week ago was very detailed in terms of giving precise dates as to what was known when, when investigation was commissioned, when the AFP reported back, when ASIO subsequently reported back and the like. He went through that with some care. In fact, Deborah does have a copy of the statement with her. She could go through that if you wish.

**Senator KROGER**—Ms Stokes, that would be very helpful, thank you.

**Ms Stokes**—I am reading the words that Mr Smith used on 24 May.

**Senator KROGER**—In parliament?

**Ms Stokes**—Yes, in parliament. He said:

On 25 February, I advised the House of the suspected fraudulent use of a number of Australian passports in connection with the murder of senior Hamas figure Mahmoud Al-Mabhouh. I now advise the House of the government's response to this matter. First it is worth recalling the circumstances in which this came to the government's attention and our response to date. On 20 January, Mr Al-Mabhouh was found murdered in a hotel room in Dubai in the United Arab Emirates. On 16 February, police in Dubai announced that falsified passports from the United Kingdom, Ireland, France and Germany had been used in connection with the murder. Late on 22 February, Dubai authorities approached Australian

officials with an inquiry about two Australian passports. The following day, 23 February, Dubai authorities confirmed to Australian officials that they were investigating a number of Australian passports in connection with the murder. Since that time, Dubai authorities have announced that they are investigating four Australian passports in connection with the murder.

Then the minister mentioned the names of those four individuals. He then said:

From the first contact on 22 February, Australian authorities have cooperated fully with Dubai investigators.

On 25 February, I expressed to the House my concern that these Australian passports had been used fraudulently. ... On 25 February, I also announced that the Australian Federal Police, in conjunction with relevant agencies, had been asked to investigate the possible abuse of these passports. ... On 9 April, I received the Australian Federal Police report.

**Senator KROGER**—Sorry, what date was the AFP report received?

**Ms Stokes**—On 9 April. Mr Smith continued:

Upon a preliminary assessment of that report, it was clear that further work and advice was required from other agencies ... I made this known publicly on 11 April. This further work included a visit to Israel this month—

in May—

by the Director-General of ASIO.

Mr Smith said that he received his final advice from agencies last week—he said this on the 24th, so the week before the 24th.. He briefed the National Security Committee of the cabinet on the morning of 24 May.

**Senator KROGER**—Thank you very much. I am interested to know: what is the process that the department or ministers take in relation to any concerns about a consul or embassy official? Is there a process? I have looked at historic instances when there may have been concerns raised. Is there a process or protocol in the way in which these events are dealt with?

**Mr Richardson**—There is not a fixed protocol, Senator. Situations can vary. Australia has, over the last seven years, asked two Israeli diplomats to leave the country. The first occasion was in 2004 and the situation there was a little different to the situation that we faced this time around. A government is entitled, under the Vienna convention, to ask any diplomat to leave. No reason has to be given. A country might ask a diplomat to leave for a variety of reasons that can range from wanting to express displeasure with the actions of a particular government; it may relate to the specific actions and conduct of a specific person in an embassy. So there is no fixed protocol. And you can ask someone to leave within any time frame that you consider to be reasonable in the circumstances. Historically, people have been given 24 hours notice to leave a country. They have been given up to a week in some cases.

**Senator KROGER**—It is the protocol here that I am most interested in and that concerns me in some way. There is no question that we would ever condone the fraudulent use of Australian passports. I would never suggest that. I am sure things were investigated in the most appropriate way. What has puzzled me over the last three months is the public evolving—and we have used that word a little bit today—of this particular situation and occurrence. We have read in the media what has been alleged to be happening in an investigative way or otherwise. You mentioned that the AFP were brought in to investigate it.

We read in the media that they were investigating. In fact, I think I read in the media or in Minister Smith's statement that the head of ASIO had travelled to Israel to discuss it. Is it common practice for the working schedule and travel arrangements of the head of our most elite agency be disclosed?

**Mr Richardson**—It would not normally be done. However, I think in the circumstances it was entirely appropriate. Mr Smith has made two statements to parliament. One was on 25 February, almost immediately after action started. Then he made another statement on 24 May. I think very few things have been put out there via the media in this investigation. Most of the information that has been put out there publicly has been put out by the minister in his two statements to the parliament.

**Senator KROGER**—Was there a meeting with the Israeli ambassador during this period?

**Mr Richardson**—He met with the Israeli ambassador on the morning of 25 February, which was the morning which he made his first statement to the parliament. He has not met with the Israeli ambassador since that time. Indeed, at the time that he made his statement to the parliament on 24 May the Israeli ambassador was back in Israel.

**Senator KROGER**—The reason I confirm that he met with the Israeli ambassador is that I seem to recall having seen that in the media.

**Mr Richardson**—That was in the media.

**Senator KROGER**—I find it extraordinary that the media would be aware of a meeting with the ambassador unless it was briefed.

**Mr Richardson**—I am not aware of the detail of that. In fact, I believe it was part of Mr Smith's statement to the parliament. The Israeli ambassador was called in on the morning of the 25th and Mr Smith gave a statement to the parliament on the same day.

**Senator KROGER**—I am reminded of how other countries have handled this. I question why we would choose to announce that someone was being deported before they had actually left the country.

**Mr Richardson**—That is not uncommon or unusual. A government, if it so wishes, can most certainly do that. There is nothing improper about that in terms of protocols.

**Senator KROGER**—Perhaps nothing improper in terms of protocols—and, again, I am in no way suggesting that this did not require and demand proper investigation—but I am concerned when we are dealing in such a volatile and sensitive political climate across the globe and particularly with the volatility we have seen in the Middle East in the last 24 hours, that we would essentially be seen by many of our friends to be perhaps more than giving a country a firm and deserved slap on the back of the wrist. I guess what I am saying is: does the punishment meet the crime here?

**Mr Richardson**—This demanded more than a slap on the wrist. This demanded firm action. It is on the public record in 2003-04 that Israel misused Australian passports. In 2006 an agreement was entered into between an Australian agency and an Israeli agency about how things would be conducted. Against that background, earlier this year Israel again misused Australian passports in a most flagrant and blatant of ways. This did not require a slap on the wrist. This required a firm statement by Australia about our own sovereignty. If we were not

prepared to take firm action against this background, what price do you put on sovereignty? We are entitled to have our own national interest. Unfortunately, in this case, a firm friend, a very good friend, did not abide by the principles of friendship. We have made very clear our commitment to Israel and we have made very clear that following this incident we have taken the action we have, and we move on. However, the incident did require firm action.

**Senator KROGER**—Thanks for that, Mr Richardson. I support the sentiment of what you are saying. I feel there has been a perception that the investigation and the way in which it has been dealt with have evolved in the public domain. There are a number of people during the last three months who clearly and publicly have been given a big whack—not a slap on the wrist but a whack. From the first meeting with the ambassador, for instance, I do not think there would be any suggestion that there was not a demonstration of a strong position being taken. My concern is that we have an appropriate and consistent protocol.

**Mr Richardson**—We acted totally properly. If there is a perception in some quarters that we did not, so be it. But we acted totally properly. Unfortunately, we had to do the same thing in 2004. It is regrettable that six years later we find ourselves placed in a position where we have no other choice but to do the same thing again. That is regrettable. I do not think there would be anyone who I work with who would not regret the fact that we were placed in a position where we had to take firm action. We would have preferred not to be in this place, but it was not our choice.

**Senator KROGER**—I have a further question that is on this matter but goes off to the side a little. It is about the records—I do not know that that is the right word—of the individuals who had their identities used. I understand it is not in your domain as such, but is that all sorted out so that it does not come up on any computers?

**Mr Richardson**—Again, this is the unfortunate position that Israel, by its actions, has placed some Australian citizens in. It is on the public record. The minister in his advice to the parliament stated that there was no evidence whatsoever to suggest that the Australians referred to in his statement had in any way acted improperly. And we have been in touch with those Australians.

**Senator KROGER**—But their names do not go into any computers that they were accidentally flagged and that sort of thing?

**Mr Richardson**—That is not something we can control. What other countries have done I do not know. But, again, it would have been good if a good friend of ours, in Israel, had thought about that when they decided to misuse our passports and infringe our sovereignty.

**Senator KROGER**—Thanks, Mr Richardson.

**CHAIR**—I propose at this stage to interrupt proceedings—

**Senator TROOD**—Chair, I think Senator Abetz has some Israel questions.

**Senator ABETZ**—Chair, I understand that the committee kindly reserved Europe for me—I have a few questions on Europe. I imagine it will take about 10 minutes. I am happy to do those questions now and then ask a few follow-up questions on Israel.

**CHAIR**—I am happy to do that. We will do Europe and then return to the agenda.

**Senator ABETZ**—I thank the committee for its forbearance. My questions are around the appointment, I think on 10 May this year, of Mr David Ritchie as our Ambassador to Italy. I understand he speaks some Italian—is that correct?

**Mr Richardson**—He has been studying Italian for some time now.

**Senator ABETZ**—Has he been given, as part of his package, some money to assist him to brush up on his Italian language skills?

**Mr Wise**—He has been undertaking language training in Australia in Italian since November—

**Senator ABETZ**—November '09, I assume.

**Mr Wise**—Yes, 2009. He will leave for Rome on 1 July and have two weeks in-country language training before taking up his position. That is very common practice.

**Senator ABETZ**—As I understand it, Mr Ritchie has a distinguished career behind him and hopefully also ahead of him; I am sure he does. To assist your officials to have the appropriate language skills seems to be a good and sensible course of action, so there is no criticism of that. If that is the normal course of practice, could you please advise me as to why that was not offered to Mr Borrowman, who was shortlisted or chosen to be our representative in Germany and the reason he was not then appointed was allegedly that he did not have sufficient language skills? First of all, can we have an answer to that?

**Mr Richardson**—I stand to be corrected but I think the lead times in both cases might have been different. I am not confident of the precise details.

**Senator ABETZ**—But Mr Borrowman already had German language skills; the only question was the degree of competency.

**Mr Wise**—The fundamental difference is that Mr Ritchie was appointed to be Ambassador to Italy, Mr Borrowman was not appointed to be Ambassador to Germany. That is the fundamental difference.

**Senator ABETZ**—Because his appointment was finally kyboshed by the Prime Minister on the—

**Mr Wise**—No-one takes up language training until after an appointment is made.

**Senator ABETZ**—Can you explain to me how Mr Ritchie was appointed then, when he did not have the requisite language skills?

**Mr Wise**—Because the government makes an appointment on head of mission positions on the basis of its own thinking and recommendations before it. It made a decision in relation to Mr Ritchie that he would be appointed, and there was sufficient time for him to get the language training that he has been given.

**Senator ABETZ**—And, of course, that could have been the case given that Mr Borrowman already had certain German language skills. One would expect that it would not have taken him as long to brush up his language skills. Indeed, even a fortnight training course as is being given to Mr Ritchie may well have done the job. We had the Prime Minister tell us:



When it comes to foreign diplomatic appointments, I do place priority on languages, as does the Minister, and last time I looked at Germany, they speak German.

We know Mr Borrowman spoke German—sure he may have had to brush up on his German-speaking capacities—but why was that not offered to Mr Borrowman, as it was to Mr Ritchie?

**Mr Wise**—The appointments of heads of mission are decisions for the government, not for the department.

**Senator ABETZ**—I agree with that. Therefore, can I ask you, Minister: the government makes the decision and, if it likes the idea of a particular appointment it will use taxpayers' money to assist that appointee to get the requisite language skills; but if it does not like the proposed appointment it will put the kybosh on it on the basis that the person does not have the requisite language skills?

**Senator Faulkner**—Like you, I have listened to the evidence that has been provided by our expert witnesses here, and every time I do that I learn more and more about how these things work. I think it is fair to say that you have had explained to you in not inconsiderable detail the basis of these things and what appears to be the standard operating procedure for the Department of Foreign Affairs and Trade. I have to be frank with you and say that I am not necessarily an expert in all the intricacies of the department, but I certainly accept the evidence that has been provided about how the department goes about these things, and I am sure that you do too.

**Senator ABETZ**—Absolutely, and there is no difficulty with the department's position, but the department has just told us that it is the government that decides the appointments.

**Senator Faulkner**—Yes, that is true.

**Senator ABETZ**—And once the government decides the appointment, Australian taxpayers—and I have no criticism of this—are then required, as in Mr Ritchie's case, to foot the bill to get the appointee up to appropriate language skill levels for them to take up the appointment.

Now, the reason used as an excuse to put the kybosh on the appointment of Mr Borrowman, was that he did not have the requisite language skills. So how did the government decide to appoint Mr Ritchie on that justification of the Prime Minister when, clearly, at the time of the decision to appoint him he did not have the requisite language skills?

**Senator Faulkner**—That is right, it is government decision making; and my understanding of these things is that it was ever thus. I am not sure when it has not been government decision making; for the period that I have been in the parliament it certainly has been and I can confirm that to you. Without going into the details of the two individuals concerned that you have named—I do not know the specific details in relation to either Mr Ritchie or Mr Borrowman—I do know that the issue in relation to Mr Borrowman has actually been raised in the estimates hearings before, so I have heard the issue and the responses that were given at the table. So, yes, I can confirm that these are government decisions, but I do not think that would come as a surprise to you or to anyone else. I am using the phrase, 'It was ever thus,' because I think that is a pretty fair way of responding.

**Senator ABETZ**—The issue is not that it is a government decision. We are all in heated agreement that it is a government decision. What we are not in heated agreement about is the justification that was provided for Mr Borrowman's non-appointment—namely, lack of language skills. Mr Ritchie, having the same deficit—namely, lack of language skills—was nevertheless appointed but allowed to undertake a taxpayer funded language course to get him the requisite skills for the appointment. That must have been a deliberate decision by government to appoint him knowing the lack of language skills. I do not criticise that decision, might I add, and I think Mr Ritchie's appointment is proper. To suggest that you need full language skills prior to your appointment is quite frankly a nonsense. Of course, Mr Ritchie's appointment and the process has shown that to be a nonsense. It does expose Mr Rudd's justification for Mr Borrowman's non-appointment to be unjustifiable and a nonsense, because the same benefits that were provided to Mr Ritchie could easily have been provided to Mr Borrowman, who originally had some German language skills, unlike Mr Ritchie who, as I understand it, did not have basic Italian language skills.

**Senator Faulkner**—As I have said, I accept the proposition that these are decisions of government. If you are making the point that in relation to these appointments—and I do not like naming individuals—they are decisions of government, not just the current government but previous governments of all manner of political persuasions, that is a fact of life. That is how the system works. If a person is appointed, it is a decision of government. I understand that you are looking at this in the negative and talking about someone who might not be appointed. That is the general point that you are making. For any appointment that is made, one person is appointed and X million Australians are not appointed. That is true. But they are decisions of government and government brings to these decisions whatever factors, criteria or judgements it cares to apply. That is the way, as I understand it, it works and has always worked. At least we agree on that.

**Senator ABETZ**—Yes, but the fundamental point is this: the justification provided by the Prime Minister has now been fully exposed as—I will be polite—disingenuous in the light of the Ritchie appointment.

**Senator Faulkner**—You and I do not agree on that.

**Senator ABETZ**—The justification given by the Prime Minister was a lack of language skill, something that Mr Ritchie suffered from even more than Mr Borrowman. Yet that is not disqualifying, and might I add nor should it disqualify, Mr Ritchie, and I want to stress that. But it should never have disqualified Mr Borrowman and the question therefore is: what was the real reason for Mr Borrowman having the kibosh put on him by the Prime Minister. The assertion of a lack of language skills clearly does not stack up given the scenario, the case study, that has just been provided to us by the officials in relation to Mr Ritchie.

**Senator Faulkner**—I think there is a leap of logic and faith involved in applying the circumstances in relation to one appointment to another. All I can say to you is—

**Senator ABETZ**—There is a lack of logic between the two in relation to justification by the government.

**Senator Faulkner**—I am talking about the leap of logic that I think is involved in that you are drawing a conclusion that I do not know there is a basis to draw. I do not believe there is a

basis to draw it. Let me go on and say that my knowledge of the people involved that you have named is really from a longstanding involvement in this committee on both sides of the table. That goes to Mr Borrowman and two Mr David Ritchies, and I have no idea which of the two Mr Ritchies has actually been appointed but there are two of them, as you are probably aware, and one of them obviously has been—

**Mr Richardson**—The good-looking one was appointed to Rome.

**Senator Faulkner**—The good-looking one. I did not think either of them was very good-looking.

**Senator ABETZ**—That is too much information. Can you actually answer the question.

**Senator Faulkner**—The point I was going to make is that I have had a longstanding association as one does as a senator, as you have in various committees, with all three of these officials. I can say from both sides of the witness table that I found all three of them to be very fine officials. That is all I can say to you. I say it quite genuinely. I do not know what all the background to these judgments might be. I have never liked, as you know, in these committee singling out individuals in this sort of way or the circumstances that apply. I do not know why decisions were made or not made. I actually do not know. But I do know that they are decisions for government. And I do not know whether you can draw valid comparisons between the cases as you have tried to. I just do not know that to be the case.

**Senator ABETZ**—All right. Would you take it on notice to see what the justification is? In relation to Mr Borrowman's name getting into the public arena, that was courtesy of the Prime Minister in May 2009 trying to justify his non-appointment.

**Senator Faulkner**—I am making the point that I had no idea and I still do not know which Mr David Ritchie has been appointed, given the description—

**Senator ABETZ**—That is irrelevant.

**Senator Faulkner**—I am just saying that there are two names mentioned. One name happens to be at least a name that is relevant to two senior officials. This is a fact of life, as longstanding attendees at this committee would know, there are two Mr David Ritchies senior in this department. I have no idea which one of them was appointed but I know both of them and Mr Borrowman to be, as I have indicated, officials who I have a very high regard for. I cannot be more frank with you about that. But I will, because you have asked me to, take it on notice and ask if the minister is able to provide greater insight than I can provide. I do not think you would be surprised that I do not necessarily have detailed knowledge of the issues that you are raising but I am happy to ask Mr Smith as the minister if he can throw any further light on it. The processes, however, come back, as you say and I agree, to government decisions.

**Senator ABETZ**—And that is why I am highly critical of the Prime Minister's disingenuous reasons publicly stated as to why Mr Borrowman could not be appointed when those considerations clearly were not contemplated in relation to Mr Ritchie. Might I add I am not critical of the Ritchie appointment; I am highly critical of the nonappointment of Mr Borrowman.

**Senator Faulkner**—I acknowledge that you have said that. I also say to you that there is either a leap of faith or a leap of lack of faith in the logic I think that you are applying. But I am sure—

**Senator ABETZ**—Tell us why the logic is not there when the one and single reason the Prime Minister gave was lack of language skill, which is exactly what applies to Mr Ritchie but we have a taxpayer program for him to learn the skills which is denied to Mr Borrowman. So take it on notice and let us see what the justification really was for Mr Borrowman's non-appointment.

**Senator Faulkner**—Senator, so you are clear, first of all, I do not know what reasons were given or not given. I do not know what the basis of the decision making was or was not. I do accept that it is government decision making, as we have both acknowledged. If Minister Smith cares to take the matter up further, he will. I am in a position here where, as always, I am very happy to help but I cannot go beyond what I have said. I have made the comments I want to make about the relevant officials that have been named because we are not talking about departmental or government processes here. The names of officials have also been used. That is why I make clear my view.

**Senator ABETZ**—An avalanche of verbiage will not overcome the duplicity in relation to these two situations.

**Senator Faulkner**—But that is just commentary or political spin or your view, and you are entitled to that. I accept that.

**Senator ABETZ**—Thank you. As you were for about two minutes just then. I just made it a lot shorter.

**Senator Faulkner**—No. I was actually trying to state the situation as I understand it to be. One thing you do understand is that the minister representing the Minister for Foreign Affairs at this table certainly is not the decision maker. However, the minister representing the Minister for Foreign Affairs is responsible for answering your questions on this and represents him here and should provide as much information to you as he can. It is difficult in this circumstance, given that I do not have a lot of background to any of those events that you have claimed occurred. I will find out if I can.

**Senator ABETZ**—Another avalanche of verbiage that has added absolutely nothing. I thank Mr Maude for staying behind. It is much appreciated.

**CHAIR**—That concludes questions on Europe. We return now to South-West Asia and the Middle East. We were discussing Israel.

**Senator LUDLAM**—This relates to matters that were raised by Senator Kroger before we took a break back to Europe. I also recognise there are some general questions around passports that will probably pop up in outcome 2. Are we fine to engage with those now or should I confine my remarks to those relating to Israel?

**CHAIR**—Do them now.

**Senator LUDLAM**—There are some budget measures that were announced a week or two ago to enhance the security of Australian passports. I would like somebody to talk us through what that will mean in practice.

**Mr Richardson**—That was covered off this morning.

**CHAIR**—It went on for 10 or 15 minutes.

**Senator LUDLAM**—Okay. I will check the transcript and see. In that case, I might confine my remarks to the specifics of the instance that Senator Kroger was addressing before.

**CHAIR**—We did portfolio overview and extensive discussion on budget measures the government is bringing with respect to passports.

**Senator LUDLAM**—Let us come back to the ejection of the Israeli official from Australia that we were discussing a little bit before. At the time, Minister Smith confirmed the close relationship that Australia has with Israel but ejected a Mossad agent, I believe, and said that the country's agencies would be subject to what he called a 'cooling-off period'. What does that mean in diplomatic speak? What is a cooling-off period? How long does it go for and what does it mean?

**Mr Richardson**—I do not believe the minister was referring to any intent on our part to have a cooling-off period. He was making an observation that, following an incident like this, it was very common for there to be a cooling off. Now that we have taken the action we have taken in respect of the passport incident, we have put that behind us, and we are moving on with the relationship.

**Senator LUDLAM**—So the cooling-off period is not some kind of diplomatic indication of some sort of seizing up of relationships or anything?

**Mr Richardson**—No.

**Senator LUDLAM**—That may have been taken out of context to a degree. The passport issue related to Australia, but obviously the people involved were implicated in extrajudicial murders in other parts of the world. Has Australia expressed an opinion to Israel either formally or informally about its practice of extrajudicial killings as they relate to Australian passports at least?

**Mr Richardson**—Senator, the minister has been very careful in his public comments not to make any judgment about the killing in the UAE. That is a matter of continuing investigation by the Dubai authorities.

**Senator LUDLAM**—Is Australia playing any part in those ongoing investigations; or does our matter begin and end with the issue of the passports?

**Mr Richardson**—Our investigative interest is in the passports. We are not playing a role in the investigation of the killing.

**Senator LUDLAM**—Are we monitoring those investigations? Are we interested in their outcome or is that really not of consequence?

**Mr Richardson**—No. We will be interested in their outcome, but obviously the Dubai police will be keeping that investigation close hold. So we are not in a position to monitor it in any active way but we will be interested in the outcome of it.

**Senator LUDLAM**—Have any agencies or representations come from the government there for assistance from Australia at all in this matter?

**Mr Richardson**—I am not aware of any. I believe the only inquiries that were put our way related to the passports, and we provided the cooperation that was sought in respect of that.

**Senator LUDLAM**—We did not express a view either in public or through diplomatic channels about the nature of the accusations that had been made in relation to the passport forgeries and what they were for?

**Mr Richardson**—We made comments in relation to the abuse of our passports but we have not made comments in relation to a matter that remains under police investigation in another jurisdiction.

**Senator LUDLAM**—Relating to passports—if I traverse ground that was covered specifically earlier in the day, I will refer to the transcript but I just want to test your views on some issues. I have recently been issued with a more recent Australian passport with a little microchip in it. How difficult is it to forge one of these modern passports?

**Mr Richardson**—It is difficult to clone a passport to engage in fraud against our passport. As the minister has stated publicly, it was clear from the investigation that with regard to this particular abuse of our passports in our view it was unquestioned that it would have taken a state apparatus to conduct the fraud that was conducted.

**Senator LUDLAM**—It was a fairly professional bit of fraud.

**Mr Richardson**—It was more than professional.

**Senator LUDLAM**—Okay. I know you are choosing your words very carefully. Can you describe for us in that case whether the measures that you have put in the budget forthcoming spending over the next couple of years will put Australian passports beyond the capability of that sort of technique?

**Mr Richardson**—That is highly unlikely, in my view. With our passports, I think you need to carry two parallel thoughts in your head at the one time: firstly, the security of our passports and the integrity of our passports are equal to any in the world; secondly, it is extraordinarily difficult at this point in time to produce a passport which another state may not be able to manipulate in some way. The other thing to bear in mind in relation to passports is that, even if they have microchips or various other security features in them, that is only relevant when you are crossing a border where the technology exists to read the technology embedded in the passport.

**Senator LUDLAM**—As these new technologies flow through, are we going to see different kinds of passports issued, once these initiatives are in place, with the different technologies in them?

**Mr Richardson**—We will see passports with still more security features in them.

**Senator LUDLAM**—But does that narrow the range of countries that can test passports against those security features?

**Mr Richardson**—Yes, it will. It will narrow the opportunity for fraud but it will not eliminate it, and at this point in time no country globally can produce a passport which can provide an absolute guarantee that it cannot be subject to fraud.

**Senator LUDLAM**—I understand. This is not the first time that this has occurred—although this is a unique instance, obviously. I was just reviewing the reporting of some events that occurred in 2004 in which the New Zealand government ejected some Israeli officials. I do not think—

**Mr Richardson**—Israeli officials, I think they were.

**Senator LUDLAM**—Sorry, what did I just say?

**Senator Faulkner**—Australian.

**Senator LUDLAM**—I do not think there has been that kind of breakdown! Israeli officials in 2004—and I do not think a fraud had been perpetuated, but something was underway that was significant enough to result in that. The Howard government had been warned, I think by a Palestinian official, that Mossad agents were seeking to forge Australian passports and New Zealand passports. I do not think it occurred, but we were certainly warned that clean passports were being sought. In representations to the Israeli government since this most recent event—setting aside the comments you made before—have we indicated that we do not appreciate continued attempts to use Australian documentation for these sorts of activities?

**Mr Richardson**—That would be an understatement.

**Senator LUDLAM**—Do you want to give me a correct characterisation of what was expressed?

**Mr Richardson**—I think it would be fair to say that in both 2004 and 2010 we stated explicitly that friends do not act this way with each other.

**Senator LUDLAM**—So what are the consequences for repeat instances of bad behaviour, then? Obviously they did not hear us in 2004.

**Mr Richardson**—An Israeli diplomat was asked to leave the country.

**Senator LUDLAM**—All right. I have some other issues, Chair, but do you want to take us out for dinner?

**Senator KROGER**—The chair is taking us out to dinner?

**CHAIR**—Other issues on the Middle East?

**Senator LUDLAM**—Yes.

**CHAIR**—We can return to that after dinner. I am happy to break now.

**Senator Faulkner**—Can I just say to the committee, as I have indicated, that I think it is Senator Conroy who will be in the chair for a short time after the dinner break. I will be back as soon as I can—I have a function to attend; around 9.30 is my expectation.

**CHAIR**—That is fine. We will suspend now and return around 7.30 to South and West Asia and the Middle East.

**Proceedings suspended from 6.28 pm to 7.31 pm**

**CHAIR**—We will continue our examination of budget estimates for the Department of Foreign Affairs and Trade. I welcome Senator Conroy, as minister, to the table. We are currently discussing south and west Asia and the Middle East.

**Senator LUDLAM**—This might be much quicker than I thought, having lost Minister Faulkner. Minister Conroy, I am going to direct this to you. About an hour and a half ago, Minister Faulkner indicated that the foreign minister would be conducting a press conference in which he was going to address the issue of the flotilla in the Mediterranean. My advice over the dinner break was that that actually was not occurring, that he had done a radio interview and that there was not a press conference and not a statement. So, first of all, I am seeking clarification on whether that is the case.

**Ms Stokes**—My understanding is he had an interview with Jim Middleton.

**Senator LUDLAM**—And that is embargoed? That is my information, again. Nothing public has come out of that as yet?

**Mr Richardson**—I do not know. I have not seen anything myself.

**Senator LUDLAM**—Let me put this to you then. That conversation happened about an hour and a half ago. Is there any additional advice or information you are able to offer us from the foreign minister's office—or from anybody else, for that matter—on the situation as it is ongoing?

**Mr Richardson**—No.

**Senator LUDLAM**—In that case, in the absence of a press conference, I will leave it there.

**Senator TROOD**—I want to ask a couple of questions about the budget issues surrounding Afghanistan. I appreciate the expenditures in relation to Afghanistan are whole of government and are divided amongst various agencies, but there is a proportion of this funding which relates to the Department of Foreign Affairs and Trade, which is \$34 million in 2010-11 and \$34 million in 2011-12 as part of an overall \$245 million in relation to civilian and policing activity, as I understand it. Can I begin by clarifying whether or not any of the \$34 million relates to the embassy activities—the upgrade and the work that is being done on the embassy?

**Mr Richardson**—It relates to the upgrade of the existing facilities; it does not relate to any new embassy.

**Senator TROOD**—So how much of the \$34 million is related to the upgrade?

**Ms Thorpe**—We do not divide it up line by line when we receive our funding. What we have is funding to fix up something. So a lot of the capital that you see there—the capital funding component of the appropriation—and you will see there is \$16.9 million—

**Senator TROOD**—Which page are we on?

**Ms Thorpe**—If you look under new measures—I will just find the page.

**Senator TROOD**—‘Budget measures’?



**Ms Thorpe**—Yes, ‘Budget measures’; if you look under the ‘Capital measures’ component on page 19, at the first item—

**Senator TROOD**—Yes.

**Ms Thorpe**—you will see \$16.87 million; a component of that would go towards the infrastructure.

**Senator TROOD**—So a significant component of the \$16 million relates to the capital costs of the embassy.

**Ms Thorpe**—We have leased premises, and it is for putting in the infrastructure—the IT and the security associated with that.

**Mr Richardson**—And accommodation.

**Senator TROOD**—And that \$16 million is included in the \$34 million which is the overall allocation—is that right?

**Ms Thorpe**—No. The \$34 million relates to the operating side of the appropriation. So we have the \$34 million plus the \$16 million.

**Senator TROOD**—So \$16 million is an additional capital amount—is that right?

**Ms Thorpe**—That is correct.

**Senator TROOD**—I see. That is helpful. So the \$34 million includes additional personnel—is that right? It includes additional DFAT officers?

**Ms Thorpe**—It would be staff costs, day-to-day running of the operations—a range of things that are not capital.

**Senator TROOD**—Are these picked out of or identified in this budget—because you would not normally identify operating costs for an embassy, would you, or a mission anywhere—because this is a new allocation of funding for that purpose; is that right?

**Ms Thorpe**—No; most of our funding is both capital and operating for most items.

**Senator TROOD**—I know, but you do not, for example, identify the operational funding for the embassy in Washington.

**Ms Thorpe**—But this is not that. Yes; if we get new funding—if we get a new policy proposal—we always get the operating component. For example, in Mumbai and Chennai—

**Senator TROOD**—Then I think we are probably at cross purposes, Ms Thorpe. I think we are probably furiously in agreement that this is a new allocation of funding to this particular post—

**Ms Thorpe**—Yes, that is correct.

**Senator TROOD**—and that is why it is identified in the budget—and that is what I am trying to clarify—whereas the continuing funding for Washington, for example, is continuing and is absorbed in other accounts.

**Ms Thorpe**—It is in our baseline.

**Senator TROOD**—Yes. So this is identified because it is a new allocation of funding for this particular mission—is that correct?

**Ms Thorpe**—That is correct.

**Senator TROOD**—I thought that was the case. Some of this overall funding, of \$249 million, is AusAID funding, as I understand it, and we can explore that with AusAID tomorrow, if we choose to do so.

**Mr Richardson**—Yes.

**Senator TROOD**—I just want to clarify the security arrangements for the embassy in Kabul. This presumably is the existing facility—is that right? The private firm Control Risks is providing the security; is that a new contract?

**Mr Page**—The contract currently in place in Kabul for a private security company is with Control Risks group, and that has been an existing contract for quite a time.

**Senator TROOD**—So there is not a new contract?

**Mr Page**—No.

**Senator TROOD**—When did Control Risks take over the responsibility for the protection of or the security for the embassy?

**Mr Page**—I do not have that at present; I can take that on notice.

**Senator TROOD**—Would you mind?

**Ms Thorpe**—I think when we first went into Kabul we started contracting with them at that time. When you say this was new funding, do not forget we have received several—

**Senator TROOD**—This funding, as I understand it, is part of the government's commitment to make a contribution to the counterinsurgency strategy which has a civilian and an aid component in Afghanistan. That is my understanding, and this \$259 million is about the prosecution of that strategy. Have Australian defence forces ever been responsible for providing security at the Kabul embassy?

**Mr Richardson**—No, they have not in Kabul.

**Senator TROOD**—The security around the embassy has always been through private contractors or Control Risks—is that right? They have held the contract since—

**Mr Page**—To the best of my knowledge, I believe since 2006 when we went into Kabul in September.

**Senator TROOD**—Is the contract that Control Risks have in relation to Kabul the only contract they have? Do they have any other security responsibilities for Australian missions or personnel anywhere else in Afghanistan?

**Mr Page**—Control Risks is the only group that the department contracts to globally and it is only in Kabul.

**Senator TROOD**—I see, so we do not use them elsewhere around the world.

**Mr Page**—No, we do not.

**Senator TROOD**—Then we do not use them elsewhere in Afghanistan for any reason.

**Mr Page**—No.

**Senator TROOD**—What do we do about DFAT personnel who are deployed outside of Kabul?

**Mr Richardson**—In Oruzgan Province, if they have a requirement to go outside the base—or outside the wire as it is commonly referred to—then they receive security protection by the ADF. In some cases they have received it by the Dutch or by whatever attachment might be available. In Kandahar the DFAT people have been in the base in Kandahar, and that is an enormous complex so they do not need security to move around there. In Oruzgan, they do need from time to time to move outside the wire; there is less of a requirement for that in Kandahar.

**Senator TROOD**—I may have asked you this: in relation to those additional staff, are any further DFAT staff being sent to Afghanistan?

**Mr Richardson**—Yes, as part of this measure.

**Senator TROOD**—How many are there and where are they deployed—perhaps what kind of activities they are engaged in?

**Mr Richardson**—An increased presence of seven or eight. It will be both in Kabul and in the south. The nature of their work will be increased engagement with the Afghan authorities at both the national and provincial level. Secondly, it will be engagement with coalition partners; and, thirdly, it will be engagement—civilian, military et cetera—in terms of coordinating what they do in working together.

**Senator TROOD**—Could the responsibilities be explained under the general rubric of governance activities?

**Mr Richardson**—Governance is an important part of what they will be about both at the national and the provincial level but that will not be the only point of engagement.

**Senator TROOD**—I do not think I have any further questions about that.

**Senator ABETZ**—I will follow on from answers provided by Mr Richardson to Senator Kroger in relation to the expulsion of—what do we call the person, a ‘consular official’?

**Mr Richardson**—No, a diplomatic officer.

**Senator ABETZ**—A ‘diplomatic officer’, thank you for that. Mr Richardson, I trust that I describe your answer as a very definite answer to Senator Kroger?

**Mr Richardson**—Yes.

**Senator ABETZ**—I am just wondering how sure are we that our action in expelling the diplomat was justifiable?

**Mr Richardson**—I am 100 per cent certain that it was totally and utterly justified. Just as it was in 2004, it was justified in 2010. In fact, if you wanted to say which was the marginally stronger case it was in 2010.

**Senator ABETZ**—Is that tantamount then to saying ‘They done it’?

**Mr Richardson**—No, it is tantamount to saying that they abused our passports. When you say ‘Done it’, what do you mean by ‘it’? What are you referring to by ‘it’?

**Senator ABETZ**—The assertion is that they have abused our passports.

**Mr Richardson**—Yes, absolutely.

**Senator ABETZ**—That is the assertion. I assume they have not admitted to doing so—‘they’ being Israel or anybody—

**Mr Richardson**—I will not comment on that and you should not hear my answer to mean one way or the other. I think it is better if I not respond to that.

**Senator ABETZ**—Yes, I accept that and draw no inference from it. Following up on the use or, potentially more properly described, abuse of Australian passports, it is alleged that other countries similarly had their passports abused in the exercise but have not taken as strong an action as Australia has. Is that—

**Mr Richardson**—The UK has.

**Senator ABETZ**—They have expelled somebody?

**Mr Richardson**—Yes, and that was publicly announced. In fact, they expelled someone, I think, back in March. That is all on the public—

**Senator ABETZ**—Before us?

**Mr Richardson**—Yes. That is all on the public record.

**Senator ABETZ**—But France?

**Mr Richardson**—Regarding France, my understanding is that their investigation is continuing. The bottom line here is that we make our decisions; the French make their’s.

**Senator ABETZ**—Of course.

**Mr Richardson**—And whether the French have the same overall background to their decision as we do, I do not know.

**Senator ABETZ**—What about other countries that may have been involved in this allegation of abuse of passports?

**Mr Richardson**—Where they are up to in their investigations, whether they have finished their investigations and if so, what action they have decided to take or not take, is their business.

**Senator ABETZ**—Of course it is.

**Mr Richardson**—Again, whether they have the same background that we have is something for them to answer.

**Senator ABETZ**—Right. When you say ‘same background’ you refer to the 2004 incident?

**Mr Richardson**—Firstly, I refer to some matters that took place in 2004, which we spoke to the Israeli authorities about very directly at the time; secondly, to a memorandum of understanding that was entered into between an Australian agency and an Israeli agency in 2006; and finally, to what took place this year. Against that background, I am more than confident that the action that has been taken in expelling an Israeli diplomat was totally appropriate.

**Senator ABETZ**—Not being experienced in the dark art of foreign affairs, can you explain to us as far as you can why an agreement—I accept that this agreement was done under a government of which I was a member at the time—would need to be entered into with another country basically so, from what I can gather, they would not engage with our passports in a particular manner which I would have thought would be illegal or unacceptable anyway? Is it tantamount to coming to an agreement with somebody that they will not burgle your house or steal your car? Why would you have to enter into such an agreement if it is unacceptable behaviour in the first place?

**Mr Richardson**—I think that is a very good question. I think that the MOU covered more. It covered general behaviour and the like of a kind which you normally do not need to have with your friends. Unfortunately, there was a need in this case because of certain activity that occurred in 2004. Again, that is regrettable.

**Senator ABETZ**—Without delaying the committee any further—it was just an interest that was aroused as a result of answers you provided to Senator Kroger—was the MOU in 2006 broader than just a passport issue?

**Mr Richardson**—Yes.

**Senator ABETZ**—That, I dare say, is not a document that is publicly available.

**Mr Richardson**—No.

**Senator ABETZ**—So we know there is a document in the ether that only certain people are aware of. I fully accept and understand that and accept your assurance that it covers more things than just the issue of passports. I thank you and the committee for that indulgence.

**CHAIR**—As I understand it, you say an incident occurred in 2004. That incident in relation to passports or passports then was of such a character that it was unacceptable. As a consequence, in 2006 our two governments entered into an MOU which in part addressed the issue of proper use of passports. Undertakings were given in this MOU between the two governments that it would not occur again. Is that what you are saying?

**Mr Richardson**—A number of things occurred in 2004. When I say ‘a number’ I do not mean to imply a lot; there were certainly three things that occurred in 2004. How the MOU came into being I do not know precisely. I am aware of what happened in 2004 because of a job I had at the time—I was heading up ASIO. But I left ASIO in the middle of 2005. I do know that the MOU that was entered into in 2006 was about how people would work with each other and about the fact that they would be transparent and do the things that normally you take for granted when you are working with close friends. Then this incident occurred in February.

**CHAIR**—Since taking over as secretary of the department, you have sighted that MOU.

**Mr Richardson**—I have not personally sighted it, because I have not felt the need to. It is a document between another agency and an Israeli agency, and I have sat in on meetings where ministers have been briefed about the agreement. It is not a departmental agreement.

**CHAIR**—I had gleaned the impression it was. You now say it was not; it is a document of another agency of the Australian government.

**Mr Richardson**—That is right.

**CHAIR**—And ministers are aware of it and they have been briefed on it and you have participated in those sessions in your career.

**Mr Richardson**—That is right.

**CHAIR**—Thank you. That has put a lot of flesh on the table and is very welcome.

**Senator TROOD**—I have one further question, which is about Afghanistan and the plight of Mr Langdon.

**Mr Richardson**—Mr Moriarty should come to the table for this.

**CHAIR**—You are much in demand, Mr Moriarty.

**Mr Moriarty**—It is a pleasure to serve.

**Senator TROOD**—It tests the proposition which was ventilated earlier in the hearings, I think, about the rising importance of consular matters. Can you give us an update on Mr Langdon's position, please.

**Mr Moriarty**—Certainly. As you are aware, Mr Langdon was detained on 4 June at Kabul International Airport on suspicion of murdering a co-worker and attempting to dispose of the man's remains. On 27 October his case was heard in the Primary Court and Mr Langdon was found guilty of murder and sentenced to death. Mr Langdon's lawyers immediately lodged an appeal to that verdict. A preliminary hearing of the appeal was heard at Kabul's appeals court on 13 January this year and then adjourned until 20 January. On 20 January the appeals court rejected Mr Langdon's appeal and upheld the guilty verdict and the death sentence handed down. Mr Langdon's lawyers have lodged an appeal to that verdict and that appeal will be heard by the Afghan Supreme Court. Our understanding is that that appeal could be heard in between two to five months.

**Senator TROOD**—Have Australian officials sat in on the proceedings with regard to Mr Langdon's case on all occasions?

**Mr Moriarty**—We certainly have provided Mr Langdon with extensive consular support, and including making 18 prison visits. I am not sure when was the last—

**Senator TROOD**—Do we have a consular agreement with Afghanistan which would facilitate access, as we have with China?

**Mr Moriarty**—No, we do not have a consular agreement with Afghanistan but the Afghan authorities have given us access. We have been able to meet Mr Langdon to talk to him, depending on the security circumstances. As you would be aware, it can be very difficult to travel around Afghanistan. But through our support to him we have been able to supply him with some necessities—reading material and messages from family in Australia. We have also recently facilitated access rights for some of Mr Langdon's friends and supporters who are in the area to visit him in prison and to deliver him supplies around about once a fortnight. So we have also been providing some updates to Mr Langdon's family.

**Senator TROOD**—Have we formed any view about the fairness of the proceedings under which Mr Langdon has been prosecuted?

**Mr Moriarty**—I think it would be very difficult to come to a judgment about another country's legal system other than that we understand from Mr Langdon that the procedure that has been followed is a fairly standard procedure in cases of this nature. We have, of course, been paying very close attention to it and have, on occasion, been able to discuss the case with him. Those consular visits in Afghanistan are not restricted in terms of the matters that we have been able to discuss and he is certainly hopeful that his appeals process will be successful.

**Senator TROOD**—He is facing the death penalty. Is that right?

**Mr Moriarty**—That is correct.

**Senator TROOD**—Has it been appropriate to make representations, or have any representations been made, about whether Mr Langdon, were he to be found guilty, would be able to avoid the death penalty?

**Mr Moriarty**—Certainly we have made a number of representations about that possibility, registering our strong views on the death sentence and the death penalty in general. Mr Smith has made representations, and so have our staff in Kabul.

**Senator TROOD**—What sort of response have we received from the Afghan authorities about that?

**Mr Moriarty**—I think it is fair to say that they are well and truly aware of our views.

**Senator TROOD**—I see. He has another process of appeal to go through, which is going to take place in the next couple of months. Once that appeal is exhausted does he have any further avenues of appeal, should the appeal not succeed?

**Mr Moriarty**—I am not exactly sure. I am just aware that while the judicial proceedings are ongoing that is what we have been concentrating on. I would have to take on notice what there might be beyond the appeal to the next court.

**Senator TROOD**—So you are not sure about that?

**Mr Moriarty**—I am not sure about that.

**Senator TROOD**—Have we been in contact with Mr Langdon's lawyers on a regular basis about the process? I presume they are Afghan lawyers, are they?

**Mr Moriarty**—Yes, he has a local lawyer. You might be aware that he has also been receiving some support from Australian legal representatives.

**Senator TROOD**—Did you say before that it was approximately two months?

**Mr Moriarty**—They are Afghan court proceedings. We understand it could be between two and five months, but I would not want to be held to precision on those timetables.

**Senator TROOD**—Thank you, Mr Moriarty. I do not have any further questions on that.

[8.02 pm]

**CHAIR**—Are there any further questions on South and West Asia, and the Middle East? No. In that case we will go to the Pacific.

**Senator TROOD**—I do not have any questions about the Pacific. I think Senator Kroger may have.

**CHAIR**—Senator Kroger, do you have any questions on the Pacific?

**Senator KROGER**—No, I do not.

[8.02 pm]

**CHAIR**—Then we will move on to international organisations and legal issues.

**Senator KROGER**—I want to ask about an international adoption matter. I understand that there was a suspension by the Rudd government last year in relation to Ethiopian adoptions and I believe that that was in response to Ethiopia asking for aid funds to be part of that deal. Can someone confirm whether that was the case?

**Mr Moraitis**—Senator, that is something for FaHCSIA. It is for another department; we do not deal with adoption matters in foreign affairs.

**Senator KROGER**—You do not deal with adoption?

**Mr Moraitis**—We are not familiar with this case at all.

**Senator KROGER**—So legal agreements between countries is for FaHCSIA not DFAT?

**Mr Moraitis**—Yes.

**CHAIR**—We now go to national security nuclear disarmament and non-proliferation

**Senator TROOD**—I have not finished with international.

**CHAIR**—I thought you said you had nothing.

**Senator TROOD**—No, I did not. I do not have anything about the Pacific.

**CHAIR**—Sorry. We are on international organisations and legal issues.

**Senator TROOD**—Yes. I want to ask some questions about whaling, please. Mr Moraitis, is that you?

**Mr Moraitis**—That is correct.

**Senator TROOD**—The Australian government has decided to initiate proceedings in the international court of justice in relation to Japanese whaling. Is that right?

**Mr Moraitis**—That is correct.

**Senator TROOD**—When was that decision announced?

**Mr Moraitis**—The decision was announced by ministers on 28 May—last Friday.

**Senator TROOD**—Have those proceedings been initiated as yet?

**Mr Moraitis**—Yes. The Australian government lodged its application in the International Court of Justice registrar's office in The Hague on Monday, 31 May—a few days ago.

**Senator TROOD**—We have begun these proceedings after focusing attention on the diplomatic route of trying to solve this problem, since the Rudd government came to office. Is that a fair statement?

**Mr Moraitis**—There has been a process of engaging diplomatically for several years now.



**Senator TROOD**—We have expended quite a lot of energy and diplomatic effort in relation to securing a diplomatic solution to the problem. Is that a fair statement?

**Mr Moraitis**—There has been considerable effort put into the work of pursuing our interests multilaterally, yes.

**Senator TROOD**—That includes the appointment of Mr Hollway as a special envoy.

**Mr Moraitis**—That is correct.

**Senator TROOD**—When was he appointed?

**Mr Moraitis**—Mr Hollway was appointed—

**Mr Wise**—5 October 2008 was his first contract.

**Mr Moraitis**—That is right.

**Senator TROOD**—Was he or anybody else engaged with that special envoy status prior to that?

**Mr Wise**—Not on whaling.

**Mr Richardson**—Neither he nor anyone else in respect of whaling.

**Senator TROOD**—Thank you. How much have we expended in relation to Mr Hollway's employment as special envoy?

**Mr Richardson**—In total over the two years: in 2008-09, contract payments totalled \$81,134, and he received other payments which were really in relation to travel and the like of \$80,186, for a total of \$161,320. In 2009-10, up until 11 May of this year, he received \$55,340 in contract payments and other payments of \$51,240, for a total of \$106,580. That totals just under \$268,000 over the two years and that includes both contract payments and other payments primarily associated with travel.

**Senator TROOD**—Are there any other costs associated with Mr Hollway's employment in relation to departmental matters? For example, was he assigned a member of staff?

**Mr Richardson**—No.

**Senator TROOD**—Did he have any premises?

**Mr Richardson**—No. As with a lot of special envoys, there are no real on-costs with him. He does come to Canberra obviously. He obviously uses facilities from time to time, but he does a lot of work in Sydney.

**Senator TROOD**—And he was employed specifically, as I understand it, to undertake diplomatic engagement on the government's behalf with regard to the issue of whaling.

**Mr Richardson**—Sorry?

**Senator TROOD**—He was employed specifically on behalf of the Australian government to pursue a solution to the problem of whaling in the southern oceans but more broadly to prosecute Australia's efforts to try to end international whaling; is that a fair summary of his brief?

**Mr Richardson**—His brief was to pursue the government's objective of ending whaling. The first priority there was a diplomatic solution. He was heavily involved in that.

**Senator TROOD**—I see. Did that involve him attending International Whaling Commission meetings?

**Mr Richardson**—It involved him attending international meetings but also visiting individual countries that play a big role in the IWC—obviously Japan, the United States, New Zealand and also other countries.

**Senator TROOD**—He undertook his duties, I assume, with some diligence?

**Mr Richardson**—Totally, yes.

**Senator TROOD**—Were there any other costs associated with this initiative apart from employing Mr Hollway?

**Mr Richardson**—I gave you DFAT's costs.

**Senator TROOD**—You gave me Mr Hollway's costs. Were there any other DFAT costs in relation to the whaling initiative?

**Mr Richardson**—There were people who travelled with him from time to time, but they were part of a delegation which he was leading. So arguably if you were pursuing a diplomatic solution you would have had those costs anyway.

**Senator TROOD**—Yes, I see. There was a provision of funding in the 2008-09 budget, I think, for this initiative of \$1.3 million. Is that correct?

**Mr Richardson**—That sounds about right.

**Ms Thorpe**—DFAT received \$0.275 million in 2008-09 at additional estimates for Mr Hollway's contract.

**Senator TROOD**—I am looking at a document here which is an answer provided by the department listing a figure of \$1.3 million as being an amount from financial year 2008-09 to 2012-13 for the joint new policy proposal with the Department of the Environment, Water, Heritage and the Arts in relation to this issue. Is that an additional cost?

**Ms Thorpe**—The figure I cited before was for the envoy. There was also funding we received for whaling more generally.

**Senator TROOD**—I assume whaling more generally is the prosecution of the same policy objectives; is that right?

**Ms Thorpe**—That is correct.

**Senator TROOD**—So we had \$1.3 million there and the \$268,000-odd for this Mr Hollway's costs. Is that an accurate statement?

**Ms Thorpe**—Yes.

**Senator TROOD**—I am trying to get an overall sense of the expenditure we have undertaken in this matter. So I am around about right?

**Mr Richardson**—Yes.

**Senator TROOD**—We have expended this funding. In answers to questions in estimates over a period of time officers of the department have continued to assure me and indeed others that the diplomatic solution has been the priority. Is that right?

**Mr Richardson**—Yes.

**Senator TROOD**—That has been the case. The possibility of legal action has always been there.

**Mr Richardson**—Yes.

**Senator TROOD**—But it was decided for some reason or other not to pursue it until a couple of days ago?

**Mr Richardson**—Yes.

**Senator TROOD**—We have assiduously pursued a diplomatic solution, as I understand it, and yet we have now reached a point—well, I assume we have reached this point—where we have decided that a diplomatic solution is not possible.

**Mr Richardson**—No. We have not reached the position that it is not possible; we have reached a position that we think it is unlikely. I am not splitting hairs there. We will remain engaged in the International Whaling Commission diplomatic process in an effort to drive a deal. While we believe the outcome of those negotiations is pretty slim, we are continuing to engage constructively in that diplomatic effort and we will remain engaged in the lead-up to and at the IWC meeting later this month in, I think, Morocco.

**Senator TROOD**—So we are now pursuing what might be regarded as a two-track policy? We are pursuing the legal track and we are continuing to pursue the diplomatic track.

**Mr Richardson**—Yes. We were pursuing solely a diplomatic track and we are now pursuing both. But we have reached the point where we think that the outcome on the diplomatic side is limited to the point where we needed to press the button on the legal action.

**Senator TROOD**—The meeting of the International Whaling Commission takes place in two or three weeks time.

**Mr Richardson**—From memory, it is around 21 June.

**Senator TROOD**—So three weeks out, more or less. As I understand it, there is a possible solution to whaling that will be on the table at that meeting. Is that right?

**Mr Moraitis**—There is a compromised text that is being developed by the chairman of the IWC, Cristian Maquieira, as a result of a process of intersessional meetings that have taken place over the last several months. I would not regard it as a possible solution. It is a compromise proposal, which, as the secretary said, in our view does not lead to the conclusion that our interests will be reflected in that.

**Senator TROOD**—So there is a compromise proposal on the table.

**Mr Moraitis**—It is a chairman's draft of his attempt to provide a compromise.

**Senator TROOD**—What authority does that have?

**Mr Moraitis**—The authority of a chairman's draft. Obviously the processes of negotiation in the various subgroups that have been taking place for several months now, without betraying details, really have not come to a modus vivendi between parties with opposing views, and the chairman, as chairman, has the right to put forward a proposal in the lead-up to the IWC for parties to consider.

**Senator TROOD**—But I assume it represents a view on the part of the chairman from wide consultation amongst the members of the commission and as a result of strenuous efforts to try to reach what has been a very divisive issue within the commission and that it is put forward with some hope—if not necessarily expectation—that it might find favour with the commission. Is that a fair statement?

**Mr Moraitis**—I would certainly acknowledge the real efforts of the chairman to come up with—

**Senator TROOD**—So you acknowledge that he has been extraordinarily diligent in trying to secure a—

**Mr Moraitis**—And we as a delegation have been trying to support the chairman's efforts. We have never had a problem with the efforts of the chairman to do the best he can in the circumstances.

**Senator TROOD**—The chairman's energies and commitment to this enterprise are not in doubt, but it is not something that has been thrown together over the last couple of days because the meeting is coming up.

**Mr Moraitis**—No.

**Senator TROOD**—It is a compromise solution, in the chairman's view, which has been secured after comprehensive and widespread consultation with the members of the commission that have a particular interest in this issue. Is that fair?

**Mr Moraitis**—With some members of the commission, yes. With pro-conservation countries and pro-whaling countries.

**Senator TROOD**—So he has consulted widely amongst those members of the commission?

**Mr Moraitis**—He has consulted with members. There have been a series of meetings, as I have said, and he presented a compromise proposal on 22 April.

**Senator TROOD**—Is this the first occasion that there has been a chairman's proposal or suggestion on the table, or anything approaching a possible accord on this issue?

**Mr Moraitis**—That is my understanding, yes.

**Senator TROOD**—In all the time the Rudd government has been in office, this is the first occasion, as a result of the efforts of the commission, that we have something on the table that looks as though it addresses the problem of international whaling. It may not address Australia's immediate concerns but, at least for some members of the commission, it represents something of a compromise which some of them at least might be able to accommodate. Is that correct?

**Mr Moraitis**—Certainly after a process that has been initiated for under a year, the chairman through a series of negotiations has tried to come up with what he thinks is a way forward to present to parties.

**Senator TROOD**—It has not been easy to get here, I assume.

**Mr Moraitis**—No, it has not been easy.

**Senator TROOD**—In fact, it has not been easy to get to this point, where there is something on the table.

**Mr Moraitis**—That is true. It is a difficult process because there are such disparate views around the process.

**Senator TROOD**—There are disparate views. Not only are there disparate views; there are strongly held views on this matter amongst the members of the commission who are opposed to whaling and the three or so countries that actually undertake whaling of various kinds.

**Mr Moraitis**—Correct.

**Senator TROOD**—This has been a deeply divisive issue. Would I be fair in saying that over a period of time the International Whaling Commission has been on the verge of becoming dysfunctional as a result of these differences? I know meetings have continued to take place but the effectiveness of the commission has been questioned as a result of the inability to solve this problem.

**Mr Moraitis**—Yes. There have been efforts in the past to try to resolve some pretty longstanding issues.

**Senator TROOD**—So this has been a longstanding problem. We have got to the point where ahead of the meeting in three weeks time we have something on the table for the first time and yet the Australian government has decided that this is the occasion to institute court proceedings against one of the chief protagonists of whaling. Is that a fair characterisation of what has happened?

**Mr Moraitis**—A fair characterisation would be that the compromise proposal that exists from the chairman, Mr Maquieira, in the lead-up to the IWC does not in our view represent a way forward for the key issue that we are pursuing, which is the end of whaling in the southern oceans.

**Senator TROOD**—You say, ‘It does not in our view represent a way forward’, but we do not expect—or do we—to get our own way in this matter?

**Mr Moraitis**—Experts have looked at the report and we have, in the course of these meetings, put forward our own proposal.

**Senator TROOD**—We anticipate the necessity to compromise if we are going to find a solution to this matter. Is that right?

**Mr Moraitis**—In some areas, perhaps, but in some key areas there are some key provisions and objectives that we wish to achieve.

**Senator TROOD**—But it is impossible to conceive of an international solution to this problem unless all parties, including Australia, are willing to undertake compromise.

**Mr Moraitis**—I understand that. If I may also say, in this context: we have a compromise proposal from the chairman but the reality is that many whaling countries have not really engaged as much as we would have liked in the context of that process.

**Senator TROOD**—That may be, but we are dealing with the reality of those countries that have engaged in the process and it would not be the first time that members of international organisations have chosen not to invest themselves in an issue which is before the

commission or before the organisation, would it? Do we have any friends of this proposal—this compromise—that we are advancing?

**Mr Moraitis**—If I may so, yes, there are many countries that share many of our views on this issue. There are many countries that have expressed the view since Chairman Maquieira presented his so-called compromise proposal. These countries have a view that it does not really represent a compromise they could accept at this stage.

**Senator TROOD**—Is it fair to say that Australia is isolated in its position with regard to legal proceedings?

**Mr Moraitis**—I would not say ‘isolated’. Certainly Australia is the only country to date which has submitted an application to the ICJ.

**Senator TROOD**—Have any other countries indicated to us that they are happy and intending to join us in the proceedings?

**Mr Moraitis**—I would not like to speculate about the views other countries convey to us. We have certainly discussed this point with many countries in the lead-up to the decision, and they are all aware of our views.

**Senator TROOD**—Don’t mention names but tell me whether or not any other countries have indicated they are contemplating supporting, or have indicated they will support, our international court proceedings.

**Mr Moraitis**—Do you mean as parties to the case?

**Senator TROOD**—Not that I am aware.

**Mr Richardson**—I can add that there are some members of the EU, the Buenos Aires group of Latin American countries and others that have joined us in stressing the necessity of phasing out whaling entirely in the Southern Ocean sanctuary. As Chris has said, there are countries that are on our wavelength. We are not isolated.

**Senator TROOD**—But so far there are no countries on our wavelength to the point where they are prepared to support our legal proceedings?

**Mr Moraitis**—We have decided to proceed on the legal basis because we have a strong view about whaling in the southern oceans.

**Senator TROOD**—I can understand the compulsion behind it, but it is also true, isn’t it, that the United States, one of our usual allies in this matter, does not share the wisdom of our view to take this course. Is that accurate?

**Mr Richardson**—We sometimes have a different wisdom from our allies.

**Senator TROOD**—I should hope so. But, on this occasion, this is a difference of wisdom—is that right?

**Mr Richardson**—Yes, that is right.

**Senator TROOD**—As recently as a few days ago, Ms Medina, on behalf of the United States, said the United States is ‘committed to the diplomatic process because we want to save whales now, not take a chance on a favourable outcome in litigation that will take several years to conclude’. That suggests to me that the United States has taken the view that the

chairman's draft, which will be before the International Whaling Commission in a few weeks time, may have some chance of securing widespread support.

**Mr Richardson**—As mentioned before, we will continue to remain involved in the diplomatic process. We hope we can get there but we think it looks pretty slim. But if we can that will be terrific.

**Senator TROOD**—But we have really given up on the diplomatic process, haven't we?

**Mr Richardson**—No—no way.

**Senator TROOD**—Is our diplomatic cause likely to be advanced, in your view, by undertaking international legal proceedings against Japan?

**Mr Richardson**—It certainly does not prevent the continuation of the process, and that is clear from what others say. The meeting on 21-22 June will go ahead and we are engaged.

**Senator TROOD**—Did you take this course because you thought it might be a way of bringing the Japanese to the table?

**Mr Richardson**—No, we have not taken a tactical decision in that sense and if we had then of course it would be foolish of me to say so publicly.

**Senator TROOD**—It would. Have we taken this course because the Rudd government now thinks it is time to honour its pre-election promise prior to the 2007 election?

**Mr Richardson**—No. I believe the decision has been taken because a view was reached that we very much doubted whether the diplomatic process would reach the end point which we wanted.

**Senator TROOD**—My problem is this: for almost three years the Rudd government has been pursuing this diplomatic course and, right now, we are three weeks away from the best deal that has ever been on the table in relation to this. It may not immediately accommodate Australia's interests, but there is something on the table for the first time in three years. And at precisely the time there is a deal on the table—which may not represent everything, but you have told me we have to compromise on these things—we have decided that we are not close to a diplomatic solution and that we are going to take a course which we have hitherto resisted. I am struggling to understand the logic of this process. For three years we have been further away from a solution than we are now and we are, possibly, within weeks of a solution and we have decided to chuck away all the diplomatic effort, all the money we have spent on the subject—a couple of million dollars—and take a course which could well, if it is ever concluded, end up leading to precisely the wrong solution.

**Mr Richardson**—In fact, we have put in two to three years of very hard effort, seeking to get there.

**Senator TROOD**—Precisely. Why wouldn't we, in those circumstances, not wait out the next three weeks, since we have waited three years, to see whether or not our hopes with regard to this matter will be fulfilled and perhaps then decide whether proceedings are appropriate?

**Mr Richardson**—We have put in a big effort.

**Senator TROOD**—I understand that.

**Mr Richardson**—Unfortunately, we have come to the view that the prospects are sufficiently slim that we should press the button.

**Senator TROOD**—Are we trying to hold the IWC to ransom?

**Mr Richardson**—No.

**Senator TROOD**—My point remains: why are we not prepared to wait out the next three weeks, continue to work for a diplomatic solution, as we have done for three years, and then work through the next meeting of the commission to see what the result is. We have put in all of this effort, energy and indeed all of the \$2 million of taxpayers' money plus, no doubt, other funds not identified; why would we not await the results of those proceedings?

**Mr Richardson**—We continue to be engaged in those proceedings. We simply consider the odds have got too long.

**Senator TROOD**—You are an experienced diplomat. Would it not be worth waiting the next three weeks to see what we can get out of them, use that time, and send Mr Hollway off again to try to tweak the solution that is on the table that may come round to something closer to that which we want. Why not speak to our friends who share our views—and you have testified to the fact that there are some of those—in the hope that in the next three weeks we may be able to get to the point which we have been seeking to secure for three years?

**Mr Richardson**—Mr Hollway will be doing that.

**Senator TROOD**—Why would he not do that without holding over the head of the Japanese the determination to drag them before the International Court of Justice and incur their displeasure by taking this course of action? I think a spokesman for the Japanese government has said, 'This is a most regrettable action.'

**Mr Richardson**—Yes, and we are prepared to have a disagreement with the Japanese on this particular issue. We believe we can have that difference within the framework of what is overwhelmingly a very strong and very close relationship.

**Senator TROOD**—But it does not help the relationship, does it, to take a friend to court?

**Mr Richardson**—We think we are both committed enough to the broader dimensions of the relationship not to allow it to be held hostage to this particular court case.

**Senator TROOD**—I am sure that is our hope, and perhaps it is even a reasonable expectation, but it does not advance the cause of Australian-Japanese bilateral relations to take the Japanese government to the international court, does it?

**Mr Richardson**—We have a difference on whaling, and if we have to pursue that difference in the ICJ then that is how we will do it.

**Senator TROOD**—The relationship would be stronger, with fewer irritants, if we had decided not to take the Japanese government to the international court.

**Mr Richardson**—The Minister for Defence and the Minister for Foreign Affairs were in Tokyo just over the last couple of weeks having the two-plus-two talks with their Japanese counterparts. We continue to take part in the trilateral strategic dialogue involving the United States, Japan and Australia, and all the other aspects of the relationship proceed on track. They are mature enough and we are mature enough to have this difference and to go to court.



**Senator TROOD**—We have all of these linkages, these institutional contacts with the Japanese—and I do not doubt that many of them continue—but in pursuing those institutional contacts what is the virtue of irritating the Japanese government when we may have a chance within three weeks time of securing some kind of compromise on an issue we have been pursuing for three years?

**Mr Richardson**—If that chance is there we will take it, but we doubt it, so we have pressed the button.

**Senator TROOD**—You have said that, but the logic of that eludes me completely, I have to say.

**Senator FORSHAW**—I was just going to say—

**Senator TROOD**—I have not finished this, by the way, Senator Forshaw, but I am happy for you to intervene.

**Senator FORSHAW**—I was just listening to your questions and the responses. It occurred to me that we are involved in forums, but particularly the WTO, where other countries that are very close friends have taken action in that tribunal, if I can call it that, over certain trade policy issues or quarantine issues. It seems to me that in those circumstances nobody necessarily suggests that the diplomatic relationship, the longstanding relationships with those countries, is going to disappear.

**Mr Richardson**—That is right.

**Senator TROOD**—We do that, though, in the context of a WTO for which there is a dispute resolution procedure which is well established, do we not?

**Mr Richardson**—Yes, and the ICJ is well established too. We have been to the ICJ previously.

**Senator FORSHAW**—We continue to negotiate with those countries.

**Senator TROOD**—That is true, but we are talking about a different order of activity here. We are talking about international legal proceedings, which is not the same as dispute resolution procedures within the context of the WTO—

**CHAIR**—Apple growers think it is.

**Senator TROOD**—No, we are talking about—

**Senator FORSHAW**—The results we are talking about are binding—

**Senator TROOD**—Let me proceed with this.

**Senator FORSHAW**—The decisions of the WTO are very binding when the final decisions come down.

**Senator TROOD**—Of course, but they are part of a regime of dispute resolution which is well established within the context of the WTO.

**CHAIR**—So is the regime Mr Richardson has been outlining. It is identical in principle.

**Senator TROOD**—I disagree with you, Chairman, but let me proceed.

**CHAIR**—When negotiations fail, you go to—

**Senator TROOD**—Let me proceed, will you?

**CHAIR**—Have you got a new point to make or the same one again for the ninth time?

**Senator TROOD**—I am glad you have appreciated the force of it.

**CHAIR**—It is the same point eight times in a row. Can you get a bit more spin on it?

**Senator TROOD**—Perhaps you will let me. I will try that.

**CHAIR**—No. 9—let's see if it can be different—

**Senator TROOD**—Let me proceed with my questions if I may. These proceedings have been instituted. Is it the intention of the government to seek provisional measures under the court's provision in relation to these proceedings?

**Mr Moraitis**—Senator, because proceedings have been initiated, I do not want to discuss legal strategy or tactics in an open forum.

**Senator TROOD**—That is fine. Explain to me, Mr Moraitis, the process here. Let me share with you my understanding of the process and you can tell me whether I have misunderstood it. The Australian government has initiated proceedings and we now have time in which to articulate our proceedings within something the equivalent of a statement of claim and we have a year to do that. Is that correct?

**Mr Moraitis**—My understanding is that we have initiated proceedings by submitting to the registrar of the courts an application. We have also deposited our instruments of appointment of agents, which is I guess the equivalent of having a solicitor as such. Then we are waiting for the registrar to set some meetings with the agents of both countries, waiting obviously for the other party's response, and also waiting for them to set some timetables. We are obviously in the very early stages. It is 48 hours since it happened.

**Senator TROOD**—There is no question, is there, of the Japanese submitting to the jurisdiction of the court?

**Mr Moraitis**—Japan and Australia have both submitted to the jurisdiction of the court by pre-existing agreement.

**Senator TROOD**—That is what I am saying. There is no question about that issue, is there?

**Mr Moraitis**—Of course; that is given.

**Senator TROETH**—There could be an issue for some countries, but this is not an issue in this particular instance; is that right?

**Mr Moraitis**—Correct.

**Senator TROOD**—The Japanese government has submitted to the jurisdiction of the court. Once these preliminary matters have been concluded, I think I am right in saying that the Australian government has a year to—

**Mr Moraitis**—I am not exactly sure of the dates, the timetable. I could take that on notice from my legal colleagues. As I said, the registrar will set a timetable for receiving so-called written pleadings. As you say, statement of claim is the equivalent—

**Senator TROOD**—Correct me if I am wrong, but do we have a year for the written proceeding—for the pleadings to be lodged?

**Mr Moraitis**—I would have to take that on notice as to the exact dates.

**Senator TROOD**—There is a colleague behind you who is desperate to say something.

**Mr Moraitis**—Our acting senior legal adviser will have the details of the ICJ processes far better than I can, Senator.

**Dr French**—There are no hard and fast rules about the timing with respect to litigation before the ICJ. As Mr Moraitis has already said, the application has been filed with the court. The registrar is in the process of organising a meeting, which would be between the respective agents with the court, to work out a fuller timetable, the first step of which would be submission of Australia's memorial, as we call the written pleadings, and the time allowed for that would be dependent upon negotiation. Certainly it is not yet clear what that timetable will be. It could be a year, it could be less or it could be more. In that context, once our memorial is lodged, then the Japanese would have a negotiated period within which to submit their memorial in response to our memorial. Then, depending upon the content of the memorial from Japan, Australia would have the option of seeking to submit additional written pleadings, which Japan also would have the option of responding to, after which oral pleadings would be heard by the court. That being said, if there were agreement between both parties, oral pleadings could commence after the submission of both memorials without any additional responding written pleadings.

**Senator TROOD**—Thank you for that, Dr French. You are essentially saying that the proceedings can go forward by agreement but there are broad guidelines as to how long the parties have to file their proceedings. Is that right?

**Dr French**—Yes.

**Senator TROOD**—And a year for the memorial is not unusual—or at least that is the outer limit, anyway.

**Dr French**—That would certainly be within the rough time frame, but the precise time frame will be subject to discussion and agreement between the parties.

**Senator TROOD**—How long does it typically take for a case to get on in the ICJ?

**Dr French**—A number of years would be normal.

**Senator TROOD**—So we are not going to have a quick legal solution to our proceedings—is that fair enough?

**Dr French**—International litigation is never quick.

**Senator TROOD**—So it could take years, could it not?

**Dr French**—For a final ruling in the court, yes.

**Senator TROOD**—So we are looking at a period of years, in all likelihood.

**Dr French**—For the final decision, yes.

**Senator TROOD**—I am not sure if it was the last occasion we took a country to the international court, but there was the case with France in relation to nuclear testing. Was that the last occasion we took someone to the international court?

**Dr French**—Where we initiated proceedings?

**Senator TROOD**—Yes.

**Dr French**—Yes.

**Senator TROOD**—And that took a couple of years, didn't it?

**Dr French**—I would have to take on notice the precise duration.

**Mr Richardson**—It did take a long time.

**Senator TROOD**—And this is going to take a long time, isn't it?

**Dr French**—For the final decision, yes.

**Senator Conroy**—The answer is yes.

**Senator TROOD**—We could get a judgment in our favour; it is a possibility. Is that right?

**Senator Conroy**—You could win, you could lose or you could draw, as they say in the classics.

**Senator TROOD**—That is a very incisive observation, Minister.

**Senator Conroy**—It is such an incisive question; it deserves such an incisive answer.

**Senator TROOD**—Thank you. It deserved and received the response that incisive questions receive. So we have proceedings which will take several years and we could get a judgment in our favour. The court does not enforce the judgment, does it?

**Dr French**—It is up to the parties, who of course are bound by international law to respect the judgment.

**Senator TROOD**—But there is no mechanism in international law to force the parties to implement the judgment.

**Dr French**—In this context, as Australia and Japan have expressly accepted the compulsory jurisdiction of the ICJ under article 36, paragraph 2 of the statute of the ICJ, we would certainly—and we would expect Japan also—to respect and fully implement the decision of the court.

**Senator TROOD**—We would indeed expect Japan to abide by the result of the proceedings, and Japan similarly would expect that, but it is not unusual in international legal proceedings of this kind for a party, where it receives a judgment against its interests, not to act upon it, is it?

**Dr French**—With respect to proceedings before the ICJ, I can certainly say with respect to Australia that of course we fulfil solemnly the undertakings that we have entered into.

**Senator TROOD**—I am pleased to hear that, because I am glad to know that we are responsible international actors, but it is not necessarily the case with all countries that are in proceedings before the international court.

**Dr French**—In this context, and certainly in Australia's view, it is incumbent upon states to implement fully and in good faith the obligations that they have entered into.

**Senator TROOD**—I see. Dr French, are you a lawyer?

**Dr French**—Yes.

**Senator TROOD**—So you have some familiarity with international law, obviously. Are you familiar with Professor Malcolm Shaw's book on international law?

**Dr French**—In general terms.

**Senator TROOD**—As long as you are aware of the volume. He says in the fifth edition his book, from 2003, 'The record of compliance with judgments is only marginally satisfactory.' Would you agree with that?

**Dr French**—That is an opinion.

**Senator TROOD**—Yes, but I think it is the result of reasonably diligent research by a well respected international lawyer.

**Dr French**—I think it would be appropriate to disaggregate decisions. Depending on the particular context, there are a range of issues. If we look, for example, at issues in relation to boundaries, you could come to certain statistics; with respect to other substantive issues you could come to other results. I simply reiterate Australia's view, and we are very confident that Japan shares that assessment, of the requirement to implement in good faith and fully decisions of the umpire as set out under the obligations in the statute of the International Court of Justice.

**Senator TROOD**—Have the Japanese government communicated to us that, if the judgement of the court is in our favour, they will be prepared to abide by the decision of the court?

**Dr French**—Australia as a responsible member of the international community has accepted the obligations inherent in our acceptance under article 36 of the statute to undertake to fulfil decisions of the court with respect to the compulsory jurisdiction of the court. Japan has accepted the jurisdiction of the court with respect to matters of this kind, as we have, and we are both bound under the principles of customary international law and the Vienna Convention on the Law of Treaties by the principle of *pacta sunt servanda*—that is, agreements shall be implemented in good faith.

**Senator TROOD**—What you are telling me is that Australia is a good international legal citizen and seeks to abide by its international legal obligations—

**Dr French**—And that is our assessment of Japan as well.

**Senator TROOD**—and that you hope that Japan will do similarly. But you will agree with me, I think, that the international legal system is somewhat imperfect and with Professor Shaw's judgement, 'The record of compliance with judgments is only marginally satisfactory.'

**Dr French**—There are a broad range of views as to the degree of compliance with international law. Equally, going back to my university days, it can be argued that compliance,

generally speaking, with international legal norms is at least as good as compliance with, for example, domestic criminal norms, given that many crimes are never—

**Senator TROOD**—But we are not in the classroom now, Dr French. We are playing international politics, where countries' national interests are at stake and where the Japanese government has a very obvious, direct and well-articulated interest in continuing to pursue international scientific whaling. It may be that you are right and that the Japanese government will be diligent and conscientious and as much of a good international legal citizen as you would hope they would be. But it is not by any means a confident assertion that you can make, is it?

**Dr French**—As I said before, we will implement in full and in good faith our international legal obligations and we certainly expect and anticipate that Japan will do likewise.

**Senator TROOD**—The more I pressure you on this, the more you sound like a lawyer, Dr French, and are unable to give a direct answer to the question. I think the reality of—

**Mr Richardson**—Senator, of course, he is a lawyer—and a very fine lawyer.

**Senator Conroy**—I am just assuming that was a compliment, coming from you, Senator Trood!

**Senator TROOD**—I do not wish to impugn his legal—in fact, I think I was complimenting him in my observations.

**Senator FORSHAW**—You think!

**Senator TROOD**—I think I was complimenting him.

**Senator FORSHAW**—Now, that sounds like a lawyer's comment!

**Senator TROOD**—I think I was complimenting him.

**Senator Conroy**—Well, flattery will get you everywhere!

**Senator TROOD**—On occasions, as you well know, Senator Conroy. So we have got a situation here where we cannot be confident about the outcome of our proceedings, can we? This is evidence we have received previously before this committee. One of the reasons why we have not previously taken this course is because we cannot be confident that the outcome will be of a kind that we would wish it to be.

**Mr Richardson**—There are no guarantees in any legal proceeding.

**Senator Conroy**—You can win, you can lose or you can draw.

**Mr Richardson**—It is not a question of being confident or unconfident. Clearly we would not be going to the ICJ, Senator, unless we believed we had a credible, strong, arguable case. We believe our case is a good one, which is why we have been prepared to press the button.

**Senator TROOD**—I would hope that we believe that our case is a good one, since we are going to expend all this energy on pursuing it. Apparently we are determined to do that. But we cannot be sure of the outcome, as we have said, and we are undertaking it—I think this is the 10th time I have made the point that we are doing it at a time when we actually have a solution at hand. I will conclude my questioning on this issue: do we have any funds set aside to undertake these proceedings?

**Ms Thorpe**—In the recent budget some provision has been made for funding for this.

**Senator TROOD**—How much is that?

**Ms Thorpe**—I am not sure at the moment, Senator. I think we are working through it at the moment, but funding has been put aside. This will be sorted out and I think you will find in the next budget process that it will become clearer. But at the moment the funding has been set aside and it will be sorted through.

**Senator TROOD**—Have funds been set aside in this budget?

**Ms Thorpe**—Yes, in this budget.

**Senator TROOD**—Are they DFAT funds?

**Ms Thorpe**—No, at the moment they are just being set aside. In any budget—and it is done in all budgets—there is funding put aside for various contingency-type, reserve-type activities, and funding will be made available from that source once it is sorted through.

**Senator TROOD**—But it is going to cost us more money than that which has already been dedicated to this task. Is that right?

**Ms Thorpe**—There will be additional costs.

**Senator TROOD**—Have you been able to quantify those costs as yet?

**Ms Thorpe**—I think we are working through it.

**Senator TROOD**—Have you any idea what the likely costs might be of the international proceedings?

**Ms Thorpe**—Not at this stage, no.

**Senator TROOD**—Do we have any precedents on which we can make a judgment of the likely costs?

**Ms Thorpe**—I do not believe so, Senator. We have had other court cases, but this will be costed on its particular case at hand.

**Senator TROOD**—I see. Is it likely to be tens of thousands, or are we likely to be in the range of millions?

**Ms Thorpe**—I am really not sure, Senator. There are a number of agencies involved; it is not just us, obviously.

**Senator TROOD**—We have to hire lawyers, presumably, and the like?

**Ms Thorpe**—I presume so.

**Senator Conroy**—You're not touting, are you?

**Senator TROOD**—No, I am certainly not doing that, Senator Conroy.

**Senator Conroy**—I thought that was against the ethics of your profession, so I am pleased to hear it.

**Senator TROOD**—It is not my profession any longer. So funds will be set aside, and they are yet to be quantified, but there is an additional amount of money beyond the \$1.3 million and the money that we have paid Mr Holloway, et cetera, to undertake this course.

**Ms Thorpe**—I am not necessarily saying Mr Holloway, but there will be the legal costs, yes.

**Senator TROOD**—What I am saying is: in addition to the funds that we have already devoted to this matter—

**Ms Thorpe**—That is true, yes.

**Senator TROOD**—the \$1.3 million, the more than a quarter of a million dollars we have spent on Mr Holloway's expenses, other numerous expenses wherever they may have fallen in the system. There will be additional expenses involved in taking this particular course. Is that right?

**Ms Thorpe**—That is correct.

**Senator TROOD**—I see. Which will be a costs about which we have no certainty.

**Ms Thorpe**—We are still working it through.

**Senator TROOD**—But the outcome is uncertain. I do not think I have any further questions on whaling.

**Senator FORSHAW**—I have a couple. There is an article in today's *Canberra Times* by a Michael McCarthy. Has anyone read that article? It is called 'Worth wailing about'. The opening paragraph of the article says:

The 24-year-old moratorium on commercial whaling, one of the world's major environmental achievements, is in danger of being abandoned at the meeting of the International Whaling Commission (IWC) which began this week in Morocco.

A proposed new deal, which stands a realistic chance of being passed at the conference in Agadir, would allow the three countries which have continued killing the great whales in defiance of the ban—Japan, Norway and Iceland—to recommence whaling legally in return for bringing down their catches.

One of the points that is made in this article is that the EU member countries may not be able to vote individually because it is suggested, apparently, that they have to have a bloc position. If you have not read the article, it is probably hard to ask you to comment on it. If I am representing the article accurately, which I think I am, it suggests that the moratorium is in danger of being abandoned, and one reason particularly is that the votes will not be there to stop this proposal from getting up. It says here:

European Commission lawyers have said that the EU must vote by consensus in the IWC, and if consensus cannot be achieved, the 25 EU member states—who form a substantial voting bloc in the 88-member IWC—must abstain.

**Mr Moraitis**—That is correct. Generally the EU try to vote as a bloc. They try to get to a common position if they can.

**Senator FORSHAW**—I must say that the final paragraph says:

The issue is still being negotiated between European Commission lawyers and member states, including Britain.

But I thought I would bring that to your notice. As I said, you are probably not able to comment, but is anybody aware of this proposition?

**Mr Moraitis**—Of the moratorium or the—



**Senator FORSHAW**—That the moratorium may be overturned, yes—

**Mr Moraitis**—Yes, that is the crux of the matter—

**Senator FORSHAW**—but on the basis that a substantial number of countries may be required to abstain.

**Mr Moraitis**—With 88 members, every vote will count in the lead-up to Agadir, and obviously the EU as a bloc is an issue.

**Senator FORSHAW**—But is that correct? Is the assertion correct, as far as we understand, that if the EU countries do not have a consensus then there is a requirement that they abstain from voting?

**Mr Moraitis**—That is not our understanding, but I can confirm that.

**Senator FORSHAW**—All right.

**Mr Richardson**—Mr Chairman—

**CHAIR**—Yes, Mr Richardson?

**Mr Richardson**—with your indulgence: a question was raised about Australia and Japan, and I think this is useful just to put on the record. At his press conference with Minister Garrett on 28 May, the minister in fact talked about Australia and Japan. He said:

In Japan I—

that is, Minister Smith, when he was in Japan for the 2+2 meeting I referred to—

also undertook to Foreign Minister Okada that if the Government decided to initiate legal proceedings that I would advise him of that in advance of the publication or the announcement of our decision. I did that last night and we again resolved our commitment that despite this matter now effectively being legally arbitrated, we would not allow it to disturb the comprehensive nature of our relationship.

Thank you.

**CHAIR**—Thank you for doing that, Mr Richardson.

#### **Proceedings suspended from 9.03 pm to 9.26 pm**

**CHAIR**—We will reconvene this meeting of budget estimates of the Senate Foreign Affairs, Defence and Trade Legislation Committee. Are we still on international organisations and legal issues?

**Senator TROOD**—I think we are.

**CHAIR**—Who is going to talk?

**Senator TROOD**—I think Senator Ludlam.

**CHAIR**—Senator Ludlam has a few issues on nuclear disarmament. It says on my list ‘nuclear nonproliferation’.

**Senator TROOD**—I thought he might have some whale issues.

**CHAIR**—It is not on his list, and I have his list here. Are we done with that?

**Senator TROOD**—I have a couple of questions about the APc—the Asia-Pacific community idea.

**CHAIR**—Okay.

**Senator TROOD**—Who is taking questions on the Asia-Pacific community?

**Mr Wise**—Chair, while we are waiting, can I respond to a question that Senator Ludlam asked earlier today about the size of our embassy in Tel Aviv.

**CHAIR**—Yes.

**Mr Wise**—We have 21 A based and locally engaged staff at our embassy in Tel Aviv.

**CHAIR**—Thank you.

**Mr Richardson**—The relevant division head has left for the evening but I am happy to take the questions on the APc to the extent that I can.

**Senator TROOD**—Thank you, Secretary. I wonder whether you can give us an update on the point that we have reached on the APc proposal.

**Mr Richardson**—Basically, we have a situation where ASEAN leaders have met. They have taken a formal decision to encourage greater engagement in the region via the United States and Russia. Two proposals are being openly talked about. One is what is called an ASEAN+8 proposal. At the moment there is an ASEAN+6 meeting—that is, ASEAN plus China, Japan, Korea, India, Australia and New Zealand, and the plus 8 would then involve the United States and Russia. There is also open discussion about an expanded East Asia Summit, which would be the existing members plus the United States and Russia. So we now have a situation where there is a lot of open discussion with ASEAN centrality around the concept of what the Prime Minister opened the discussion on in mid-2008.

**Senator TROOD**—What is the anticipated progress of resolving these competing proposals?

**Mr Richardson**—It will really be determined by the ASEANs. We think both proposals have merit and we are happy to see ASEAN reach a consensus around either of those options which they themselves have developed.

**Senator TROOD**—This has always been the case, hasn't it? Hasn't it always been the case with regard to issues of Asia-Pacific integration and community building and the framework of regional architecture in Asia-Pacific, that ASEAN has always wished to be in the driving seat?

**Mr Richardson**—I think that is a reasonable characterisation.

**Senator TROOD**—Nothing that we could have proposed or done would have succeeded without recognising that reality.

**Mr Richardson**—I think it is also fair to say that without the initiative taken by the Prime Minister in mid-2008, we might not be at this point. He opened the discussion and, as you know, Richard Woolcott was engaged as the special envoy. He has done a terrific job. It has now got to this point, which is a tremendous advance. I think most sceptics a few years ago would not have considered we would have been at the point we are today.

**Senator TROOD**—Perhaps not, but my observation of the region is that there has been, over a decade, if not a furious, then at least an enthusiastic debate about regionalism and new

forms of cooperation around the region. I must say it is not obvious to me that the Prime Minister's initiative has necessarily galvanised any of those ideas. Can you tell me whether or not Mr Woolcott has any further and continuing duties in relation to this matter?

**Mr Richardson**—His contract is now formally finished but he continues to be engaged on a needs basis, and is paid on a needs basis. His contract period is now over.

**Senator TROOD**—Can you tell me the total cost of engaging Mr Woolcott's services over the time that he has been engaged in this activity?

**Mr Richardson**—In 2008-09 he received contract payments of \$125,682 and other payments—primarily associated with travel—of \$281,893. So total payments in 2008-09 were of \$407,575. As of 11 May 2010—that is, for the 2009-10 period—contract payments were \$68,182 and other payments of \$18,891: total payments in 2009-10 of \$87,073.

**Senator TROOD**—Do you have the other costs associated with the initiative? Is there a figure?

**Mr Richardson**—No, I do not. There were costs associated with the conference, which was in Sydney in December. Most other costs were absorbed in the department. The two big costs were the special envoy himself. The total conference cost in December was \$913,532. Of that, the department provided \$850,908 and AusAID provided \$62,625 for airfares and accommodation for 16 delegates from Cambodia, Laos, Vietnam and Burma through its international seminar support scheme.

**Senator TROOD**—What payments are being made to Mr Woolcott on an as needs basis? What is his rate of payment?

**Mr Richardson**—None at the moment.

**Senator TROOD**—Does he have a scale of payment?

**Mr Richardson**—The scale of payment will be the same as what the scale of payment was before. From memory, it was around \$1,650 a day. That is fairly standard consultant contract payment for someone of his background and standing.

**Senator TROOD**—There are no plans for the moment to re-engage his services?

**Mr Richardson**—Not on a full-time contract.

**Senator TROOD**—Are there forthcoming events for which it is planned to engage him?

**Mr Richardson**—None currently planned at this point.

**Senator TROOD**—You have outlined two proposals; is it clear at this stage whether the regional actors have a preference for one or the other?

**Mr Richardson**—No. Different actors have different preferences.

**Senator TROOD**—Would it be true to say that Mr Rudd's original proposals have essentially found no friends in the region?

**Mr Richardson**—As I read the core of his proposal in mid 2008, it was to open up a discussion for the creation of a forum which would bring together the United States, Japan, China, India and some other countries in a single forum which could discuss political,

economic and strategic issues. Two years later the core of that is very much where we are now at.

**Senator TROOD**—Does either or both of these proposals envisage a downgrading of the APEC forum? Is it a necessary consequence of either of those courses being selected that the key element of APEC, the annual summit, might disappear from the agenda of the region?

**Mr Richardson**—That is not the intention.

**Senator TROOD**—Is it conceivable that the United States could be engaged in one or either of these new forums if it is still expected and anticipated that an American president will be engaged in two summits on an annual basis?

**Mr Richardson**—Yes, that is feasible, depending upon the logistical arrangements.

**Senator TROOD**—I do not have any further questions on this.

[9.40 pm]

**CHAIR**—We now turn to National security, nuclear disarmament and nonproliferation.

**Senator LUDLAM**—Gooday, Mr McKinnon—glad that we finally got to you. I think this might be our first estimates session in the post John Carlson era. Can you just give us a bit of an update on who is running the show now?

**Mr McKinnon**—It is not a post John Carlson era; he is actually still in his position. He is not here today because there is a meeting of the Asia-Pacific Safeguards Network and he is the chair of that meeting. He wanted to be here today but the timing of that meeting had already been changed twice to accommodate his attendance at the Nuclear Security Summit and the NPT and, on this occasion, ultimately it was set by the Indonesian minister's availability. So he cannot be here.

**Senator LUDLAM**—When are we going to get him a gold watch with the hands parked at six minutes to midnight? Is he not leaving the agency?

**Mr McKinnon**—He is leaving the agency. I will leave the exact timing of that for others to offer a comment on.

**Mr Richardson**—The precise timing of that has not yet been determined.

**Senator LUDLAM**—Are you advertising for a replacement?

**Mr Richardson**—We already have.

**Senator LUDLAM**—Yes—I thought we had discussed this in February. So you have not found somebody?

**Mr Richardson**—No—it is just that the precise timing of when someone else might start and when John might leave is still being worked through.

**Senator LUDLAM**—So you do not want to estimate it for us. Let us get into it then. Mr McKinnon, could you just describe your role and the capacity in which you are here tonight.

**Mr McKinnon**—I am responsible for the International Security Division, which handles policy aspects of international strategic security issues including nonproliferation, disarmament, weapons control and that sort of thing.

**Senator LUDLAM**—Can you give us your view of the NPT conference that has just wrapped up in New York. Has the Australian government issued a formal statement of outcomes?

**Mr McKinnon**—Yes, Senator. To answer that last question first: the minister, Mr Smith, has issued two press releases, one on the Sunday immediately after the conference concluded on the Saturday in which he welcomed the outcome. He has subsequently—I think even just earlier today—issued a joint statement with the Japanese Foreign Minister, Mr Okada, in which they also welcomed the outcome and made a point of noting the very close cooperation between Japan and Australia in the period leading up to the NPT itself and on the floor of the conference.

Turning to your first question: I think that the conference is seen very generally as being a very significant success—especially in contrast to the 2005 NPT review which, as you well know, was a complete failure. On this occasion, the conference adopted two documents, one being a review of the conference proceedings, which was a chairman’s text. The best part of the result was a consensus adoption of follow-on action plans across 64 actions across the three main pillars: disarmament, nonproliferation and peaceful uses of nuclear, and it reaffirmed the importance of the NPT as the body which should take the main thrust of nonproliferation and disarmament and carriage of peaceful uses of nuclear. So, instead of the aftermath of the 2005 conference, we have a whole raft of actions and issues to follow up on.

**Senator LUDLAM**—You are sounding a bit more optimistic than some analysts who are not calling it a success but are at least characterising it as the absence of failure. Do you think there are some things there to work with?

**Mr McKinnon**—Again, the threshold objective was to avoid another failure. It was very clear that there was a political will on the floor of the conference to avoid a debacle like the 2005 conference—one which could well have put at risk the non-proliferation and disarmament efforts which were being carried out under the NPT. So it was very critical that we avoided a failure. In this case the absence of a failure is a very significant success. There are pointers there: a commitment by the nuclear weapons states who are NPT members to work for a world free of nuclear weapons.

The key commitments are very solid. Of course, there is a lot of hard slog to be done to achieve those commitments. As an expression of political will, a consensus document pointing towards a world without nuclear weapons, and—even in the chairman’s text—picking up issues such as the additional safeguard as the benchmark for IAEA compatibility, is very good. It is now a matter of implementing them. As you were inferring, one of the problems with the earlier commitments from the 2000 review conference was that the implementation was less than fully effective.

**Senator LUDLAM**—I am noting also that there are a couple of mentions in the text of the need for a nuclear weapons convention, which I think is the first time that that has been adopted by all parties. I am presuming that you would treat that as a welcome bit of progress.

**Mr McKinnon**—I think that there is a recognition that at an appropriate time there will need to be some sort of legal and technical framework within which to accomplish the final abolition of nuclear weapons. But at this stage there was no commitment to negotiate that.

**Senator LUDLAM**—It is a start.

**Mr McKinnon**—There was not a commitment to negotiate that but a recognition that it would be valuable at some appropriate time.

**Senator LUDLAM**—Can you just give us a rundown on the future of the ICND? It did a lot of work over the last year or two since the Prime Minister announced it in Japan and it was obviously involved at the NPT. What is the immediate future for that commission?

**Mr McKinnon**—The funding in the current arrangements for the ICND wind up within two months. There is a final meeting to be held in Vienna in early July. That will consider flow-on activities or potential other arrangements which would flow from the ICND's work. That is not determined yet. Picking up on one of the earlier threads, the ICND has been a real focus for the additional activity of much of the portfolio leading up to the NPT. This was always going to be a very busy year for these issues.

The ICND held commission meetings across six continents. As you know, the Australian co-chair, Mr Evans, I think went to 36 or closer to 40 different cities to visit political leaders, academic think tanks and a whole range of people. I was there at the start of the NPT and it was very clear to me that many of the delegations were using the ICND's report as somewhat of a checklist of the issues and as a framework for thinking about the issues.

As that ICND commission and Mr Evans worked through their advocacy program leading up to the NPT, they were supported in a whole range of posts all around the world by Foreign Affairs and Trade, who were also representing that report to the host governments. It was a tremendous success.

**Senator LUDLAM**—My understanding is that there is nothing in the budget forward estimates for the continuation of that commission but if the commission puts a proposal to the Australian government, and presumably the Japanese government, for its continuation with a different mandate, would you be in a position to consider that? Or is it your view that that commission should shut down once it has had its final meeting?

**Mr McKinnon**—I do not have a view. As I have said, it has been a very significant success and as yet there has been no proposal put to the government.

**Mr Richardson**—That is right.

**Senator LUDLAM**—But that does not rule out considering one if one was put?

**Mr Richardson**—No, but that is up to the commission members and they have given no indication that that is the path they are intending to go down.

**Senator LUDLAM**—I want to touch on a couple of different issues around the world. Has the department been asked to provide any assessment regarding nuclear issues in India or perhaps a review of uranium sales to India in the context of the India-Australia free trade agreement discussions?

**Mr Richardson**—The answer to that is no.

**Senator LUDLAM**—Or in the context of any other bilateral discussions between Australia and India?

**Mr Richardson**—I am not aware of any review of policy in that respect.

**Senator LUDLAM**—What about an assessment of the Indian nuclear fuel chain?

**Mr Richardson**—It depends what you mean by ‘assessment’. Assessments of that kind would normally be done in government by the Office of National Assessment. I do not know what their program is.

**Senator LUDLAM**—I will not ask you to speak for them but, as far as you are concerned, with the portfolio that you represent, you have not been asked to provide a briefing specifically on the Indian nuclear fuel chain?

**Mr Richardson**—No, but if we became aware of any significant developments we would obviously brief the government.

**Senator LUDLAM**—Minister, are you able to update the committee as to the Australian government’s policy on uranium sales to India or to other NPT signatories?

**Senator Faulkner**—I have been asked about this in the chamber. I am not aware of any changes at all. I do not believe there have been any but, if you wish, I can go through that again with you. I am happy to do so.

**Senator LUDLAM**—I am only interested if there has been a change in position and I am very happy to hear if there has not been.

**Senator Faulkner**—I am not aware of any, no. I do not believe there has been any.

**Senator LUDLAM**—Similarly, have you been asked to provide any assessment regarding the nuclear fuel chain in Russia? Obviously this is a live issue, because Australia is considering uranium sales to Russia, as we are not with India.

**Mr Richardson**—Again, assessments of that kind would be provided by the Office of National Assessment.

**Senator LUDLAM**—ASNO has got very specific expertise.

**Mr Richardson**—ASNO could also do that.

**Senator LUDLAM**—The reason I am putting these questions to you is we have Mr McKinnon at the table. I am expecting that you are sitting with us tonight with an ASNO hat on?

**Mr Richardson**—No, he is sitting here in his capacity as the division head in charge of the International Security Division. He is not sitting here in any capacity relating to ASNO except that he has knowledge of ASNO and works with ASNO. But he is not wearing an ASNO hat.

**Mr McKinnon**—We are close friends.

**Senator LUDLAM**—Is the reason that we are not hearing from them simply that Mr Carlson is still overseas?

**Mr Richardson**—That is right; he is overseas.

**Mr McKinnon**—ASNO has had discussion with its international counterparts and has satisfied itself that there is an adequate separation between Russia’s civil and military reactors, which is our main concern in this instance, so obviously it has examined the matter.

**Senator LUDLAM**—I note that the US-Australia nuclear agreement provides for transfer of reactors and components for nuclear power production. Can you give us an idea of the context for that given, I believe, it is still Australian government policy not to allow the construction of nuclear reactors for power in Australia?

**Mr Richardson**—Is this the Australia-US agreement that was renewed just a month or so back?

**Senator LUDLAM**—That is right.

**Mr Richardson**—I stand to be corrected, but that relates primarily to the low-level nuclear waste that is primarily shipped off to the US and that agreement provides the umbrella for that.

**Senator LUDLAM**—That is helpful. It is long lived intermediate-level waste rather than low level. That point is noted. That is a helpful distinction. Could you on notice undertake to establish whether there are any other motivations for those clauses to be in that agreement. My understanding is that it goes beyond the transfer of fuel for reprocessing to the US.

**Mr Richardson**—Yes.

**Senator LUDLAM**—When President Obama announced that agreement he referred to an unclassified nuclear proliferation assessment statement—an NPAS—concerning that agreement. Could you please table that for us now or point to where we could find it.

**Senator Faulkner**—What would you like us to table?

**Senator LUDLAM**—An unclassified nuclear proliferation assessment statement.

**Mr Richardson**—It is an assessment by whom?

**Senator LUDLAM**—It is an assessment by the President of the United States.

**Mr Richardson**—We certainly do not carry around copies of unclassified briefings by the US.

**Senator LUDLAM**—Perhaps I should have started a step or two earlier. Are you aware of that assessment statement that was referred to by the President?

**Mr Richardson**—I am not but the experts may be.

**Mr McKinnon**—Is that the nuclear profile?

**Senator LUDLAM**—It is the nuclear proliferation assessment statement.

**Mr McKinnon**—We will take it on notice.

**Senator LUDLAM**—If you could. If you could point to where we would be able to find that, I would appreciate it.

**Senator Faulkner**—This is always where it gets difficult, Senator—when the department is asked to go searching for these sorts of things. In this circumstance, I think it is fair enough to check whether it has the paper on file and, if it has, whether the minister agrees to its release. But it is all a little bit second-hand. Some of these things are available, if they are unclassified, on the internet et cetera. That might be a possibility. But I think the most sensible thing is that I will take the question on notice, but I place on it a caveat, obviously, that the



department needs to check its own files in relation to this and then make a judgment about whether it is able to be released. I think that is the sensible way of dealing with it, if you are comfortable with that, Senator.

**Senator LUDLAM**—That is fine. Thank you. Our foreign minister reminded us that Australia sells around 36 per cent of its uranium exports to the United States. They are also a major processor of uranium that is then on-sold to other countries after being enriched in the US. Can you tell us how we can be satisfied that it is not possible for Australian uranium sold to the United States to find its way to India, given the US-India deal—I think that is how was referred to—a year or two ago, which we ticked off within the NSG?

**Mr Richardson**—There is an agreement. Our experience with the US is that they do honour their agreements with us. We would need to take that on notice just to ensure that there are not some technical factors involved which we might alert you to.

**Mr McKinnon**—We would like to take that question on notice, as the secretary said. On the non-proliferation thing, is there any possibility of any confusion with the Nuclear Posture Review, which has received—

**Senator LUDLAM**—No. It was not the NPR.

**Mr McKinnon**—One further thing: regarding the main differences between the new safeguard agreement that we have with the United States and the old safeguard agreement, if I could just run through those quickly it may help with that earlier question.

**Senator LUDLAM**—If you like.

**Mr McKinnon**—The new agreement refines the scope for technical cooperation between the two parties to more closely align with current activities. For example, it adds reference to the possibility of cooperation in the important and growing field of nuclear forensics. It clarifies the prohibition on use for military purposes of material, equipment or components transferred pursuant to the proposed agreement and it adds provision for the protection of intellectual property and settlement of disputes. It has a 30-year duration, like the 1979 agreement, but provides for rolling five-year extensions. Those are the key features, which I know does not exactly address the issue that you were chasing before.

**Senator LUDLAM**—Yes—I was asking something quite specific. Finally on this issue, did you say that you had attended some or part of the NPT review conference just gone?

**Mr McKinnon**—I did say that.

**Senator LUDLAM**—How much of the conference were you able to attend?

**Mr McKinnon**—I attended the first eight days.

**Senator LUDLAM**—There is a seven-member UN Security Council panel monitoring the implementation of sanctions against North Korea. Its research, I understand, indicates that Pyongyang is involved in banned nuclear and ballistic activities in Iran, Syria and Burma. Could you update the committee on any efforts that the department has undertaken since we last met on investigating or verifying emerging evidence of a possible nuclear program in Burma.

**Mr McKinnon**—The Australian government is aware of unconfirmed reports since last year that Burma may be developing undeclared nuclear facilities. Its membership of the Nuclear Non-Proliferation Treaty requires it to place all of these facilities under the IAEA safeguards, of course. We expect it to abide by the obligations under this treaty. We share international concern, obviously, but the most we can do at this time is to monitor developments in Burma, including the possibility that they are receiving assistance in nuclear technology from North Korea. I would not want to go any further than that.

**Senator LUDLAM**—The reason that I raise this in the context of the recent NPT conference, which you were attending part of, is that I believe the Security Council sanctions committee tabled that report less than a week ago. I would not obviously call that an unconfirmed report; it is quite recent information. Have you had time to review that material?

**Mr McKinnon**—I have not had time to review that.

**Senator LUDLAM**—In that case, all I can do is point you to it. I asked questions earlier in the day about the reconsideration of our sanctions regime on Burma and the fact that we are allowing Australian investors there, particularly in the oil and gas industry, with flow-on consequences with respect to the availability of foreign exchange to Burma. Can you review that document with these comments in mind—that Burma has just been implicated again in receiving prohibited technology, which would be in violation of their NPT obligations. Chair, I will leave it there.

[10.02 pm]

**CHAIR**—Are there any further questions on this program? As there are no further questions, we will turn to Program 3.2: Overseas property.

**Senator KROGER**—Mr Richardson, the ANAO have conducted a report. In brief, they were pretty damning of DFAT's property management. The assessment found that property management and planning processes to be:

... largely ad hoc and driven by the need for security upgrades. Such an approach means that other important and/or more difficult projects are not given sufficient weight and could be overlooked.

I think we have heard in the past about insufficient budget allocation for sufficient maintenance of the substantial property portfolio that DFAT has. I would like you to make some comments, firstly, in response to this and, secondly, whether in fact you are putting together a formal response and, if so, what is the process?

**Mr Richardson**—We thought the ANAO report was quite reasonable. It did make some criticisms and we accepted those criticisms. In fact, we have accepted each of the recommendations the ANAO has made. I think we accepted one, with a qualification. It recognised the size of the estate, it recognised the number of properties in over 60 countries and it recognised the difficulties of all of that. As you say, it made some recommendations about strengthening management of the overseas owned estate, and we are in the process of implementing that. I will hand over to Peter Davin, who will be able to provide more detail than me.

**Mr Davin**—Yes, it was an extensive and detailed performance audit of the Overseas Property Office. We had the auditors with us for over 12 months at the two posts visited as part of their field exercise.

**Senator KROGER**—Which posts were they?

**Mr Richardson**—They made a point of visiting London and Washington.

**Senator Faulkner**—And can I say that there is no person better placed to know what a hardship post in Washington is than yourself, Mr Richardson. I can confirm that.

**Mr Davin**—It was an extensive and detailed audit. They undertook two visits. They noted in that audit many instances of good practice being observed by the Overseas Property Office, but they went on to say that there could be improvements. We have accepted the recommendations they have made. Very briefly, in summary, the recommendations went to improving the relationship with our tenant agencies through perhaps the introduction of a charter agreement. They relate to improving the property condition reporting systems that we use. They recommended a strengthening of our compliance auditing and the performance indicators that we use. Finally, they recommended that it was timely to look at the commercial model that we use for the management of the overseas estate, and we would do that in consultation and agreement with the Department of Finance and Deregulation.

**Senator KROGER**—In reading the report, one of the observations that I made—and I thought it was the theme through it—was that money spent on overseas properties, given the changing nature and requirements of security and the need to invest a lot more in technical advances to secure premises, was being directed into those sorts of areas rather than the very foundations of the building itself and so on. Is that a reasonable observation?

**Mr Davin**—It is true that the changed international security environment has placed a much higher priority on relocation and in fact building new embassies, which would not have happened under a normal maintenance cycle regime. So we have been very focused on that in the last few years. That is not to say that routine maintenance has suffered. Our normal forward program of maintenance has been ongoing. We spend something like \$24 million a year on a maintenance program. We are advised in developing that program through our outsourced property provider. Those maintenance programs have been running, but there has been an emphasis naturally on addressing these security shortcomings and in many instances that has required a relocation of our chancellery buildings.

**Senator KROGER**—How have you prioritised your program of maintenance in the past?

**Mr Davin**—We do that on the basis of advice. We have a commercial property organisation under contract that delivers the property services on the ground. In many instances, that involves the actual posting of aid based and trade skilled personnel to our larger posts. They are on-site facility managers. They advise and inspect regional posts around their location. They develop programs which come back to us and we, in that sense of where our broader priorities might be, determine the maintenance programs. One of the recommendations in the audit report is that we should look at taking a longer time frame for the life of equipment. We do some of that but clearly that is another area that has been identified for improvement.

**Senator KROGER**—So we actually send building or program managers from here to the post to oversee and contract out what is required, with locals I presume, for maintenance purposes—is that what you are saying?

**Mr Davin**—We have a broad contract with a company to provide property services right across the overseas estate. That involves the posting, or the location in many instances, of Australian based professionals to manage these quite large and complex properties. Part of their responsibility is a regional responsibility and they visit smaller posts to provide property services and advice. That is the regime we operate. There are 24 staff based overseas whose sole focus is really the maintenance of buildings—developing these maintenance programs.

**Senator KROGER**—Coming back to this report, the recommendations of which you said, Mr Richardson, you essentially wished to adopt, what sort of time frame are you hoping to achieve in adopting the recommendations outlined, such as changing your commercial arrangements, the way you manage tenants and so on?

**Mr Davin**—That will be ongoing. Some of the changes we have been able to put in place we were in the process of improving at the time of the audit, others we have been able to address already and some of the other issues are for further work. Certainly the review that we have scheduled with the department of finance will be a fairly substantial exercise which to some extent will determine the model we will be operating under with our tenant agencies, so clearly we would want to get that review finalised and some recommendations to government before we went into some new charter arrangement. We would want to make sure we had consistency across that. We have developed quite a detailed matrix of the recommendations made by the Audit Office and we are working progressively through that to improve those areas identified.

**Senator KROGER**—You have already indicated the size of the portfolio—or Mr Richardson has. Do you have an assessment of each property? If you were asked to provide something tomorrow, would you have an assessment of the condition of each property—that is, the sort of investment that you think it might require or that it does not require any investment?

**Mr Davin**—Yes, we certainly have assessments of every property. We also have maintenance programs for every property. The broader question of the whole-of-life cycle of those properties and, more importantly, the plant and services in those properties is a more detailed exercise. We would have that information in some instances but that is part of the exercise we need to do—that whole-of-life cycle and when we should be replacing major plant. The Audit Office is suggesting we have to be far more proactive in that area. But this is a demanding activity across a wide variety of locations. Whereas equipment might last for 15 years in one particular environment, it may last only five years in a different environment. It is a technical assessment we will have to put some more work into.

**Senator KROGER**—Thank you very much. That is all I have to ask, Chair.

**Senator TROOD**—Mr Davin, in relation to the portfolio—and I think you answered yes to this question—do you maintain a consolidated list of the anticipated expenditure on properties that you can see down the track?

**Mr Davin**—Yes, we do.

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**Senator TROOD**—Could you make that list available to the committee?

**Mr Davin**—Yes, we can. We have a maintenance program for the current year, we have a maintenance program in place for the next financial year and we have plans, some more detailed than others, about where we might need to be doing midlife upgrades of our substantial buildings and where we might need to replace plant and equipment.

**Senator TROOD**—I imagine this changes over time.

**Mr Davin**—Priorities will change.

**Senator TROOD**—What I would like from you, and you can take this on notice, is—I do not need detailed breakdowns of the particular activities undertaken—the anticipated expenditure in relation to the various properties that we have.

**Mr Davin**—I can certainly give you the maintenance program for next year. I can provide a guide of what we anticipate.

**Senator TROOD**—Not only next year. I want to know if you have a figure, for example, in relation to each of the properties and the extent to which you have determined an expected expenditure in relation to those properties. I do not want a breakdown of the figure; I just want to know how much the amount is.

**Mr Davin**—The maintenance program for properties remains fairly constant. If you looked at London and Washington, for instance, you would see over the last five years that the average cost of maintaining our Australian High Commission building in London runs somewhere around \$1.5 to \$1.7 million a year. In Washington the figure is somewhere around \$1 million per annum. That is fairly constant. If you are looking at a replacement of the airconditioning plant or something like that, obviously there will be a spike. If you look at that across the board, this \$24 million that I mentioned earlier, which is about our annual maintenance spend, is fairly constant although it involves different items. That is also picking up reactive expenses we have to meet. I can provide you with some guidance on that.

**Senator KROGER**—Do you have a coding system or an assessment on each property—whether you see that it has a limited life span so that if it is necessary you can look at alternative properties after 10 years; you will see it has a life span of a certain period of time and other options will need to be explored. I do not know whether that is relevant to what you do in your assessments.

**Mr Davin**—These are some of the areas where the Audit Office have asked us to do more work. They have suggested, for instance, we should be having a much longer time frame, and instead of looking at a five-year rolling program, we should be looking 20 years ahead. That is something we have done some work on, and we need to do more work on it.

**Senator KROGER**—If you have anything that gives an indication even for now of limited life expectancy, whether it is the next five years, or two years, that would be helpful.

**CHAIR**—Thank you very much. That concludes our deliberations on all of the programs this evening.

**Committee adjourned at 10.19 pm**