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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 31 MAY 2004

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SENATE**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE****Monday, 31 May 2004**

Members: Senator Sandy Macdonald (*Chair*), Senator Hutchins (*Deputy Chair*), Senators Chris Evans, Ferguson, Payne and Ridgeway

Senators in attendance: Senator Sandy Macdonald (*Chair*), Senator Hutchins (*Deputy Chair*), Senators Bartlett, Brown, Chris Evans, Eggleston, Faulkner, Ferris, Ferguson, Harradine, Hogg and Payne

Committee met at 9.10 a.m.

DEFENCE PORTFOLIO**In Attendance**

Senator Hill, Minister for Defence

Department of Defence**Portfolio overview and major corporate issues****Portfolio overview**

Mr Ric Smith AO, PSM, Secretary of Defence

General Peter Cosgrove, AC, MC, Chief of the Defence Force

Budget summary (financial statements and improvement initiatives)

Mr Lloyd Bennett, Chief Finance Officer

Mr George Veitch, First Assistant Secretary Budgets and Financial Planning

Mr Noel Dobbie, Acting First Assistant Secretary Financial Services

Mr Jon Collings, Assistant Secretary Planning and Budgeting

Capability development

Lieutenant General David Hurley, AO, DSC, Chief Capability Development Group

Air Vice Marshal Kerry Clarke, AO, Head Capability Systems

Dr Ralph Neumann, First Assistant Secretary Capability Investment and Resources

Capital budget (major capital equipment)

Dr Stephen Gumley, Chief Executive Officer Defence Materiel Organisation

Mr John Peters, Head Management Information Systems

Dr Ian Williams, Head Land Systems

Major General Peter Haddad, AO, Commander Joint Logistics

Air Vice Marshal John Monaghan, AM, Head Aerospace Systems

Ms Shireane McKinnie, Head Electronic Systems

Ms Ann Thorpe, Acting Head Materiel Finance

Mr Peter Morris, Head Industry Division

Commodore Trevor Ruting, RAN, Acting Head Maritime Systems

Air Vice Marshal Norm Gray, Head Airborne Surveillance and Control

Air Commodore John Harvey, Director General New Air Combat Capability

Ms Mary Kelaher, Director General Materiel People and Performance

Capital budget (major capital facilities projects)

Mr Alan Henderson, Deputy Secretary Corporate Services

Mr Michael Pezzullo, Head Infrastructure

Ms Chris Bee, Assistant Secretary Strategic Planning and Estate Development

Air Commodore Brian Plenty, Director General Headquarters Joint Operations Command
Project

Outcome 1: Command of operations in defence of Australia and its interests**Output 1.1: Command of operations****Output 1.2: Defence Force military operations and exercises****Output 1.3: Contribution to national support tasks**

Vice Admiral Russ Shalders, AO, CSC, RAN, Vice Chief of the Defence Force/Chief of
Joint Operations

Major General Mark Evans, DSC, AM, Deputy Chief of Joint Operations

Outcome 2: Navy capability for the defence of Australia and its interests**Output 2.1: Capability for major surface combatant operations****Output 2.2: Capability for naval aviation operations****Output 2.3: Capability for patrol boat operations****Output 2.4: Capability for submarine operations****Output 2.5: Capability for afloat support****Output 2.6: Capability for mine warfare****Output 2.7: Capability for amphibious lift****Output 2.8: Capability for hydrographic and oceanographic operations**

Vice Admiral Chris Ritchie, AO, RAN, Chief of Navy

Rear Admiral Rowan Moffitt, RAN, Deputy Chief of Navy

Mr Stephen Wearn, Director General Navy Business Management

Outcome 3: Army capability for the defence of Australia and its interests**Output 3.1: Capability for special forces operations****Output 3.2: Capability for mechanised operations****Output 3.3: Capability for light infantry operations****Output 3.4: Capability for army aviation operations****Output 3.5: Capability for ground based air defence****Output 3.6: Capability for combat support operations****Output 3.7: Capability for regional surveillance****Output 3.8: Capability for operational logistic support to land forces****Output 3.9: Capability for motorised infantry operations****Output 3.10: Capability for protective operations**

Lieutenant General Peter Leahy, AO, Chief of Army

Brigadier Michael Clifford, AM, CSC, Director General Preparedness and Plans—Army

Mr Lance Williamson, Director General Corporate Management Planning—Army

Outcome 4: Air Force capability for the defence of Australia and its interests**Output 4.1: Capability for air combat operations****Output 4.2: Capability for combat support of air operations****Output 4.3: Capability for surveillance and response operations****Output 4.4: Capability for airlift.**

Air Marshal Angus Houston, AO, AFC, Chief of Air Force

Ms Grace Carlisle, Assistant Secretary Resource Planning—Air Force

Air Commodore John Harvey, Director General New Air Combat Capability

Outcome 5: Strategic policy for the defence of Australia and its interests**Output 5.1: Strategic and international policy, activities and engagement****Output 5.2: Military strategy and capability analysis**

Mr Shane Carmody, Deputy Secretary Strategy

Outcome 6: Intelligence for the defence of Australia and its interests**Output 6.1: Intelligence**

Mr Ron Bonighton, AM, Deputy Secretary Intelligence and Security

Mr Frank Lewincamp, PSM, Director Defence Intelligence Organisation

Mr Steve Merchant, Director Defence Signals Directorate

Outcome 7: Superannuation and housing support services for current and retired defence personnel**Output 7.1: Superannuation and housing support services for current and retired defence personnel**

Mr Lloyd Bennett, Chief Finance Officer

Mr George Veitch, First Assistant Secretary Budgets and Financial Planning

Mr Jon Collings, Assistant Secretary Planning and Budgeting

Ms Alice Dobes, Assistant Secretary Treasury and Tax Management

Business processes**Defence Science**

Dr Roger Lough, Chief Defence Scientist

Dr Tim McKenna, First Assistant Secretary Science Policy Division

Mr Maurice Hermann, Assistant Secretary Science Industry and External Relations

Inspector General

Mr Claude Neumann, Inspector General

Chief Information Officer

Air Vice Marshal Julie Hammer, AM, CSC, Acting Chief Information Officer

Corporate Services

Mr Alan Henderson, Deputy Secretary, Corporate Services

Mr Mike Pezzullo, Head, Infrastructure Division

Mr David Kenny, Head, Information Systems Division

Brigadier Mike Swan, Acting Head, National Operations Division

Air Commodore Simon Harvey, Director General, The Defence Legal Service

Public Affairs (now part of Outcome 5)

Mr Mark Cunliffe, First Assistant Secretary Ministerial Services and Public Affairs

People**Defence Personnel**

Rear Admiral Brian Adams, AO, RAN, Head, Defence Personnel Executive

Ms Sue Parr, Acting First Assistant, Secretary Personnel

Air Commodore Tony Austin, AM, Director General, Defence Health Service

Defence Housing Authority

Mr Keith Lyon, Managing Director, Defence Housing Authority

Mr John Kitney, Chief Financial Officer, Defence Housing Authority

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome Senator Robert Hill, the Minister for Defence, General Cosgrove, the Chief of the Defence Force, Mr Ric Smith, Secretary of the Department of Defence, and officers of the Defence organisation.

The committee has before it the particulars of proposed budget expenditure for the year ending 30 June 2005, documents A and B, and the portfolio budget statements for the Defence portfolio. The committee will now consider the estimates for the Department of Defence, beginning with the portfolio overview and major corporate issues. We will then move on to outputs, business processes and people.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions and the questions will be forwarded to the department for an answer. The committee has resolved previously that Thursday, 22 July 2004 is the return date for answers to questions taken on notice at these hearings. With respect to questions on notice, on 28 May Senator Andrew Murray submitted to all departments and agencies questions on notice relating to advertising, with a request that the answers be returned to the committee by 15 June 2004. Departments and agencies are encouraged to answer these questions as soon as possible but I reiterate that the committee's return date is 22 July 2004 and the committee would appreciate receiving all answers by that date.

Witnesses are reminded that evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy. However, they may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was selected. An officer shall be given reasonable opportunity to refer questions asked to the officer to a superior officer or to the minister.

Minister, I note for the record the late return of the Defence organisation's answers to questions on notice. The deadline set by the committee for the return of answers was 1 April 2004 and the answers were received by the committee on 14 May. As noted during additional estimates, the committee considers such delays to be understandable, certainly, but excessive, and would appreciate receiving all answers to questions taken on notice during these estimates on time. Minister, do you or any of your officers wish to make an opening statement?

Senator Hill—No, not at this time.

CHAIR—We will begin with questions relating to the portfolio overview.

Senator CHRIS EVANS—As I indicated before the hearing commenced, it was my intention to ask, with respect to the portfolio overview, a series of questions relating to Iraq. What this committee has done in the last few years is to invite General Cosgrove to give an overview report at the beginning of proceedings about our troops deployed overseas, their welfare and activities. It has always proved to be a good place to start. I presume General Cosgrove came prepared to do that, so we might start there.

Gen. Cosgrove—I have one or two notes for you, Senator. The ADF is currently engaged in a broad spectrum of operations spread across the globe. The ADF has approximately 2,500 personnel deployed on over 10 significant operations that include border protection, peace monitoring, peacekeeping and nation building.

Our most significant operations are: Operation Catalyst, Australia's military contribution to the rehabilitation of Iraq; Operation Citadel, in support of the UN mission in East Timor; Operation Anode, the ADF's contribution to the regional assistance mission to the Solomon Islands; and Relex II, providing support to civilian agencies for the border protection of our northern and western coastlines. The operational tempo for the defence organisation has been high since 1999, when our commitment to East Timor commenced.

There are currently about 860 ADF members deployed for Operation Catalyst: Australian national headquarters of approximately 60 people, headed by the Australian National Commander Brigadier Hutchinson; a naval component with about 180 personnel embarked on the frigate HMAS *Stuart*, and command and logistic support elements; an Air Force component with about 150 personnel deployed with two RAAF C130 Hercules transport aircraft and about 160 personnel deployed with two RAAF P3C Orion maritime patrol aircraft; and an air traffic control detachment and support personnel at Baghdad international airport. That latter group totals about 65 personnel.

In addition, there is a security detachment of approximately 90 Army personnel protecting the Australian representative office in Baghdad and providing force protection for the Iraqi army training team. There are approximately 65 personnel to the coalition military assistance training team to help train and develop the Iraqi coastal defence force and Iraqi army. Approximately 25 personnel are working in the coalition joint task force headquarters. There is a logistics element located in Baghdad and Kuwait, providing support to ADF units and Australian government agencies. A 12-person team is supporting the work of the Iraq survey group. A small number of ADF personnel are working in specialist roles with the coalition provisional authority. A small number of ADF personnel are working in liaison roles with coalition forces.

Operation Slipper is our umbrella operation in contributing to the global war on terrorism. HMAS *Stuart* and the P3C detachment contribute to Operation Slipper tasks, although the ship and the P3C personnel are accounted for in the Operation Catalyst numbers. We have one senior Air Force officer currently embedded in the coalition air operations centre. He is dual force assigned, being assigned to both Operation Catalyst and Operation Slipper. We have a

demining officer assigned as part of Operation Slipper to the coalition joint task force 180 in Afghanistan.

In Operation Citadel, soon to be renamed Operation Spire, Australia is contributing about 440 personnel to the UN mission in support of East Timor. Australia provides about 25 per cent of the peacekeeping force. Up to date it has been an infantry battalion group headquarters, an infantry company and UN military observers. The infantry battalion group headquarters has also included force elements from other contributing countries.

The ADF will contribute to the new UN mission in support of the revised mandate for a 12-month period from 20 May 2004. The new mission will have a peacekeeping force strength over all of 350 personnel. The ADF contribution will be about 100 personnel, which includes a national command and support element. The focus of the ADF contribution will transition from the provision of an infantry capability to the provision of a small engineer element and logistics support. Australia will continue to provide personnel for key headquarters appointments in the role of military liaison officers. These manning levels maintain the government's commitment to contributing around 25 per cent of the total UN mission in support of the East Timor peacekeeping force.

Operation Anode is the military name for the Operation Helpem Fren, the Regional Assistance Mission to the Solomon Islands. On 24 July last year ADF troops were deployed on that mission. The primary mission of the military force was to provide protection for the participating police force. Additionally, the military force has provided and continues to provide logistic support to other elements of the RAMSI force. Within the military force we have also had elements from New Zealand, Fiji, Papua New Guinea and Tonga. To give some detail on the ADF contribution to that operation, it includes a military adviser to the special coordinator; personnel from units around Australia operating a coalition joint task force headquarters which combines police and military personnel; an Australian rifle company headquarters and an infantry platoon; and an engineering group from Townsville, which is undertaking engineering tasks in support of the deployed ADF elements and some minor civil engineering tasks such as road works and bridge building and approved limited humanitarian tasks such as upgrading water supplies

We also have had a combat service support element providing logistics and maintenance support to the ADF and to the RAMSI force. We have had an air element of two Caribou aircraft, crew and support staff from Amberley and Townsville, and this provides intra-island airlift support. We have had one minor war vessel, either a Fremantle class patrol boat or a minehunter, one naval landing craft heavy, providing logistics support and intra-island transport and, just to reiterate, approximately 670 military personnel deployed, including about 440 from the Australian Defence Force.

In addition to the Australian Federal Police and Australian Protective Service elements, other countries contributing police forces include New Zealand, Fiji, Cooks Islands, Samoa and Vanuatu. There are about 310 police deployed to the Solomons. There are a number of other operations. If senators have got a particular interest in any of those, I would be happy to go to those, but they are the major commitments. There are a range of other smaller operations which are ongoing.

Senator CHRIS EVANS—I asked before the hearing started about the Australians soldiers who were injured in Iraq the other day. I think the committee would like an update on their welfare.

Gen. Cosgrove—It was a fairly spectacular accident, if that is the right word for an accident. The armoured vehicle turned over a number of times. It was purely a traffic accident; there was no suggestion of enemy action. I understand that the vehicle had to take a violent evasive manoeuvre to avoid another road user they came upon unexpectedly and suddenly. In the course of that evasion, they turned over. None of the soldiers who were in it have life threatening injuries. My understanding is that one soldier has a broken jaw. It is unknown at this stage whether that soldier will be brought back to Australia, but the other soldiers have lesser injuries and it is likely that they will remain on duty.

Senator CHRIS EVANS—Could you give us an update on the Iraq rotations and what has formally be decided about rotations.

Gen. Cosgrove—We will replace the ship. We will obviously continue to replace the SECDET people and the individual people. It is intended to continue the air traffickers until the end of September, but we are examining the implications of continuing them if needed. In relation to the C130s and P3Cs, we are preparing plans to continue to rotate those elements. We review the ongoing tasking of those elements routinely, but we are making plans to rotate them beyond the end of the year.

Senator CHRIS EVANS—But it would be fair to say that there has not been a decision taken yet to rotate them?

Gen. Cosgrove—No, we prepare the forces but as we come up to a deadline we consider the role and tasks of those elements, then the government makes the call.

Senator CHRIS EVANS—As I understand it with the air traffic controllers, the original expectation was that they would come out, to be replaced with a contractor. I think that changed to some scheme of locally trained personnel. Are you saying that by September that might have occurred?

Gen. Cosgrove—I think it probably will have. I think what might have changed is the overall intended use for Baghdad, which was going to become totally and only a civil airport. Under Saddam, there were always some military aircraft there but it was, by and large, a civilian airport.

I think the coalition—or, as it will become, the multinational force—now plans to continue to have some military transport use of Baghdad international airport. This makes more desirable keeping a military air traffic control element as part of an overall air traffic control operation at Baghdad. It may be—and I am yet to hear this in detail—that the civilian Iraqi air traffickers are sitting side by side in the tower with some of our chaps or military air traffickers.

Senator CHRIS EVANS—I suppose the key decision is whether or not Australia will keep responsibility for that air traffic control work. Has that decision been made?

Gen. Cosgrove—Not beyond the end of September.

Senator CHRIS EVANS—So you are basically suggesting that it could evolve to a hybrid control system at Baghdad airport—

Gen. Cosgrove—That is possible.

Senator CHRIS EVANS—and we might have some ongoing military involvement in that?

Gen. Cosgrove—That is also possible but not yet decided.

Senator CHRIS EVANS—For instance, with the security detachment, you are rotating the actual soldiers every four months?

Gen. Cosgrove—I think the tour of duty is four months, yes.

Senator CHRIS EVANS—So while the decision is to keep them there, in fact the personnel are being replaced?

Gen. Cosgrove—Every individual will go there with an expectation that he or she would do about four months. That is in a security detachment; some other individuals do longer.

Senator CHRIS EVANS—Can you detail for me who we have now in the Coalition Provisional Authority and the coalition headquarters? I think these various headquarters are used interchangeably in the media, but I have lost the sense of who is where in terms of the command structures.

Gen. Cosgrove—It is quite a complex and detailed walk through. Perhaps if I could refer to notes for a moment?

Senator CHRIS EVANS—Sure.

Senator Hill—You want how many people we have attached to the CPA and what are their roles?

Senator CHRIS EVANS—Yes. I know there was the announcement a couple of months ago of a senior officer deploying, I thought, to the coalition headquarters. Are they used interchangeably within the—

Senator Hill—That was to the joint military headquarters.

Senator CHRIS EVANS—That was why I wanted to clarify it.

Senator Hill—Then there are a number of other officers that are attached to parts of the evolving Iraqi administration, so it is quite complex.

Gen. Cosgrove—What I do not have is their names, although I do not suppose you would want their names.

Senator CHRIS EVANS—Not necessarily—a couple of the senior officers maybe. I was just trying to sense of who we have where now.

Gen. Cosgrove—We have five ADF personnel working in the Coalition Provisional Authority, with three working in Baghdad and two working in the provincial Coalition Provisional Authority office in Al Hillah. We have three Defence civilians providing policy advice to the Coalition Provisional Authority's office of national security affairs.

Senator CHRIS EVANS—That is an office inside the CPA?

Gen. Cosgrove—Yes, it is. It is the CPA's version of the Ministry of Defence.

Senator CHRIS EVANS—Who is our senior officer in the CPA?

Vice Adm. Shalders—There is not a rank structure within the CPA. The actual rank of the senior officer in that headquarters is group captain at the moment.

Senator CHRIS EVANS—Are you suggesting there is no rank hierarchy in there or no rank hierarchy for the Australians serving there?

Vice Adm. Shalders—There is not an Australian structure. They are working in different parts of the CPA.

Senator CHRIS EVANS—So are they doing a particular job inside the CPA or are they just allocated to functions by whoever is in charge of the CPA?

Vice Adm. Shalders—We are doing a number of different jobs here, Senator. For example, we have one officer who describes himself as the ‘deputy mayor of Baghdad’. When I spoke to him he had just come from a meeting which was focused on arranging the sewerage system of Baghdad. They are spread across the whole range of functions that are conducted within the CPA.

Senator CHRIS EVANS—Have the Australians taken on a job of, say, restoring sewerage in Baghdad or have we got officers who are slotting into jobs according to their skills and as the rotations change they go to different jobs?

Gen. Cosgrove—It is the latter. They are being provided into line jobs within the CPA. Given that the CPA is itself ad hoc rather than a structured military headquarters then some of those jobs will have a project nature. But they are not sent there with the specific thought that they might, as an example, do the sewerage system.

Senator CHRIS EVANS—So we have not said, ‘We will take care of that’?

Gen. Cosgrove—No, we have not said that we would prefer or that we would want a particular set of jobs.

Senator CHRIS EVANS—We have got five defence officers and three officials built into the team inside the CPA, and the current ranking officer is a group captain but there is not an Australian command structure inside that headquarters?

Gen. Cosgrove—That is correct.

Senator Hill—Within the joint headquarters.

Senator CHRIS EVANS—There is a coalition headquarters—is that right title—or is it the joint headquarters?

Senator Hill—It is just changing its name.

Gen. Cosgrove—We have about 25 personnel who are embedded in the senior military headquarters, which has an acronym CJTF7. This will change on or after 30 June to be the MNF, the multinational force headquarters.

Senator CHRIS EVANS—This is what we more commonly called the coalition headquarters, is it?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—We have got 25 in there.

Gen. Cosgrove—Approximately.

Senator CHRIS EVANS—How are they commanded? Who is the senior officer? What are they doing?

Gen. Cosgrove—The senior officer at the moment is Major General Jim Molan, who works in the operations area. General Molan is particularly looking at civil military operations. He is a deputy chief of staff for civil military operations. So he is the senior officer. The others, by definition, are more junior ranks than he is but spread across the headquarters in various functions.

Senator CHRIS EVANS—The structure is not that they are operating as an Australian cell directly reporting to him; they are spread throughout the headquarters operations.

Gen. Cosgrove—That is correct.

Senator CHRIS EVANS—Are they taking any particular tasks?

Gen. Cosgrove—There is a spread of tasks—

Senator CHRIS EVANS—Has Australia said, ‘We are doing this part of the job’?

Gen. Cosgrove—No.

Senator CHRIS EVANS—Again, they are spread according to their skill base and—

Gen. Cosgrove—That is correct.

Senator CHRIS EVANS—Are they all Defence Force officers or are some of them civilians?

Gen. Cosgrove—On that headquarters, to my knowledge, they are all ADF officers.

Senator CHRIS EVANS—From the three services?

Gen. Cosgrove—I believe so.

Senator CHRIS EVANS—What is the reporting structure?

Gen. Cosgrove—Each officer who is outposted—that is, not actually with our national headquarters—has a superior. In the case of officers on that military headquarters, each week they are required to provide a brief report to the senior Australian on the headquarters. He returns that to our national headquarters in Baghdad where it is compiled and collated and any items of special significance are referred back in the situation reports out of Baghdad from our national headquarters.

Senator CHRIS EVANS—We will come back to that later. I want to go back a step. An officer serving in coalition headquarters doing a particular job obviously reports to what might be an American or British superior in his section. Is that correct?

Gen. Cosgrove—His or her primary responsibilities are, of course, within the line of work—the chain of command, if you will—in that headquarters for the entirety of their time in that position. This is an additional report which one might call: ‘Are you in gainful employment, are you safe and is your administration working?’ Of course, though, we also use that broadly to get a picture of what is happening.

Senator CHRIS EVANS—Effectively, they have two chains of command. They are integrated into the coalition chain of command for their everyday work but they also have to report up the Australian chain of command to whom—to Major General Molan?

Gen. Cosgrove—He would receive these reports from all those in that small group and then he would put those on to the force commander.

Senator CHRIS EVANS—Effectively, though, if an Australian officer had any difficulty or was concerned or underutilised or whatever they would go through Major General Jim Molan as the Australian senior officer in their area of work, but generally are they integrated into the coalition chain of command?

Gen. Cosgrove—They are totally integrated. Their day-by-day tasks come from whoever their coalition superior is. Part of our monitoring is to ensure that all of that is satisfactory from our point of view.

Senator CHRIS EVANS—Are we providing any particular skill set to the coalition HQ? When you are looking for officers to go, are we filling any particular niche roles?

Gen. Cosgrove—It is a matter of negotiation each time. Most of our officers are highly prized. We have been there now for a year or so and each time there is a rotation there would probably be consideration as to whether there is a new area for assistance.

Senator CHRIS EVANS—But we are not necessarily filling a discrete berth.

Gen. Cosgrove—No. We have, again, not looked to say that we want that particular function and that function only or mainly.

Senator CHRIS EVANS—So when an Australian officer rotates, he may well replace an USA or UK officer who was doing that job before the rotation?

Gen. Cosgrove—He may do or he may replace another Australian.

Vice Adm. Shalders—Senator, to update the number of civilians: we now only have two civilians working within the CPA headquarters; one has recently departed. Those two are working in what is called the Office of National Security Affairs, which will ultimately become the ministry of defence. So there are two rather than three.

Senator CHRIS EVANS—Thank you. Now, that is the situation at the coalition headquarters, General Cosgrove. I understand there is a separate US military headquarters. Is that right?

Gen. Cosgrove—There will be. The coalition military headquarters is the senior headquarters.

Senator CHRIS EVANS—My next question is: do we have anybody in the US military headquarters?

Gen. Cosgrove—I do not believe so. I will check. No, we do not.

Senator CHRIS EVANS—So there are no Australians serving in the US military headquarters. What is the make-up of the Australian joint task force headquarters now?

Gen. Cosgrove—We have an Australian joint task force headquarters for the command of ADF elements deployed in the Middle East. The headquarters is responsible for operations

Catalyst and Slipper, which I referred to a few minutes ago as Australia's contribution to the war on terrorism. There are about 50 or 60 personnel under the command of an Australian one-star, presently Brigadier Peter Hutchinson. They are responsible for the coordination, support and force protection of all Australians presently in the Middle East area of operations.

Senator CHRIS EVANS—Are the 50 to 60 under Brigadier Hutchinson's command all military personnel or are there are some civilians?

Gen. Cosgrove—There may be a civilian officer in there. There used to be a pol-mil adviser. I am told that they are all military now.

Senator CHRIS EVANS—What are their key functions?

Gen. Cosgrove—Administration: so there are personnel and logistics officers there to provide unique Australian administrative and logistics support to our people. Welfare: there is a chaplain there. Operations: insofar as we do have some unique Australian activities taking place which require coordination, and here I might refer to particular support we might wish to provide to the training team that is supporting the Iraqi army—so if we wanted to move something from A to B for that force then that would be an operation we would handle. And intelligence: with an intelligence bias, if you will, towards force protection to ensure that all Australians in the Middle East area of operations are at an adequate level of force protection. There would also be a command staff, which is the commander plus one or two who are part of his personal staff.

Senator CHRIS EVANS—Are there any other coalition forces posted with the Australian joint task force?

Gen. Cosgrove—No.

Senator CHRIS EVANS—So it is a purely Australian operation?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—What is the line of reporting there? What is their relationship, say, with the coalition headquarters?

Gen. Cosgrove—They have the strongest relationship we could build on the intelligence and operations side, but as a national headquarters they are not privy—and nor would it be proper for them to be privy—to day-to-day operational detail throughout Iraq. They would receive briefings rather than be intimately involved in the formation of plans.

Senator CHRIS EVANS—So you are suggesting that they operate fairly independently in the sense that they have this separate—

Gen. Cosgrove—But in a monitoring and liaison sense to try to find out what they can of operations, particular strongly on the intelligence side.

Senator FAULKNER—But what interface is there, for example, with the Coalition Provisional Authority? Is there any?

Gen. Cosgrove—Only insofar as we have some representatives there. Those representatives we would be monitoring in terms of their day-to-day work—that is, are they gainfully employed; are they being well administered; are they safe?

Senator FAULKNER—What about with the coalition headquarters, which I now know is CJTF7? What about the direct relationship there?

Gen. Cosgrove—There is no direct relationship; there is no line of command or control. There is simply the liaison that happens when headquarters are co-located. For example, the CJTF7 headquarters is in a particular complex near Baghdad International Airport; our national headquarters is about 200 metres away from that headquarters.

Senator FAULKNER—What about with the US military headquarters?

Gen. Cosgrove—Not as much. I cannot write out that there is no liaison on intelligence issues et cetera, but the main relationship is with CJTF7.

Senator FAULKNER—There are actually ADF personnel in the UK military headquarters, aren't there?

Gen. Cosgrove—Yes, and we do have some people deployed as individuals on exchange duty who find themselves in Iraq. These are individuals who left Australia for a posting in the UK or the US and have found that their unit has been deployed to Iraq. There are some of those individuals.

Senator Hill—There are also those who we have posted direct into the UK headquarters in Basra.

Gen. Cosgrove—Yes. Picking up on the minister's point, there are some who are in the British divisional structure in southern Iraq.

Senator FAULKNER—What are they doing?

Gen. Cosgrove—They are in staff jobs and training jobs.

Senator CHRIS EVANS—How many?

Gen. Cosgrove—I think it is five.

Senator FAULKNER—Were these the ones who were transferred from Bosnia to the UK headquarters?

Gen. Cosgrove—Yes. It is of the order of five or six.

Senator CHRIS EVANS—I will go for seven. We will see how we go.

Senator FAULKNER—I will go for seven too; that is my recollection—

Senator Hill—Mine is eight.

Senator FAULKNER—so it is probably wrong.

Gen. Cosgrove—Legions of staff officers are now busy on that.

Senator FAULKNER—So we do have some with the UK headquarters but none with the US headquarters?

Gen. Cosgrove—Unless they have come through on these third-country deployments. We will check that to find out precisely whether any of our people are in that position.

Senator Hill—But there are none who we have posted into the US headquarters.

Senator FAULKNER—So it is this third-country deployment that has led to the situation with Australian personnel at the UK headquarters?

Gen. Cosgrove—No, that was a separate arrangement. For a number of years we had about six or seven people—perhaps a few more on some occasions—who were with the British force in Bosnia. By separate arrangement the Brits asked if we could put that number into their operations in southern Iraq because the British involvement in Bosnia was reducing, and the government agreed.

Senator FAULKNER—That means that for those who are posted in CJTF7 the weekly reporting inquiries go back to the ADF command structure in Australia—is that right?

Gen. Cosgrove—No. They would report to Major General Molan. Major General Molan would collate that and report highlights, I suppose, or issues to our national headquarters in Baghdad. That would then be assessed and either incorporated or, if it is mundane, not incorporated into reports back to Australia.

Senator CHRIS EVANS—What did we do before Major General Molan?

Gen. Cosgrove—Same thing.

Senator CHRIS EVANS—What rank was the previous senior officer?

Gen. Cosgrove—Colonel.

Senator CHRIS EVANS—And he was not deputy chief of operations?

Gen. Cosgrove—No.

Senator FAULKNER—Just so that I am clear on this, what happens then? Those reports go to the Australian headquarters and might be reported back to Australia in sit reps?

Gen. Cosgrove—Might be.

Senator FAULKNER—That is a decision taken, obviously, by the responsible personnel in that headquarters.

Gen. Cosgrove—It is taken in the first place by the senior Australian at CJTF7 and in the second place by the commander of our national headquarters. But staff who would process those reports would assist him in that regard.

Senator CHRIS EVANS—Who do the Australian joint task force HQ Baghdad report to—to Headquarters Australian Theatre, or straight through to the Department of Defence?

Gen. Cosgrove—To Headquarters Australian Theatre, which is now Headquarters Joint Operations Command in Sydney.

Senator CHRIS EVANS—That is right; you changed the name again.

Gen. Cosgrove—You were starting to get good at knowing the other one.

Senator CHRIS EVANS—You decided to make sure I am off my game all the time. So their direct reporting is through to them?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—Can you explain to me the relationship between Australian joint task force headquarters and the Australian Representative Office in Baghdad.

Gen. Cosgrove—Hopefully it is close in terms of day-to-day contact but there is no formal relationship beyond the requirement of the Australian commander in Baghdad to provide protection and escort for members of the ARO and other people as a primary task. So that is the relationship. The Australian commander does that through the efforts of the security detachment, whose sole task it is to provide that sort of support to the ARO—obviously its members, its premises and other people such as visitors or Australians who are moving from A to B in hazardous circumstances. That is a call made by the commander in Baghdad.

Senator Hill—We also provide a military officer to the head of the Representative Office to assist in military matters, don't we?

Gen. Cosgrove—Yes.

Senator Hill—How many?

Gen. Cosgrove—We have one. A temporary military liaison officer is what we call him, and he is, to all intents and purposes, a defence attache.

Senator Hill—And we also provide a military adviser to the United Nations.

Gen. Cosgrove—That particular officer has been there for a while and we will replace that officer.

Senator CHRIS EVANS—This is a military liaison officer to the United Nations?

Gen. Cosgrove—He is called a military adviser to the United Nations Special Representative of the Secretary-General in Iraq. He is a fellow who was working for Mr Vieira de Mello.

Senator CHRIS EVANS—What function does that officer perform?

Gen. Cosgrove—When the UN is in an area of operations in which there is significant military activity, it is almost invariable that the SRSG is not a military man, so the military adviser is there to help him in his understanding of what is happening in the area of operations and to assist him in his negotiations and day-to-day dealings with the military.

Senator CHRIS EVANS—So the officer posted to the Australian Representative Office in Baghdad is effectively the equivalent of a military attache to an embassy type role?

Gen. Cosgrove—That is right.

Senator CHRIS EVANS—So there is one person there. In terms of the relationship between our joint task force and the Australian Representative Office in Baghdad, I understand the security aspects but in terms of the reporting and/or function, what is the relationship there?

Gen. Cosgrove—You would expect them each to know the significant conclusions or inputs that they are receiving. But that is a matter for local liaison. There is no necessity to give a directive in that regard. It is just common sense that the commander of our national headquarters and the Australian Representative will keep each other aware of significant issues, especially to do with threats, force protection et cetera.

Senator CHRIS EVANS—Do I take it from that that they effectively report separately—the Australian Representative in Baghdad reports to Foreign Affairs?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—And the commander of the Australian joint task force reports to your newly titled joint command—

Gen. Cosgrove—Joint operations command. I point out that there is a similarity—in fact, it is virtually identical—in Timor and in the Solomon Islands, and there has been for some time.

Senator FAULKNER—Of the Coalition Provisional Authority, CJTF7 and the Australian Joint Task Force HQ, which have had legal representatives amongst the posted personnel?

Gen. Cosgrove—We have had legal representatives at CJTF7. I think we have a legal officer at our national headquarters, and we have had legal officers at the CPA.

Senator FAULKNER—So all three, effectively?

Gen. Cosgrove—Yes.

Senator FAULKNER—Are you able to indicate to us what the current situation is in relation to legal representation in those three bodies?

Gen. Cosgrove—While Air Commodore Harvey is organising himself, I can say the sweepstake was won by the minister and the two senators: it is seven Army officers in Iraq at the multinational division south.

Senator FAULKNER—What prize is awarded for this, General Cosgrove?

Senator CHRIS EVANS—The first prize is two more days of estimates!

Air Cdre S. Harvey—I must admit I do not have complete and full knowledge of the legal officers that are over there at the moment, but my understanding is that there is squadron leader legal officer in the joint task force 7. There is a colonel located within the Coalition Provisional Authority. There is a group captain over there as well, but I think he may be in another headquarters. I understand there is also a legal officer in the joint Australian headquarters, but if you like I can ascertain that and get back to you today.

Senator FAULKNER—So we have had an ongoing presence of legal officers in these three bodies?

Air Cdre S. Harvey—My understanding is that we have, yes. Certainly in relation to the CPA, we have had a legal officer there for some time. In relation to the joint task force 7, a number of legal officers have rotated through that position.

Senator FAULKNER—There has been some press coverage of Major O’Kane, which no doubt you have seen. Where did Major O’Kane work?

Air Cdre S. Harvey—Major O’Kane was employed in the Combined Joint Task Force 7. Senator, I have just been provided with some more accurate information regarding the current legal officers. This has changed a little bit. We have a commander in the headquarters joint task force 633. In fact, we do have a group captain and a colonel in the Coalition Provisional Authority.

Senator CHRIS EVANS—So your current person in the CTJF7 is not a squadron leader but—

Air Cdre S. Harvey—I was coming to that. So we have a squadron leader in the Combined Joint Task Force 7, a group captain and a colonel in the Coalition Provisional Authority and a commander in the headquarters JTF633.

Senator CHRIS EVANS—Which is the Australian headquarters?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—So you have four reasonably senior legal officers in the three separate headquarters?

Air Cdre S. Harvey—We have those legal officers as mentioned.

Senator CHRIS EVANS—Perhaps you could indicate whether that has been consistent or whether that has changed greatly since the changes of status in Iraq.

Air Cdre S. Harvey—Obviously they rotate out after a short period of time, but my understanding is that we have had a number of legal officers in the Combined Joint Task Force 7. In relation to the Coalition Provisional Authority, it has only been fairly recently that we have had two officers. It has generally been the one officer at colonel rank, and we have had a legal officer in the headquarters joint task force for some time.

Senator CHRIS EVANS—So it is fair to say that we have had a legal officer at each of those headquarters since May last year?

Air Cdre S. Harvey—That is my understanding, but I might just point out that my role as the Director General of the Defence Legal Service is essentially to identify legal officers to fill vacancies which are advised to me. My role is to certify the legal officers and to make sure that they are able to be released given demands in Australia, being able to backfill and so on. My requests pretty much come from—in those days it was—Headquarters Australian Theatre. That is why it is a bit unclear that I can give you a definitive answer.

Senator CHRIS EVANS—I am happy for the secretary, the minister or the chief to help you. I want to get a sense of what we have had in the way of legal officers inside Iraq since the end of the active war period.

Senator Hill—I think the sense is accurate, as I understand it, in relation to the CPA. I am not sure whether we have had one in the joint headquarters continually; we might check on that.

Gen. Cosgrove—I would be very surprised if we did not have our own legal officer continually at our own headquarters.

Senator FAULKNER—The *Sydney Morning Herald* reported on 27 May—it does not mean it is accurate, but you can let me know if it is—that:

... there were at least two other Australian military lawyers working with the Coalition Provisional Authority (CPA) on six-month deployments—Colonel Mike Kelly and Lieutenant Colonel Paul Muggleton.

Can you confirm that that is the case?

Air Cdre S. Harvey—Certainly those officers have been in that position, but I cannot certify—could you repeat the question?

Senator FAULKNER—My question is whether you can confirm an item that was reported in the *Sydney Morning Herald* on 27 May. It said—and I am just quoting; I always think it is important to put that qualification in—that:

... there were at least two other Australian military lawyers working with the Coalition Provisional Authority (CPA) on six-month deployments—Colonel Mike Kelly and Lieutenant Colonel Paul Muggleton.

Air Cdre S. Harvey—In response to that, as I said, both the officers that you mentioned have been at the Coalition Provisional Authority, but my understanding is that they were not necessarily there at the same time. There may have been only one officer there. My recollection is that the lieutenant colonel replaced Mick Kelly.

Gen. Cosgrove—We would also want to check on the six months. It might have been four months.

Air Cdre S. Harvey—I think Muggleton was only there for a shorter period.

Senator CHRIS EVANS—Could we overcome this? Is Defence able to provide us with a list of the legal officers serving in Iraq and the positions they held?

Gen. Cosgrove—In relation to just the names, we have had the media camped on Major O’Kane’s doorstep to the point where we have become concerned for him. I would not want to table names. You will recall that, by and large, where it has not been fully necessary, we have been reluctant to publish the names of people on our service in Baghdad or in Iraq.

Senator Hill—Why don’t we start by—

Senator FAULKNER—That is fine, but I am quoting names that are appearing in the newspaper.

Gen. Cosgrove—But you are wanting us to volunteer extra names.

Senator Hill—Why don’t we start by providing a schedule of the positions that we have held since May of last year, which I think was the thrust of Senator Evans’s question, for the two headquarters and the CPA?

Senator CHRIS EVANS—Yes, and I think if we could actually indicate—

Senator Hill—Then, if you want to pursue an issue in relation to any of those particular positions, we can debate the issue of identification.

Senator FAULKNER—For my own part, I am much more interested in what they did—what their responsibilities were—than what their names are.

Gen. Cosgrove—Thank you, and that would not provide any obstacles for us, but we would want to be more careful with the names.

Senator CHRIS EVANS—As Senator Faulkner indicated, the only reason we know their names is that we read them in the paper. Certainly for those three officers it is a bit late, but our interest is in what their roles are. Perhaps it would be a good starting point if we could get that schedule; that would be helpful. We talked earlier about the fact that Australian officers tended to be rotated through to do a variety of tasks, not necessarily a designated Australian task. Is that true of the legal officers as well, or were we supplying continuously one or two legal officers to each of these headquarters to pick up a specific function?

Gen. Cosgrove—I think it is correct to say that there is a negotiation each time. It is also correct to say that the coalition has obviously in the past said, ‘If this chap’s going home can we have another one?’ It would be a question for us as to whether we had somebody available, if in overall numbers we wanted to fill another job instead, and I think in a fairly routine way we have replaced these officers.

Senator Hill—We can identify the job of each of these persons in the schedule we are going to prepare. In a rotation, the job of the next one may not have been identical to the job of last one.

Senator CHRIS EVANS—For instance, from our own legal needs, we had different rules of engagement, we have different treaty obligations. I would have been absolutely gobsmacked if the Australian headquarters did not have their own senior legal—

Gen. Cosgrove—That has never been an issue for us. As I said to you in an answer a few minutes ago, I will be most surprised if we have not had continuous legal officer service to our headquarters in Baghdad.

Senator CHRIS EVANS—That seems quite unremarkable, given all those issues that arise. I suppose it is more interest, in a sense, to find out whether legal representatives placed on the staff of the CPA or CTJF7 were there to fulfil any Australian role or whether they were there purely to fulfil a role of the coalition or the coalition headquarters.

Gen. Cosgrove—I can tell you that without regard to the schedule that we will produce. They were always there to work as line officers for the commander of that headquarters.

Senator CHRIS EVANS—So they had no role in monitoring whether or not Australia’s legal obligations or policies were being adhered to?

Gen. Cosgrove—No, they were there to perform jobs for the coalition.

Senator CHRIS EVANS—So how did we monitor whether or not we were happy with our policies, rules of engagement et cetera being applied by those joint coalition authorities?

Gen. Cosgrove—That is a question of the reports that were put together by people all through Iraq and provided through the national headquarters reporting chain, and also what we were aware of here in Australia. For example, we had other inputs besides what we were getting from our people on the ground in Baghdad and we monitored those continually.

Senator CHRIS EVANS—So Major General Molan—

Gen. Cosgrove—This is our Australian officer in—

Senator CHRIS EVANS—Yes. He effectively has responsibilities for Australia’s interests as commanding officer?

Gen. Cosgrove—Yes, but his primary responsibility—and at the moment he will work for the multinational force, so let’s talk in those terms—is to the commanding general of the multinational force as a deputy chief of staff for operations.

Senator CHRIS EVANS—Yes, but you have been at pains on previous occasions, General Cosgrove, to stress to this committee how Australia has always maintained its own view about rules of engagement, about what is appropriate for Australian soldiers and other officials to be doing et cetera and how we have always insisted that they act under Australian authority. I

understand that obviously in a coalition headquarters they have to act within a coalition authority but I am just trying to get a sense, an understanding, of how we enforce that or ensure that they are not doing things that they are not comfortable with or that are contrary to their Australian orders. This is in a general sense.

Gen. Cosgrove—Of course, in addition to the weekly report that each embedded officer from, say, headquarters CJTF7 would make, each individual is aware that they have the opportunity and responsibility to make special reports if there is something which they feel is not right in accordance with the way we would want things done. They would make that report nominally to the senior Australian on their headquarters back to our own national headquarters and then it would proceed from there.

The point I made about General Molan is that his primary responsibility is obviously to work for the coalition. He has an additional responsibility as the senior Australian on that headquarters to receive collated reports from the others of his national group working in disparate parts of the headquarters on their ordinary affairs.

Senator Hill—Australian forces, say, for example, our security detachment, operate under the Australian rules of engagement.

Senator CHRIS EVANS—Perhaps when you are doing this schedule you might also provide a list of the commanding officers. I know Major General Molan has only recently been appointed and you said that it was previously a colonel. They are probably all on the public record anyway.

Gen. Cosgrove—The predecessor senior officer to General Molan is not on the public record.

Senator Hill—We can provide the rank.

Gen. Cosgrove—Yes, we can provide the rank and the sort of thing he was doing.

Senator FAULKNER—I think Senator Evans's question went from the cessation of hostilities in May 2003 through, effectively, to the present time. I am also interested, General, in what occurred from the commencement of hostilities through to the March-May period of 2003. As this schedule is being completed could you also include that period, please?

Gen. Cosgrove—Sure. This is going to take a couple of days. It is not something we are going to have available for you in the context of the sitting period of estimates.

Senator CHRIS EVANS—What—the legal officers?

Gen. Cosgrove—No, you have asked now for commanders.

Senator CHRIS EVANS—No, we are just after the senior Australian. I would have thought there were only three or four people.

Gen. Cosgrove—Okay. We should be able to have that fairly quickly.

Senator FAULKNER—Senator Evans's question, as I heard it, went from the cessation of hostilities through to the present day. Separately I am asking if you can also provide for the benefit of the committee the information that effectively goes from that period to March-May 2003.

Gen. Cosgrove—But only the same nature of information?

Senator FAULKNER—Yes, in relation to our legal representation, because that was the period when we negotiated the joint forces agreement on prisoner detention, wasn't it?

Senator Hill—The headquarters, of course, were not in Iraq then, but there are similar issues in relation to the rules of engagement, because each of the coalition parties had their own rules of engagement and there were lawyers working to ensure the management of that particular issue as it affected day-to-day operations.

Senator CHRIS EVANS—I think we have had evidence to this committee before about, for instance, the tasking of Air Force in relation to targets and those sorts of things. That is what I was really going to tease out with you, General Cosgrove. The clearest example I can think of is: what happens with a pilot attached to the US Air Force posted to Iraq? We had a discussion about targeting et cetera. In a practical sense, so I can be clear in my own mind about how that works, is the Australian pilot acting under American rules of engagement or Australian rules of engagement while attached to an American unit?

Gen. Cosgrove—Our rules of engagement, Senator.

Senator CHRIS EVANS—They must be quite complex to administer.

Gen. Cosgrove—Yes, potentially complex. The issue is to ensure that the individual is aware of the rules of engagement—is briefed on them, understands them and acknowledges that—and also conveys those rules of engagement to superiors within the allied unit. That is what was done before—

Senator CHRIS EVANS—I do not want to labour the point. It sounds like a very difficult thing to do. But the legal technical answer is that they would operate under Australian rules of engagement?

Gen. Cosgrove—That is correct.

Senator FAULKNER—This might best be directed to you, Air Commodore, or to you, General Cosgrove—I am not sure. I just want to understand whether it was the Coalition Provisional Authority or the Combined Joint Task Force 7 that basically—

Senator Hill—Before you go on, I think we need to clarify the answer that was just given. If it were an Air Force person attached to a US force, one of the third-party deployments, then they would be operating under the United States rules of engagement except if and where those rules of engagement differed from Australia's legal obligations.

Gen. Cosgrove—And that is consistent with my answer. Where our rules of engagement align with the United States there is obviously no difficulty. But our people must observe the differences between our rules of engagement and the US's.

Air Cdre S. Harvey—That is correct. In fact during the Iraq conflict we did direct our mind towards ensuring that any Australian pilots in particular who were involved in third-country deployments with foreign forces that may be involved in operations were aware of limitations that might apply under Ottawa convention requirements and so forth. So the answer is correct as given.

Senator Hill—It is quite complicated because you could have a mission being flown into Iraq which included Australian aircraft with pilots operating under Australian rules of engagement and US aircraft operating under US rules of engagement, but one of those US aircraft might be manned by an Australian pilot on third-country deployment who would be then operating under the US rules of engagement except for the overriding obligation of Australian law. That is why, before each of the missions, the lawyers basically had to clarify these issues as they might relate to that particular mission.

Senator CHRIS EVANS—More work for lawyers.

Senator FAULKNER—Could the committee be given a very brief understanding of the role that either the Coalition Provisional Authority or the coalition headquarters, CJTF7, or both, played broadly in respect to prisoner of war or detention policy and also in relation to Geneva convention compliance? Could you provide for the benefit of the committee, please, a brief report on the respective responsibilities of those two organisations in relation to those important areas.

Gen. Cosgrove—The easiest way to describe it is that the CPA is the government in its nonmilitary form and CJTF7, for the while, is the defence force arm of the government. The lawyers, for example, that we had on the CPA were military lawyers but acting in a broader capacity—more as general counsel type lawyers than necessarily strictly on issues of military law. The lawyers in CJTF7 were military lawyers acting on issues that particularly affected the military and not concerning themselves as core business with nonmilitary legal issues.

Senator Hill—As I understand it—and someone will correct me if I am wrong—the jails were under military command and, clearly, any interrogation was under military command. So that line of command, presumably, was up to the joint military headquarters.

Gen. Cosgrove—That is correct.

Air Cdre S. Harvey—That is certainly my understanding. I think the general's description is a fairly good one. The Coalition Provisional Authority is essentially concerned with the transition of the government at that strategic level, whereas the actual military type activities very much rested within the Combined Joint Task Force 7. Certainly any supervision or oversight of detention systems and the like would have rested with the military chain through the joint task force. That is not to say that the CPA would not have been an interested party, of course.

Senator FAULKNER—What you are saying to me, fundamentally, is that, in relation to prisoner of war policy or detention policy in the broad and in relation also to compliance with the Geneva conventions, these are issues where primary responsibility falls to the coalition headquarters, CJTF7.

Senator Hill—I think it is fair to put it that way, as primary responsibility. But because compliance with the Geneva conventions is obviously a whole-of-government responsibility, even though the jail is administered by the military arm the de facto government in effect, the CPA, obviously has an interest. But its interest is one of being able to influence rather than being able to direct.

Senator FAULKNER—You indicated to us before that Major O’Kane was posted at CJTF7. This is probably a question for you, Air Commodore, but you will obviously redirect it if necessary. Could you indicate to the committee what Major O’Kane’s responsibilities were and what was the period of his deployment.

Air Cdre S. Harvey—I can answer that question in broad outline. As I indicated, my role primarily was to select individuals for positions that had been identified. The information we had for the selection of Major O’Kane was that it was going to be a subordinate legal officer position within the Office of the Staff judge advocate of the joint task force and that his primary responsibilities would be more in the operations arena. That is obviously the basis that we used to select the person.

Senator FAULKNER—We know, because Senator Hill has informed us at a doorstep, that Major O’Kane was working for the Judge Advocate General. What is the broad role, if you like, of the Judge Advocate General? I think I might have a reasonable idea but let us be clear about it.

Air Cdre S. Harvey—I think the terminology they use is Staff Judge Advocate. Essentially, it is the senior lawyer who controls the cell of lawyers that provides legal services to the joint task force. So it would deal with every legal issue that might come up in the joint task force.

Senator FAULKNER—What did you say—or did you say; I did not hear you if you did—was the period of Major O’Kane’s deployment?

Air Cdre S. Harvey—I am not sure of the precise dates. My understanding is that the time of his deployment was from July to very early February.

Senator CHRIS EVANS—So it was July 2003 to February 2004?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Are you able to be more specific about Major O’Kane’s actual responsibilities? I thought you might be because of the amount of work that seems to have gone on within Defence to nail all this down—which I am not critical of, it seems an entirely appropriate thing to do. I thought you might be able to indicate to the committee more precisely what the major’s role was.

Air Cdre S. Harvey—I could probably flesh it out a little bit. I mentioned he was working on operations law matters, so he would have had involvement with issues such as rules of engagement and discussions in relation to a whole raft of matters relating to the operational aspects. I am a bit hamstrung as to how much detail I can go into because, obviously, in that position he was providing advice to coalition partners, so I cannot give any details of the actual advice. From my limited knowledge of what I have seen I think he was generally involved in all sorts of matters, from presenting lectures on the laws of armed conflict to general advice.

Senator FAULKNER—One of the issues of course always—and I appreciate the point that you make—is getting the balance right. But here we have something that has received a lot of publicity. That does not mean that the publicity is all accurate, of course, and I never jump to such conclusions I quickly say. It has received, as you know, a lot of publicity. I think

it is important that as much information that can be provided on the public record, understanding the usual constraints that this committee has always been sensitive to, is provided for the public record. For example, I would assume the staff judge advocate's role would go to monitoring compliance with the Geneva convention. That is not Major O'Kane's role, but would that be the staff judge advocate's role?

Air Cdre S. Harvey—Certainly providing advice in relation to Geneva conventions would have been a function of the staff judge advocate.

Senator FAULKNER—Who is responsible for monitoring Australia's compliance with the Geneva convention? Would this fall to Major O'Kane?

Air Cdre S. Harvey—Are we talking in the context of the joint task force?

Senator FAULKNER—Yes. He is deployed to the joint task force. Before you go on, you have indicated to us—and in previous questioning we have tried to establish—that that role was fundamentally one for the joint task force. It is on that basis that I am asking these follow-up questions.

Air Cdre S. Harvey—As has been previously mentioned, when employed—I think I know where your question is going to—

Senator FAULKNER—I wish I did!

Air Cdre S. Harvey—he effectively really had two reporting chains. One was because he was a line officer in the joint task force and obviously provided legal advice and worked on matters that were delegated to him by his superiors. I think his immediate superior was a British officer and, obviously, there was a US Army colonel above him. Obviously, work was delegated down and he reported up the chain on the issues that were given to him. I think where your question is coming from is that if he identified something that was of concern to Australia or a matter of Australian national interest then that is a matter that he would report to the senior Australian person embedded in the joint task force. If it were seen as being a major issue it would be referred up, I would imagine, to the Australian national headquarters.

Gen. Cosgrove—I want to add one thing there. What we do not have for you, but it might be useful to tell you, is how many lawyers were in the staff Judge Advocate General's branch.

Senator FAULKNER—I imagine there are quite a few.

Gen. Cosgrove—There is a force of 130,000 Americans and a substantial number of others in the coalition, so I would imagine that it is a substantial legal branch. There is an impression created that there is one lawyer in Iraq, Major George O'Kane. We seek to correct that.

Senator FAULKNER—It is not my impression. I understand the point you make and I accept it; however, I could equally say to you that there are not many Australian lawyers in the CJTF7. I think that is a reasonable thing to say to you and I think you have accepted that.

Gen. Cosgrove—Yes.

Senator FAULKNER—We know from the evidence you have provided that that is the case. So, in understanding the point that there are many lawyers in the staff judge advocate's office, I accept that. But there are not many Australian lawyers and this brings a special focus,

as you would appreciate, in relation to this parliament and this committee in relation to Major O’Kane’s role.

Gen. Cosgrove—It is not so much to take the focus away from the single Australian lawyer but to have some context in which you could see his likely span of duties and day-to-day place in that overall organisation.

Proceedings suspended from 10.30 a.m. to 10.52 a.m.

CHAIR—We will continue with questions on the portfolio overview and major corporate issues.

Senator FAULKNER—Mr Chairman, we were just talking about the role of Major O’Kane. Could we ask Major O’Kane to come to the table, please?

Gen. Cosgrove—Major O’Kane is not available for the hearing.

Senator FAULKNER—Why is that?

Gen. Cosgrove—Could you refer that question to the minister, please?

Senator FAULKNER—Minister, I have just asked General Cosgrove why Major O’Kane is not available to appear before the estimates committee.

Senator Hill—I got a letter from Senator Evans asking if we would make him available. I gave that careful consideration and concluded that it was not in accord with the usual practice. In this inquiry into the estimates it is our responsibility to bring senior officials and senior officers to the table to account for public expenditure; it is not designed to be an interrogation of relatively junior military officers on an individual basis. There may be other ways in which that can be done, but I certainly do not think it is the role of this committee.

Senator FAULKNER—Where is Major O’Kane? Is Major O’Kane posted to Canberra?

Gen. Cosgrove—Yes, he is.

Senator FAULKNER—He is at Russell?

Gen. Cosgrove—His place of duty is at Russell, yes.

Air Cdre S. Harvey—It is actually at the R.G. Casey Building. He works on the staff of the Defence Legal Service, and we are located at the R.G. Casey Building.

Senator Hill—I thought it was appropriate to have available the commander of the Australian headquarters during the relevant periods. That was Commodore Darby, as I understand it, and he arrived back in Australia at 6 a.m. today. We have asked him to become available as soon as convenient. Obviously we have here the director of legal services to answer questions relating to the legal chain of command; the Chief of the Defence Force, who has the overall responsibility for his military officers; and the secretary of the department who has the responsibility for the financial administration of the department.

Senator CHRIS EVANS—The difficulty with that, though, is that they are not the people you have been quoting in the press when explaining the government’s position on this. You have not been quoting General Cosgrove or Air Commodore Harvey; you have been specifically referring to what Major O’Kane told you or told Defence, to what he said or what his view was. His name has been in the media, but you have been using his first-hand

information and his knowledge of these matters to try to explain what the Australian government and the Australian Department of Defence knew. For the same reason that you thought it was important to quote him, we thought it was important to interview him, in the sense that he has the first-hand knowledge.

Senator Hill—I have not thought it appropriate to quote him. I have not brought his name into the public domain at all. I have answered questions if I have been asked specifically about him, but I do not really see how that is relevant to this committee. I believe that the officials at the table are those who can answer as to the knowledge of the Australian military of events that were taking place and the line of responsibility in relation to those events. In relation to the knowledge that Canberra had of any particular events and the civilian side of the department, obviously we have the secretary of the department and under him the deputy secretary for strategy and policy.

Senator FAULKNER—Senator Hill, if we were to use the logic that you have outlined to the committee, no-one else apart from General Cosgrove and Mr Smith would ever front up to the committee. The point here is that we have an officer who is located at the R.G. Casey Building here in Canberra and is available to come to the committee and there is no reason provided for why the relevant officer—in this case, Major O’Kane—cannot come before this committee. It just happens, Minister, to suit you and the government that Major O’Kane not be made available. That is a totally unsatisfactory situation. These committees are about accountability. Given the public—

Senator Hill—I do not need a lecture on it from you.

Senator FAULKNER—If you do not need the lecture then he should front up.

Senator Hill—I know the role of this committee as well as anyone else that is here. But this was a request from the Labor Party to interrogate a relatively junior officer under the cover of this committee, which deals with other matters. In those circumstances, I did not see that it was appropriate to be drawn into that game. There are appropriate ways to do things and there are inappropriate ways to do things. The Labor Party have chosen to take a political opportunity and to use this meeting on the estimates to interrogate a junior military officer about matters that do not even relate to the estimates. If this had happened under previous Labor governments and the coalition had requested such a junior officer, we would have been laughed at.

Senator FAULKNER—You know that is not true.

Senator Hill—I know it is true.

Senator FAULKNER—You have no excuse whatsoever for failing to provide for the attendance here of Major O’Kane, who, as we speak, we understand, is at the legal division of Defence sitting there at the R.G. Casey building in Canberra. That is a totally unsatisfactory situation.

Senator Hill—The excuse is proper process, which may not be of interest to Senator Faulkner because he has other objectives. There are times and places to do particular jobs.

Senator CHRIS EVANS—Proper process was followed. You were asked to provide the witness.

Senator HILL—Just because the Labor Party demands—

Senator CHRIS EVANS—No, I did not demand. The secretariat advised me to write to you, so I wrote to you. I asked you politely to provide the witness.

Senator Hill—that an individual should appear to be interrogated, that does not mean that the government has to accord with that demand.

Senator CHRIS EVANS—That is correct, Minister, but I—not the Labor Party—followed proper process as a senator and as a member of the committee. At the suggestion of the committee secretariat I wrote to you and formally asked you to make him available because you have been quoting him and using his information and his personal experiences in explaining the government's position on this matter. He has been the central person.

Senator Hill—That is not true.

Senator CHRIS EVANS—Maybe the *Hansards* or your doorstops are wrong. Maybe the ABC and the television stations are lying, Minister—

Senator Hill—There are no *Hansards* of doorstops.

Senator CHRIS EVANS—but it seems to me that he has been central to this whole matter. He has the best knowledge of what he did inside Iraq, and when, and it would be helpful to the committee if he was available.

Senator Hill—That is the decision that I have taken because I believe it is proper process.

Senator BARTLETT—I have two questions. Firstly, you said that this is not relevant to the purposes of estimates. I had thought that it was pretty clearly established that any questions going to operations of departments and agencies are relevant. There is a pretty strongly established precedent of going very broadly. I do not think this is particularly broad at all; it is very specific. Secondly, the minister would be aware that there is still on foot a proposal to have a specific inquiry into this matter where no doubt a request would be made for this person to appear. Is the minister saying that it is more appropriate for us to have a completely separate inquiry, which would be through this committee I presume, and to then request this officer to appear there, rather than in the context of estimates?

Senator Hill—Firstly, in relation to the relevance, I have not argued that the issues are not relevant, even though I think I could. I have not argued that because—

Senator CHRIS EVANS—The Geneva conventions are not relevant!

Senator Hill—we have, in recent years, taken a broad view and covered an enormous range of things where the connection with public expenditure is very tenuous. I am arguing that it is inappropriate to use this committee under that guise to drag a relatively junior military officer here to be interrogated. In relation to the proper process to do that, I do not think it is for me to dictate that. There have been other processes where we have complied with requests, and relatively junior individuals have given evidence to the parliament.

Senator FAULKNER—If you have got nothing to hide, Minister, Major O'Kane should be provided for the benefit of this committee so questions can be asked of him. It is not an issue of interrogation or anything of the like; it is proper questions with the full accountability and transparency that is appropriate before a parliamentary committee.

Senator Hill—We are extraordinarily transparent and accountable and I think that that is a good thing, but you have to draw a line. If the Labor Party wants to use the front of this committee to interrogate a junior military officer then it is crossing the line. I think I have some responsibility to officials to ensure fair play in this committee. Ultimately, the committee makes its own decisions but I have a responsibility to staff and to the military officers that serve under General Cosgrove to ensure that the committee, in my view, acts properly. I do not think this request from the Labor Party is proper.

CHAIR—As committee chairman, can I say that the committee is entitled to ask any question it likes. It is entitled to ask for Major O’Kane’s appearance, but you have declined that request and you take responsibility for that decision. I think that there is probably not a lot of point in pursuing that request further. The decision you have made has been clearly stated to the committee. If members of the committee wish to pursue it, they can, but I think they are wasting their time.

Senator Hill—In terms of the issues, I am more than happy to have senior officials answer the questions but—

Senator FAULKNER—But they cannot; they were not there.

Senator Hill—questions relating to Australian knowledge have not even been asked.

Senator FAULKNER—They were not there.

Senator Hill—They have not even been asked.

Senator FAULKNER—The questions this committee wants to ask Major O’Kane go to Major O’Kane’s direct role and involvement at the Coalition Joint Task Force in Iraq. He was the legal officer there, no-one else. Not you, not General Cosgrove or Air Commodore Harvey or anybody else. That is why questions need to be asked of him.

Senator Hill—Take for example the operations of the special forces in Iraq. The Labor Party may not have been happy about a particular operation, so it is asking that it could drag the corporals, the privates—whichever it likes—before this committee—

Senator FAULKNER—No, we are not.

Senator Hill—Yes, the Labor Party is arguing that. It is saying it can drag anyone before this committee, no matter where they are in the line, and interrogate them on issues that it believes to be of political use. What I am saying is that it has the right to question senior officials in this place on issues of public expenditure, and those senior officials are being made available for that task.

Senator FAULKNER—That is a straw man, of course. As usual, Senator Hill puts up a straw man and then knocks it down. The truth is that the witness we are requesting is an officer in the Australian Army who is senior enough to have been slotted into the Baghdad operation and work on very important legal issues on behalf of our country and coalition partners. That is what we are asking for; we are not asking for a private or a corporal or anyone else.

Senator Hill—So where does the line get drawn? The line gets drawn wherever Senator Faulkner dictates.

Senator FAULKNER—Senator Hill knows it, and for him to put up a such a straw man and argue about privates and corporals and the like is absolute arrant nonsense. What this is from Senator Hill is the same old tactic that he uses time and again. It is a cover-up to stop this information—

Senator Hill—I was waiting to hear that because with Senator Faulkner it is usually said about 20 times per estimates day.

Senator FAULKNER—and to stop the witness from coming to this committee. Mr Chairman, this witness is available; he is in Canberra. He is in the R.G. Casey Building in Canberra. He was senior enough to be deployed to our operation in Iraq, in Baghdad, to deal on behalf of the ADF with these very important legal issues. As a result it is a reasonable request, a proper request, to ensure that we have accountability and transparency at this committee. I do not think the minister has any alternative on this occasion but to ask the relevant witness, who was there, who was at the coalface. Only he can provide answers to the questions we want to ask.

CHAIR—Senator Faulkner, I understand your view entirely. Whether I agree with it or do not is irrelevant, but I cannot arbitrate on this. The minister takes responsibility for the decision.

Senator FAULKNER—The minister is scared the witness will come on and tell the truth.

CHAIR—The minister has made a decision. I cannot arbitrate further on that, I am sorry. In the interests of the committee's program, we will move ahead.

Senator CHRIS EVANS—May I make the point that my letter to Senator Hill was on the advice of the committee. There has been proper process. It was not a letter from the Labor Party to interrogate a junior officer. The language always gets more shrill as the minister comes under more pressure. But the key question was—

Senator Hill—You have been listening to Senator Faulkner. I am surprised you did not start with the allegations of a cover-up.

Senator CHRIS EVANS—I have heard all four versions of your explanation of these matters so far and no doubt we will have the fifth today. But let us be clear: we followed proper process, asking you to make available Major O'Kane and any other officers who had direct knowledge of these matters inside Iraq. That was the request, done according to proper process: for you to provide those officers who had direct knowledge, not because of their title, not because of their rank but because of their direct knowledge of the matters, their direct involvement in these matters. That is what we are seeking. We are seeking to get them before us so that we can get an understanding of what they did, what they knew and what their role was.

Senator Hill—Senator Evans claims to have followed proper process and demands that this young officer be fronted, and I claim to have followed proper process and said no.

CHAIR—In this circumstance, Minister, you have the whip hand so the matter as far as the committee is concerned is closed. The request has been made; you take responsibility for denying the request and that is quite appropriate.

Senator BARTLETT—I ask the minister, for my guidance, whether he believes that this is not the appropriate process. Obviously, there are specific questions that many senators want to ask. It is clearly a legitimate argument to say that it is in the public interest to ask them. Minister, are you saying it is because it is estimates and estimates is not the right forum? Are you saying that Senate committees are not the appropriate place to ask these questions? Should we have a separate committee inquiry specifically into this matter?

Senator Hill—I have not said, even in this committee, although I could, that it is not the appropriate place to ask questions relating to Australia's knowledge of these matters. What I have said is inappropriate is to identify a young officer way down the chain and haul him before this committee to be interrogated. That is not the way in which this committee is supposed to function.

Senator BARTLETT—Do you mean estimates specifically?

Senator Hill—In estimates.

Senator BARTLETT—So we should have a separate inquiry?

Senator Hill—It is not my job to—

Senator BARTLETT—We do not have much choice. It is not because he is young—I do not even know how young he is—it is because he is the only one in a position to answer some of these questions, surely.

Senator FAULKNER—He is an officer in the Army.

Senator Hill—You cannot jump to that conclusion when you have not even asked the questions of his superiors, the people of whom you are supposed to ask these questions.

Senator CHRIS EVANS—We are only going on your public comments, Minister. If you are saying I should not rely on them, I am happy to take your advice, but you have been discussing Major O'Kane for days.

Senator Hill—I have not drawn any individual into this discussion.

Senator CHRIS EVANS—At your doorstep you answered quite lengthy questions about Major O'Kane and what he did and what he advised you.

Senator Hill—Did I introduce his name into the discussions?

Senator CHRIS EVANS—I am not sure who introduced it.

Senator Hill—No, of course I did not.

Senator CHRIS EVANS—You certainly have been out there debating his view of the world.

Senator Hill—I think there is a strong argument that none of these individuals by name should be dragged into it.

Senator CHRIS EVANS—You have been on the record directly referring to what you say he says. It seems to me that it is reasonable for the committee to ask him directly.

Senator Hill—I have been asked questions and if I am asked the questions again today I will answer them to the best of my liability.

Senator FAULKNER—Why then did you allow officers of the same rank to appear before the CMI committee when you blocked others, such as Rear Admiral Gates, from attending? There is no consistency in the way you approach this—except one thing: it comes down to transparency and scrutiny. That is what it comes down to—holding the government accountable and you do not want to allow these issues to be canvassed in a way where the truth will out. That is what it is about.

Senator Hill—That is not true. Senator Faulkner's tactic is always to make statements under the guise of questions. What I said in relation to that committee is that only officers that are relevant to the inquiry should be called.

Senator FAULKNER—Are you seriously suggesting that Major O'Kane is not relevant to the inquiry?

Senator Hill—In that instance the Labor Party sought to cover the field by dragging them all before the committee, lining them all up along the table at once and picking and choosing which one got questioned, then cross-examining them. If they want to play those games, they can attempt to. But, again, I have some responsibilities for the staff that are within my portfolio. If that does not please the Labor Party, so be it.

CHAIR—I think we should move on. Are there any further questions on the portfolio overview?

Senator FAULKNER—Senator Hill, can you inform the committee whether one of Major O'Kane's responsibilities was liaising with the International Committee of the Red Cross.

Senator Hill—I understand—

Senator CHRIS EVANS—You understand?

Senator FAULKNER—You understand; you don't know?

Senator Hill—I understand that on some occasions he did perform that task, and I have said that before.

Senator FAULKNER—Why do you understand that?

Senator Hill—That is the advice I have received.

Senator FAULKNER—Who from?

Senator Hill—From my department.

Senator FAULKNER—Who from in your department?

Senator Hill—I do not have to say who it is from.

Senator FAULKNER—I want to get to the bottom of the advice.

Senator Hill—My briefs would be signed by senior officials of the department—the sorts of officials who are supposed to appear before estimates committees.

Senator FAULKNER—Can you explain to the committee what investigations have been undertaken in the department to establish that advice to you?

Senator Hill—Yes. I have asked that relevant individuals within the department who had contact with the prison system or detainees should be identified and interviewed. As per the

statement of last Friday by the CDF and the secretary, in actual fact several hundred have been so identified. All but a couple have been interviewed and all have said that they had no knowledge of abuses within the system.

Senator FAULKNER—My question went to the issue of whether Major O’Kane had liaison with the International Committee of the Red Cross.

Senator Hill—One of those interviewed was Major O’Kane, because he was working during relevant periods in the coalition headquarters. He was working as a legal officer in that headquarters and he had some role in liaison between that headquarters and the Red Cross. As I understand it, between March and November of last year the International Red Cross conducted inspections and other investigations of the practices of detainment and interrogation within Iraq from the time an individual was first detained through their period within prisons, and in relation to at least some of these inspections or investigations Major O’Kane, in his task as a legal officer, provided facilitation.

Senator FAULKNER—In other words, you do not really know at all. Who interviewed Major O’Kane?

Senator Hill—I understand that he has been interviewed by the director of legal services. I think he has also been interviewed by the deputy secretary, strategy—no, just by the director of legal services.

Senator FAULKNER—So, Air Commodore, you conducted an interview with Major O’Kane as part of the inquiry that Mr Smith and General Cosgrove made public?

Air Cdre S. Harvey—I have spoken to the major on several occasions, yes.

Senator FAULKNER—How formal were these discussions? I used the word ‘interview’; you said you have spoken to him. Was there a record of interview?

Air Cdre S. Harvey—No, there was not a formal interview in the sense of a record of interview.

Senator FAULKNER—Did you take notes?

Air Cdre S. Harvey—No, I did not.

Senator FAULKNER—How can I be confident that what Senator Hill has told the committee is accurate?

Air Cdre S. Harvey—The information that would have come to the minister would have come up through various sources, including me, and would have been based upon information that I gleaned from the major.

Senator FAULKNER—Did anyone else, apart from you, Air Commodore Harvey—and I want to be clear on this; I think the answer is no but let us be absolutely clear—interview or have discussions with Major O’Kane about these matters pertaining to events in Iraq?

Air Cdre S. Harvey—I cannot answer that definitively. I know one other legal officer in my office may have had discussions with Major O’Kane.

Senator FAULKNER—May have had?

Air Cdre S. Harvey—I am pretty sure he did, yes.

Senator FAULKNER—Were notes taken?

Air Cdre S. Harvey—Not that I am aware of.

Senator FAULKNER—How extensive were your two discussions with Major O’Kane?

Air Cdre S. Harvey—There have been a number of discussions, generally in relation to ascertaining information to be able to answer questions that have been asked.

Senator FAULKNER—How extensive were they, Air Commodore Harvey; how long did it take?

Air Cdre S. Harvey—It is hard to say. I have had quite a number of conversations. You must appreciate that this major works in my office, so naturally when an issue comes up I will speak to him and get his information and use that as the basis for any information—

Senator FAULKNER—But no record, no transcript?

Air Cdre S. Harvey—There was no formal interview, no.

Senator Hill—Not an interrogation.

Senator FAULKNER—No, that is why it might be appropriate to actually have a formal transcript. You are very confident, Senator Hill, in providing this information. We now know it is based on a conversation or conversations that Air Commodore Harvey had with Major O’Kane, of which there is no record. You are joking, Senator Hill, aren’t you? That is accountability Senator Hill style!

Senator Hill—It is based on a number of interviews at least in part with the director of legal services in the department.

Senator FAULKNER—How many interviews, Senator Hill?

Senator Hill—Well, you ask—

Senator FAULKNER—No, I am asking you. You said ‘a number of interviews’. Surely you checked. You are providing this information and evidence to this committee on behalf of Major O’Kane, because you will not let Major O’Kane come before the committee. You say ‘a number of interviews’—did you know there were no transcripts or records of interview?

Senator Hill—I know that there were several interviews, because I received—

Senator FAULKNER—Did you know there were no transcripts?

Senator Hill—Will you let me answer the question?

Senator FAULKNER—Yes.

Senator Hill—I know that there were several interviews because I have received several briefs from senior officers of the department on the issue. I did not ask whether they had recorded their interviews with him, because I do not think that is appropriate. That is not my job. I seek advice from senior officials on matters that are relevant to my responsibility. If that requires them to carry out some investigation, they do that and then report to me.

Senator FAULKNER—But surely you would accept that, given the public use or misuse of Major O’Kane and his alleged statements and role, he is a major witness in relation to these matters? Even you would accept that, wouldn’t you, Senator Hill?

Senator Hill—Senator Faulkner is falling into the trap. ‘He is a major witness in relation to these matters.’ What is this all about? Is this a trial of the major?

Senator FAULKNER—No.

Senator Hill—Why doesn’t the Labor Party ask—

Senator FAULKNER—It is holding the government, but also holding Defence, which I think they accept and understand, accountable on these issues. That is what it is.

Senator Hill—the senior officials the questions that it wants answered? If it wants to know—

Senator FAULKNER—It is not a trial; it is holding Defence accountable—

Senator Hill—You would like to make it a trial.

Senator FAULKNER—and most importantly you, as Minister for Defence, who makes all these courageous and brave statements and now it turns out they are based on the flimsiest basis.

Senator HILL—You can’t jump to that conclusion.

Senator FAULKNER—I have.

Senator HILL—You can and you will, because that serves your purposes.

Senator FAULKNER—I jump to the conclusion because it is true. There is no documentary record, is there, Air Commodore Harvey, of the discussions you had with Major O’Kane?

Air Cdre S. Harvey—The only record would be the briefs that we have provided up the chain.

Senator Hill—Did you hear that, Senator Faulkner?

Senator FAULKNER—Yes, I did. I heard that.

Senator Hill—So after interviewing him they prepared a brief.

Senator FAULKNER—Yes, I understand that. Was there a record of interview, Air Commodore Harvey?

Air Cdre S. Harvey—I believe I have answered that. There was not.

Senator FAULKNER—Did Major O’Kane sign any documentation?

Senator Hill—‘Were the briefs prepared while the matters were still fresh in the mind of the witness?’ Isn’t that the next logical question to ask?

Senator FAULKNER—You can ask your questions. One assumes you would have asked them when you signed off on the brief, but I doubt it, because you are not that thorough, Senator Hill. I will ask my questions, you can ask yours. Please don’t waste the time of the committee by you asking questions of the officials.

Senator Hill—One assumes the job gets done properly.

CHAIR—Order!

Senator FERGUSON—Mr Chairman, I would have thought that debates can take place in the chamber, not here. You are debating it.

Senator FAULKNER—It is not Senator Hill's job to ask questions here, is it, Mr Chairman?

Senator FERGUSON—But you do not debate here.

Senator FAULKNER—That is true. Senator Hill can stop asking questions and we will get on with it. My question to Air Commodore Harvey is: did Major O'Kane sign any documentation in relation to the matters that have been raised publicly about his or others' roles in Iraq?

Air Cdre S. Harvey—Not to my knowledge. As I said before, the information gathering process was so that I could feed information up the chain. It is not our departmental practice to have majors sign ministerials. The information that I ascertained from the major was provided under my signature.

Senator FAULKNER—General Cosgrove, in that statement, I recall, you talk about Major O'Kane's comments, don't you?

Gen. Cosgrove—I believe I do.

Senator FAULKNER—Were you aware of on what basis these were gleaned?

Gen. Cosgrove—Questions to Major O'Kane about his recollections—not questions from me—

Senator FAULKNER—Yes.

Gen. Cosgrove—but questions posed by others to Major O'Kane about his recollections and assurances from Major O'Kane in relation to the serious allegations that were identified in January and publicised in April.

Senator FAULKNER—Were you aware who had asked the questions?

Gen. Cosgrove—Not particularly of Major O'Kane, but—

Senator FAULKNER—How did—

Senator Hill—Why don't you let him answer the questions?

Senator FAULKNER—I am. I thought he had finished answering.

Senator Hill—No. You never let them finish. You just keep butting in.

Senator FAULKNER—Senator Hill, keep your shirt on.

Senator Hill—My shirt is on. I am quite comfortable, thank you.

Senator FAULKNER—Good.

Gen. Cosgrove—Not particularly by Major O'Kane, but by the people who prepared the draft statement telling me that Major O'Kane had been asked if the statement was an accurate representation of his views and recollections.

Senator FAULKNER—Who prepared the draft statement?

Gen. Cosgrove—The deputy secretary strategy was the coordinator of the production of the statement, although the secretary and I take responsibility for it.

Senator FAULKNER—When you took responsibility for this statement that was issued, you did not know who had undertaken the question?

Gen. Cosgrove—No, but I was assured that Major O’Kane had been spoken to. I accepted that because it seemed to me that, if I was assured of that, it had been done.

Senator FAULKNER—Who gave you that assurance?

Gen. Cosgrove—The deputy secretary strategy.

Senator CHRIS EVANS—Were you saying that Major O’Kane got to review your statement before it was made public?

Gen. Cosgrove—He was asked to look at the statement to ensure that it was an accurate depiction of his views and recollections.

Senator CHRIS EVANS—We are talking about the media statement issued in the names of you and the secretary?

Gen. Cosgrove—That is right.

Senator CHRIS EVANS—So a draft of the media statement was put before the major?

Gen. Cosgrove—I believe so.

Senator FAULKNER—That ought to be just a matter of fact that one of the witnesses should be able to—

Air Cdre S. Harvey—I can confirm that, because—

Senator FAULKNER—Somebody ought to be able to be definitive.

Air Cdre S. Harvey—He was working in my office, so I performed that task.

Senator CHRIS EVANS—You provided him with a draft of the media statement.

Air Cdre S. Harvey—I showed him the words that related to—I think he may have seen the whole statement; I certainly provided the statement in terms of the words that were attributed to him.

Senator CHRIS EVANS—Words that were attributed to him? So you were quoting him?

Air Cdre S. Harvey—As I understand it, there was a reference in the statement to the understanding of Major O’Kane. Obviously that is the issue that I was critical to see that he saw. But now that I think about it, I am pretty sure he saw the whole statement.

Senator CHRIS EVANS—So, despite his junior status and his youth, we are prepared to quote him in the statement?

Air Cdre S. Harvey—I think the issue is basically that the statement makes reference to the understanding of Major O’Kane. With respect, I do not see that there is any other way of doing it without—

Senator CHRIS EVANS—My point exactly.

Gen. Cosgrove—Just to make the record accurate, I do not think you would say that Major O’Kane is quoted. He is referred to. His recollections are referred to.

Air Cdre S. Harvey—His understanding.

Gen. Cosgrove—‘Major O’Kane did not report any details.’ ‘At no time did Major O’Kane report.’ And so on. In that there were at least three references to Major O’Kane in the statement, it was considered prudent to ensure that that was entirely his recollection and views on the issue.

Senator CHRIS EVANS—Were you the only one to liaise with the major on these issues or was the deputy secretary involved as well?

Air Cdre S. Harvey—As I understand it, the deputy secretary was coordinating the process, but obviously, because Major O’Kane was located in my office at the time of clearance, the task fell to me to speak to the major.

Senator CHRIS EVANS—So nobody more senior than you was involved in discussing this with the major?

Air Cdre S. Harvey—Not that I am aware of, no.

Senator CHRIS EVANS—Could I just go back a step. General Cosgrove, when you and the secretary initiated this internal inquiry—I do not have your own words—to report on this situation, that was at the request of the minister, was it?

Gen. Cosgrove—We were engaged in that the moment we understood that it would be a matter of high public interest. It took some time, but, unsurprisingly, the minister either directed or concurred. I am not sure of the exact sequence. You could say that it was coincidental that we decided and the minister either concurred or directed.

Senator CHRIS EVANS—Perhaps you could take that on notice and find out whether it was coincidental, directed or requested.

Gen. Cosgrove—I think there may have been action under way when the minister’s formal requirement for this to be done was made known. In fact, I would say that.

Senator CHRIS EVANS—So you did get a request from the minister to provide a report on these matters. Can you tell me when that occurred? I am trying to understand the sequence.

Senator Hill—After 11 May—

Senator CHRIS EVANS—After your statement in the Senate.

Senator Hill—It was either the 10th or the 11th, but when I started to learn of the contact of some ADF personnel with these issues through their deployment, I asked that they be interviewed to ensure that I had as complete a picture of their involvement as possible.

Senator CHRIS EVANS—Have you got the date of that request?

Senator Hill—It was a little later that it became apparent, as the department explored these issues further, that in fact there were some hundreds of individuals that had some direct or indirect contact. So that part of the process was probably the initiative of the department and mine was in relation to individuals that had been named to me.

Senator CHRIS EVANS—Perhaps you could put it in your own words, Minister: when did you request advice from the department and what did you request of them?

Senator Hill—I will go back and get the language but it is just as I have put it to you, and it was several times in periods subsequent to and around 11 May.

Senator CHRIS EVANS—Clearly, you had a brief with you when you rose to speak in the parliament, which I think was on the 11th.

Senator Hill—Yes.

Senator CHRIS EVANS—As I recall, I got into some trouble with the President for interjecting on you at the time, so it does stick in my memory.

Senator FERGUSON—That is not unusual.

Senator CHRIS EVANS—It is not unusual, no. I just want to be clear: you clearly had a brief, Minister, on 11 May but it was subsequent to that that you actually asked the department to provide you with further and better advice about ADF knowledge of these matters—is that right?

Senator Hill—The questions changed as time went on because the first brief related to the issue as to whether the ADF had actually taken prisoners, because the debate at that time was about the treatment of prisoners. That would seem to have been the week before 11 May.

Senator CHRIS EVANS—That you were provided with that brief, do you mean?

Senator Hill—Yes.

Senator CHRIS EVANS—That would have been the brief you used in answering the question on the 11th?

Senator Hill—According to my sequence of these briefs, the next one was dated 10 May, which I suspect I received on the morning of 11 May. That told me of the involvement of lawyers in the ADF who were working in the office of the CPA.

Senator CHRIS EVANS—That is the first time your brief included that information?

Senator Hill—That related to the February report of the ICRC, and that is why, in my answer to the question on 11 May, I referred to the February report of the ICRC.

Senator CHRIS EVANS—Is that the first time your brief included that information?

Senator Hill—I think that is correct. Are you saying over the last few years?

Senator CHRIS EVANS—No, obviously in the current context.

Senator Hill—In this sequence of events.

Senator CHRIS EVANS—Yes.

Senator Hill—The sequence of events really started for me at about the beginning of May with the *New Yorker* article and the international press on the abuses and certain American individuals being prosecuted. With the benefit of hindsight, we can now all recall that there was mention of this in January, in terms of the fact that the US was carrying out an investigation. But nobody seemed to remember that up to that point, probably because it was carrying out an investigation into alleged improper practices and that is not all that unusual in

itself. It was when the pictures were published that people suddenly realised there was substance in this particular matter.

Since early May I have obviously sought to put together the jigsaw on any Australian contact with prisoners or with the detention centre. As I said in the parliament, my advice is that we did not ever, at any time, hold prisoners and therefore, in relation to the convention obligations, they were not on us, they were on others. I was told that we did not administer the prisons, that we did not conduct interrogations within the prisons and that our only contact with the system was really of an incidental nature. So the contact that I knew of on the 11th that I referred to was the fact that legal officers in the CPA were aware of the February report of the ICRC that went to the head of the CPA, Mr Bremer, and the representatives of the occupying powers, the United States and the United Kingdom.

Senator CHRIS EVANS—When do you say you became aware that they had that contact and that knowledge?

Senator Hill—My recollection, and it is supported by the briefs, is that it was about 11 May, but I am not going to say that if I go back over the thousands of briefs that I would have had on Iraq in the last 12 months that there was no mention of these issues. I actually do not think that there was, but I am wanting to be careful. I do not believe there was. Even in my visits to Iraq, I do not recall the issues being raised. Interestingly, even in my visit to Iraq in April, a few weeks before these events became public, I do not remember these issues being raised. I spent the best part of two days, off and on, with the ABC. I do not remember them raising the issues. There were a lot of issues put before me in Iraq but I do not recall that this was one of them. After those photos were published in America, then people started to ask questions and similarly, not surprisingly, we asked questions internally within Defence. Apart from the legal officers that have given legal advice from time to time or facilitated ICRC visits—that is what they are doing: they are trying to help in the process—we have not had any direct contact with these issues.

Senator CHRIS EVANS—Can I take you back then. When did you request the investigation by the department as to the level of contact?

Senator Hill—The copies of the briefs that I have before me do not have my handwritten notations, but I think the first time was probably after the 11th. Then when I started to receive further briefs with extra pieces of information I extended my requests.

Senator CHRIS EVANS—Perhaps the secretary can help us with the date; no doubt he had to act on this request.

Gen. Cosgrove—I think the important thing is that from about that time we started to assemble any information of any nature that we could find on our own activities or involvement to do with the specific set of abuses and misbehaviours evident from the revelations in April. My recollection is that it was in early May that we started.

Senator CHRIS EVANS—Who was tasked with that?

Gen. Cosgrove—In the first place it was the head of strategic operations who started the process. It was quickly expanded to include all Australian government people or defence people who were in Iraq—some of whom were not of the ADF. It was a multiple exercise

involving the head of strategic operations and moved out later to pick up the deputy secretary strategy and naturally, because of his seniority, he has become the coordinating agent for it in the last few days.

Senator CHRIS EVANS—The deputy secretary has only been coordinating it in the last few days?

Gen. Cosgrove—But his group has been involved from the outset because of the identity of some of the people who had to be asked questions.

Senator FAULKNER—In your press statement—yours and Mr Smith’s—you say at the beginning of paragraph 6:

ADF officers, including Major O’Kane, working in the coalition headquarters and the CPA were aware of the October 2003 ICRC report on detainee treatment.

Can we have an indication of how many other officers were aware?

Gen. Cosgrove—The information I have is Major O’Kane and possibly one or two lawyers who were in the CPA. That would include the senior officer—not a lawyer—on the headquarters of CJTF7 to whom Major O’Kane provided weekly sit reps.

Senator FAULKNER—When you use the terminology ‘were aware of the report’—

Gen. Cosgrove—Perhaps a better phrase would be ‘of the existence’ of the report.

Senator FAULKNER—Does this mean they had seen or received the report in any way?

Gen. Cosgrove—No, it does not mean that.

Senator FAULKNER—In fact it means?

Gen. Cosgrove—That there was an ICRC matter.

Senator FAULKNER—Can we be precise about the numbers of officers: ‘possibly one or two’ others—can we do better than that?

Gen. Cosgrove—We can attempt to find out a precise number.

Senator CHRIS EVANS—As I understand, you have conducted an inquiry and you have interviewed all these people, so surely we know now, don’t we?

Gen. Cosgrove—But if you were to say that we were aware of the fact that there was an ICRC matter, that would obviously include an officer in the CJTF7 to whom O’Kane made his weekly reports on gainful employment, administration—

Senator CHRIS EVANS—This is an officer you would have interviewed as part of this inquiry?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—So we will know what he knows and will be able to tell us now, won’t we?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—So can we tell us?

Gen. Cosgrove—Yes. He was one of the defence personnel who was unaware of the allegations of abuse or serious mistreatment before the public report of the US investigation in January 2004. He is encompassed by that remark.

Senator FAULKNER—Had Major O’Kane seen or received a copy of the report? I appreciate that you said the others did not. I do not want to put words into your mouth; you can confirm that others did not. Can we now be clear about whether Major O’Kane did?

Gen. Cosgrove—I believe that he saw ICRC material.

Senator FAULKNER—But can we be more conclusive?

Senator Hill—Can I try and help?

Senator FAULKNER—Yes, but before you do I want to indicate that I appreciate your assistance to the committee, General, but ‘I believe’ is obviously qualified. I appreciate you can only give the best evidence you have available to you, but I thought, given that we have been informed that an inquiry had been undertaken, we could be quite definitive about some of these issues. If Senator Hill can help, that is good.

Senator Hill—We know that the ICRC had a process going between March and November of last year. It was basically investigating these issues, which included visits to facilities and probably all sorts of other investigative procedures. We know that it culminated in a report that it presented to the CPA, the de facto government—perhaps I should not use that expression but I will for the purposes of this discussion—together with the governments of the occupying powers. I think it is reasonable to assume that the processes that took place during the year led to paperwork, but whether that paperwork ever got to the CPA I do not know. If what General Cosgrove is saying is that the legal officers working in the CPA did not receive any documents produced during the year as the report on Iraq was developed, that would not surprise me at all, because you would believe that they would be more likely to go to the party that is responsible for the management of the prisons or the management of the interrogation processes.

Senator FAULKNER—It is one thing to be aware of the report, but it is another thing to have read it or received it. I think you would accept that, wouldn’t you?

Gen. Cosgrove—Yes.

Senator FAULKNER—We know from General Cosgrove’s previous evidence that other ADF officers had not read or received the report. That is correct, isn’t it, General Cosgrove?

Gen. Cosgrove—To the best of my knowledge, other ADF officers did not receive ICRC material in October. We would need to verify that in relation to the officers at the CPA, but my belief now is that they did not receive ICRC material.

Senator FAULKNER—My question was whether Major O’Kane had seen or received the report.

Senator Hill—Everyone talks about the report, but in fact it may not have been a report. That is the point I am trying to make. It may be that the report was the February report but that the ICRC produced materials during the year in relation to various issues in various places.

Senator CHRIS EVANS—I understand that the report in February was a summation of the concerns they had been raising from March to November.

Senator Hill—Of the previous year, yes, including the period we are talking about now.

Senator CHRIS EVANS—Which makes intriguing the argument that somehow the stuff we are dealing with from October is unrelated to the stuff in the final report in February. We will come to that, but it seems to me that it is counterintuitive if you have a series of concerns being raised. The question is: who did see the ICRC stuff? I gather that your answer to Senator Faulkner is that it was Major O’Kane alone.

Air Cdre S. Harvey—That is my understanding. I might add that the survey that we have done was primarily directed towards whether people had seen prisoners of war and whether they had seen abuse rather than the question of whether they had seen ICRC reports. Our survey, interviews—call it what you like—did not provide definitive answers to that. It has been a case of contacting people that we know may have had exposure. My understanding is that Lieutenant Colonel Muggleton has indicated that he did not have access to it. In relation to O’Kane, certainly he did.

Senator FAULKNER—But what you are saying, Air Commodore, is that you have surveyed a range of personnel as to whether they saw prisoner abuse directly—is that right? You explain what the survey comprised. That might be helpful. What did you actually survey the personnel—

Air Cdre S. Harvey—It is probably a bit hard for me to do that because I was only involved at the tail end.

Senator FAULKNER—Could we get the witness to the table who can tell us what the survey comprised, please?

Air Cdre S. Harvey—I might just point out that, in terms of process, the identification of people was done by Strategic Operations Division, so they are the ones who obviously knew exactly what they were looking for.

Senator CHRIS EVANS—They are obviously the ones we would like to hear from then. Let us have to the table the person who can answer the questions about the survey.

Gen. Cosgrove—To carry on from what the air commodore has foreshadowed, the initial raft of questions concerned actual involvement in or witnessing of abuse, and only subsequently did it become relevant to consider whether there was other material of this nature that people may or may not have seen. That is point one. Point two is that the vast majority of the 302 people who were surveyed by definition were not in areas where they would be exposed to any material from the ICRC. It is incongruous to think so. If they had not been asked specifically, ‘Did you see ICRC material?’ then I would submit to the committee that that should not be a fatal flaw of any nature. An officer who had seen detainees being moved from point A to point B by coalition forces might be asked his view of whether their treatment was appropriate, but it would be hard to imagine how that same officer might somehow have stumbled over a report.

Senator FAULKNER—I accept that, but you see, General Cosgrove, what we now know is that the survey of the 298 plus four Defence personnel, if I understand your words, was about whether they were involved in or had witnessed abuse. That is true, isn't it?

Gen. Cosgrove—Correct.

Senator FAULKNER—Your statement said:

None of those surveyed were aware of abuse or serious mistreatment of Iraqi prisoners or detainees, of the nature of recent allegations, during their deployment.

That is something different. Again, that is an awareness issue. What I would like now is for the person who conducted the survey to come to the table so we can get clear what the survey was about. These are quite different things. I think you appreciate that they are different things. Your statement goes to awareness—I am very interested in awareness and we will be addressing that at a later stage—but the survey was about involvement in or witnessing of abuse. Can we get the person who designed and conducted the survey to come to the table, please?

Senator Hill—We are sending for him.

Senator FAULKNER—You are saying the relevant officer is not here?

Senator Hill—The relevant officer should be here, but we are having trouble finding him at the moment. We have sent out a search party.

Senator CHRIS EVANS—A lot of survey groups have difficulty finding stuff these days. It is a fairly common problem.

Senator FAULKNER—I pointed out the difference—which I think you accept, don't you, General Cosgrove—about involvement and witnessing abuse as opposed to awareness. They are quite different conceptually, aren't they?

Gen. Cosgrove—And I think we will find, Senator, that the awareness question was also asked.

Senator FAULKNER—Fine. I don't know and I want to be clear on that. But you are not sure at this point that it was asked and that is why I wanted to try and clear it up.

Mr Smith—Perhaps Mr Carmody can assist. He did not run the survey but he had some involvement in it.

Mr Carmody—I did not compile the survey questions but my clear understanding was: did anyone who was surveyed have any dealings with prisoners? Did they see any abuse? Were they aware of any issues of concern? Did they handle any prisoners? I am sure the Strategic Operations Division will be able to provide the answers to the specific questions, but I think it cuts to awareness. So it cuts not only to what they did, which was the first question, but also to what they saw: did they have any awareness of abuse of the nature of the reports that had come out in April?

Senator FAULKNER—Mr Carmody, the survey effectively was directly your responsibility, was it? Yours was the guiding hand, was it?

Mr Carmody—I think the Strategic Operations Division had started the survey anyway, but essentially I was coordinating, at the end of the day.

Senator FAULKNER—How was the survey conducted? Was it done literally on a series of 290-odd interviews?

Vice Adm. Shalders—In the first instance, to generate this list of names, we asked our headquarters in Baghdad to provide details of any people who might have visited the prison or dealt with prisoners and detainees. That request resulted in 11 people who responded positively. From that point, we then made a determination regarding anybody who had been deployed in that headquarters or in a security detachment or within CPA, CJTF-7, the Iraq Survey Group or the combat support group—that is, almost everybody who was in Iraq who may have had contact with prisoners of war or detainees, and that expanded the list to the 302 that we talked about. Of those 302, we then asked a series of questions, and I do not have the exact form of those questions and we will provide that shortly. We asked those questions of those people and the list was then refined and refined from an initial potential list of over 3,200 to a much smaller number of about 15, who were then asked by the legal service more specific questions. At that point we were asking quite specific questions relating to what contact they might have had.

Senator FAULKNER—Was there a survey form or was this conducted by individual interview?

Vice Adm. Shalders—To refine the list down to 302, it was not individual questions being asked of individuals. Once we got to that list of 302, it was a series of either telephone contact or email contact with those individuals to refine the list even further. My understanding is that the final 15 who were subject to legal questioning—and I am sure the air commodore can expand on this—had a face-to-face interview.

Senator FAULKNER—So there was an original survey form, effectively?

Vice Adm. Shalders—Not to refine the list down from 302, no.

Senator FAULKNER—But at any point in the process? Was it a series of questions asked by individuals or did people actually have some sort of survey form in front of them?

Vice Adm. Shalders—No, it was a series of questions, either by telephone or by email.

Senator FAULKNER—Could we get a copy of the questions that were asked, please? I assume they are standard questions—is that right?

Vice Adm. Shalders—Yes, Senator. We can provide that.

Senator FAULKNER—Thank you. It might be useful, when the responsible officer comes, if someone could communicate to the responsible officer that it might save a bit of time if that documentation were tabled. Definitionally, General Cosgrove, is there any significance in the terminology ‘serious mistreatment’, which is a term that is used in the statement by you and Mr Smith on the abuse allegations?

Gen. Cosgrove—Obviously, as an adjective it is supposed to orient people towards the sorts of abuses and mistreatments that were evident in April, which is actually the first time a major issue concerning the treatment of detainees came to our attention. I think anybody would describe anything seen there as serious.

Senator Hill—They are abuses have led to criminal prosecutions.

Senator FAULKNER—But what I am asking is whether the terminology ‘serious mistreatment’ means effectively that you would be providing different information if it were merely defined as mistreatment. I wonder if awareness of serious mistreatment might be different. I do not know the answer to this; it might be different to the awareness of mistreatment.

Gen. Cosgrove—It may be. There was no attempt to provide as a footnote—you can see from the statement—a definition of serious mistreatment. The minister’s point made a moment ago about them leading to criminal charges might be reasonable, but we did not seek to define serious mistreatment, leaving it up to commonsense. If, in the eye of the beholder, mistreatment was serious, then it was serious.

Senator FAULKNER—Yes, but in the fourth paragraph of your statement you say:

None of those surveyed were aware of abuse or serious mistreatment of Iraqi prisoners or detainees, of the nature of recent allegations, during their deployment.

It seems to me, on the face of it, that that could be a much qualified sentence.

Senator Hill—But you’ve got to—

Senator FAULKNER—This may or may not be the case. I do not even know what ‘of the nature of recent allegations’ necessarily means. Do you believe that you and Mr Smith would still be able to make a statement to this effect: ‘None of those surveyed were aware of mistreatment of Iraqi prisoners or detainees during their deployment’? In other words, is this major qualification significant in terms of the understanding and knowledge of deployed ADF personnel?

Senator Hill—Can I just say that I think you have got to read the third paragraph of the statement as background to the second paragraph. This has been one of the difficult issues of this matter. There are a number of different words used but the general word that has been used is ‘abuse’ or ‘abuses’. Generally it has been characterised in terms of the abuses that were made public at the beginning of May and that have led to various prosecutions. But, since then, part of the debate has moved into other areas of alleged abuse that may not be, in the minds of some, as serious but that are nevertheless characterised by some as abuses. This becomes very difficult when you are asking people questions, and you really have to seek to define what you are asking. Clearly, from this statement, it would seem that the questions related to the types of abuses that became public in May, which we now know were alleged in January and which came to US attention from within by one of the military police, who brought to senior officers’ attention these abuses.

Senator FAULKNER—I have read that paragraph and I note the qualifications in the statement. I just want to understand if the qualifications are significant or if they are not. If I go to the fourth paragraph, the final sentence, it says:

None of those surveyed were aware of abuse or serious mistreatment of Iraqi prisoners or detainees, of the nature of recent allegations, during their deployment.

Is the general able to assure the committee that none of those surveyed were aware of the mistreatment of Iraqi prisoners or detainees during their deployment?

Gen. Cosgrove—The opportunity was available for people to report any mistreatment of prisoners or detainees both in response to the questions asked and, more broadly and particularly, during their deployment. None have come forward. They had the opportunity while they were deployed, if they saw anything which they considered was abusive or mistreatment, to make that representation. That is the ordinary thing we would expect of them. Those surveyed were asked specific questions. When those questions are available to you, we will be able to see whether there was a qualification put on the questions which will inform that answer.

Senator FAULKNER—But I am interested in what appear to be a couple of possible qualifications. They are qualifications, but I am trying to establish whether there are significant qualifications in your statement. I am still not clear on that. For example, the nature of recent allegations may beg the question as to whether there might be other abuses that have not been made public.

Gen. Cosgrove—You can say these sorts of things about all the words in there, but the point is that at the time we were seeking to find out about the specific issues that were notorious in April this year. If there were other issues, people had the opportunity to represent those and then we would deal with those as they arose.

Senator FAULKNER—I understand and appreciate that, but I am asking whether there was an awareness of abuses or mistreatment that may not have been notorious. That is the question—whether the qualifications in the statement are significant or not.

Gen. Cosgrove—I cannot answer that particularly because we have got the responses that we have got.

Senator FAULKNER—Are we able to now deal with this issue of the survey?

Gen. Cosgrove—I do not think the officer is here yet.

Senator CHRIS EVANS—In one of your earlier answers, Minister, you referred to a suggestion throwing doubt on whether in October there was an ICRC report. The statement from the secretary and the general seem to confirm that there was.

Senator Hill—Again, I think there are reports and there are reports. It is difficult. Basically the ICRC do not give us information because they say we are not entitled to it. What I described a while ago as trying to put the jigsaw back together again has led me to believe that the February report might be qualitatively different from other papers that were produced during the course of the year. But I am still not sure of what documents were produced—certainly not sure of all the documents that were produced during the course of the year.

Senator CHRIS EVANS—Maybe I will ask a simple question. What is the Defence view? Was there an October ICRC report or not? Do we know that?

Gen. Cosgrove—We do not know if there was an ICRC October report in the same manner as there was for February.

Senator Hill—We know that—

Senator CHRIS EVANS—What do you say that Major O’Kane saw?

Senator Hill—We know that there were papers produced on various issues arising from the work of the ICRC and those papers included some produced in October, which were seen by the major.

Senator FAULKNER—The October ICRC report is mentioned three times in your own statement.

Gen. Cosgrove—Yes. We certainly felt that there was a report; it kept getting referred to. But I direct you to the paragraph which begins, ‘Defence investigations to date show there is no record of the existence of the October 2003 report being communicated back to Defence officials in Australia.’

Senator FAULKNER—Yes.

Gen. Cosgrove—In the negative, we need to ask the ICRC and other countries whether there is an October report.

Senator HILL—I may be able to help a little. I think it is a question of the shorthand: do you call these workings a paper or do you call them a report? Some clever person has found a press release of the ICRC dated 7 May. The prime purpose of the press release was to say that they were profoundly disturbed to see that the February report had been made public without the consent of ICRC. It says that this report summarises a series of working papers handed over to coalition forces. So that might be what has occurred during the course of the year and it might have been better language to refer to the February document as a report and—

Senator FAULKNER—Given, as you say, the notoriety of all of this, Mr Smith, has anyone thought of checking as to whether there was an October 2003 ICRC report?

Mr Smith—We took the term ‘October 2003 report’ from a reference which Major O’Kane made to it. Subsequent to that we have continued to search and we found, as the minister said, that there was not one report during the period from March to November but a series of what the ICRC calls working papers. I now think that what Major O’Kane referred to as an October report was probably one of those papers. The collection of those papers led, then, to the February report.

Senator FAULKNER—Has there been any checking by Defence to try and nail down this issue of the October 2003 report?

Mr Smith—Yes.

Senator FAULKNER—So you have tried to check that?

Mr Smith—Yes.

Senator FAULKNER—Who have you checked that with?

Mr Smith—We checked that, initially, with Major O’Kane but beyond that I believe we have asked abroad.

Mr Carmody—I understand, from statements made over the weekend, that the questions have been asked of the ICRC, but I do not believe the specific question—

Senator CHRIS EVANS—Do you mean your review of the Prime Minister’s comments? So you are talking about press reports; you do not know whether or not those have been done?

Mr Carmody—I do not, personally. I understand that they would have been but I do not know personally whether the question has been asked. The issue seems to be that there is some confusion—

Senator Hill—We asked the ICRC for the October report. As I understand it, they have come back in the negative. We have asked the occupying powers for the October report. Whether there will be a document properly described as such, I am not sure. We do know that the ICRC produced several working papers in October. We know that in the course of Major O’Kane’s work he was tasked with drafting responses to at least one of those working papers.

Senator FAULKNER—General Cosgrove, your statement mentions the October 2003 ICRC report on three occasions but at no point in the statement is there a qualification about its nature or any suggestion that it may ever have a different status, for example, from the February 2004 ICRC report.

Gen. Cosgrove—That is correct because that was our understanding at the time. We took it on face value that there was some report or material in October and we noted that it had not been sent to us by the ICRC or by the occupying powers.

Mr Carmody—The ICRC press release that the minister referred to, even though it is dated early May, came to my attention on Sunday—yesterday. That helps explain to me what the ICRC’s view was. As Defence secretary Mr Smith said, I was going on the views that had come forward about there being something. This ICRC press release seems to indicate something different. That is why the status was not clear in the press release of Friday, because we just did not know.

Senator FAULKNER—It seems to me that the status still is not clear—whether it is a separate report or a working document for another report. No doubt we will find out in due course.

Senator CHRIS EVANS—We should ask Major O’Kane.

Senator FAULKNER—Yes. Major O’Kane might be able to help us on that but given you refuse to have him to the table we will not be able to ask him. Mr Carmody, you had oversight for the internal Defence inquiries into these matters—is that right?

Mr Carmody—Yes. I was trying to draw the pieces together over the last week-and-a-half.

Senator FAULKNER—Who tasked you to do that?

Mr Carmody—I cannot remember specifically the tasking from the minister’s office, but I normally get tasking from the minister’s office to answer questions, as I did about these questions as they were coming up. For example, some of the briefings that the minister referred to around 10 and 11 May would have come from the Director General Defence Legal Service, and some of them would certainly have come from my organisation as well. We would provide some information and sometimes that would lead to more questions.

Senator FAULKNER—Can you tell the committee who tasked you to be the coordinator of these inquiries?

Mr Carmody—I think it was CDF, General Cosgrove, at a morning meeting a couple of weeks ago—I cannot quite remember the date—when the issue was still moving. It was very

early in the piece around the time the minister made his statement. I suggested, I think, at the time that we needed to coordinate our activities and CDF suggested at that point that I should do so and I did.

Gen. Cosgrove—I concur with that.

Senator FAULKNER—There was no written task.

Mr Carmody—No, absolutely not.

Senator Hill—There were written requests from me.

Mr Carmody—There were written requests from the minister.

Senator CHRIS EVANS—We are still waiting for the date of those actually. I have asked that about three times.

Senator FAULKNER—Let us go to those. How many written requests came from the minister?

Mr Carmody—I do not know the answer to that question.

Senator FAULKNER—You know there were written requests but you do not know how many.

Mr Carmody—I do not know how many. There would have been questions coming back if the minister had annotated a particular brief and asked another question.

Senator FAULKNER—You might be able to check that for us over the lunchbreak. Would that be possible? We want the number, the date and the nature of the tasking that came from the minister or the minister's office.

Mr Carmody—I can check that. There is a significant amount of correspondence between the department and the minister. If I can get an answer during the lunchbreak, I will. I will certainly have it checked. It might take a fraction longer.

Senator FAULKNER—I would have thought this would be something that you might have even expected to be asked at today's estimates hearings. If you can assist us we would certainly appreciate that. Could you tell the committee how you went about this role, Mr Carmody?

Mr Carmody—Certainly. What I did was coordinate the activities and deal directly with Strategic Operations Division, which was conducting the survey activity. I dealt directly with, essentially, the Director General of the Defence Legal Service on the questions they were putting to Major O'Kane. I understand the inquiries then went more broadly in the sense that Strategic Operations Division spoke to Headquarters Australian Theatre, now the Joint Operations Command, to have them ascertain precisely how many people had been in theatre in the Middle East area of operations during the entire campaign. So that is where the 3,000-odd figure came from—in other words, from formal records of how many people were deployed into theatre. That led to an assessment of how many of those people might likely have had contact with prisoners.

Senator FAULKNER—Did you conduct any interviews with any officers or officials yourself?

Mr Carmody—No, I did not. I dealt with the Director General of the Defence Legal Service and the head of Strategic Operations Division.

Senator FAULKNER—As the person coordinating the inquiry, can you tell me who did do that?

Mr Carmody—Who did speak to whom?

Senator FAULKNER—Do you know who was responsible for interviewing officers?

Mr Carmody—I know who was responsible for interviewing Major O’Kane.

Senator FAULKNER—Even I know that because Air Commodore Harvey has told us.

Mr Carmody—Strategic Operations Division was coordinating the survey on my behalf. They had to find the officers wherever they were in the world and try and get the surveys to them.

Senator FAULKNER—Did you approve the survey questions?

Mr Carmody—No, I did not.

Senator FAULKNER—Who approved the survey questions?

Mr Carmody—I am not sure of that answer, but I can check for you.

Vice Adm. Shalders—I can respond to that, Senator. The Director General of Joint Operations and Plans was responsible within my organisation for asking those questions. He was assisted by a wing commander, and those two basically administered the survey we spoke about a moment ago.

Senator FAULKNER—I understand that perhaps, again, straight after the lunchbreak we might be able to table a copy of the questions that were asked. That might be helpful.

Vice Adm. Shalders—Certainly I can provide the questions that were asked to refine that list of 300 down to 60 and then to 15. The questioning of the final 15 by the legal services was of course conducted by the air commodore.

Air Cdre S. Harvey—When we got down to the final 15 a small team of senior lawyers in my organisation contacted those 15 people. I think there was a draft set of questions, so we will make those available.

Senator FAULKNER—Who prepared that draft set of questions?

Air Cdre S. Harvey—I prepared that in consultation with the Director of Operations and international law.

Senator FAULKNER—That is, of course, a different set of questions to the ones the admiral speaks of.

Air Cdre S. Harvey—That is correct. The first set of questions, if I could just explain, was to go out to all the people to basically narrow down the field. It was a filtering exercise. The questions that we will see this afternoon that I asked were more targeted in terms of getting more detail in relation to the dealings, whether they had actually visited prisons and things of that nature.

Senator FAULKNER—Would that also be able to be made available to the committee after lunch?

Air Cdre S. Harvey—The questions?

Senator FAULKNER—Yes.

Air Cdre S. Harvey—Certainly. Yes, we can.

Senator CHRIS EVANS—Can you describe the subgroup of 15 for me? Are they mainly staff officers in headquarters—I do not want you to list them—or privates out in the street in Baghdad?

Air Cdre S. Harvey—It is hard to list them in any sort of grouping because they really were quite disparate. Essentially, when we went through the responses we got back, there were issues that we thought maybe needed to be clarified. There were issues in that we knew people had had some sort of visiting of a prison, so we thought we would go into more detailed questions. It is a bit hard to say it was a group of administration officers or anything like that. It was a fairly diverse group.

Senator CHRIS EVANS—So it included people of a diverse nature who, for some reason or another, ended up visiting a prison or—

Air Cdre S. Harvey—That is correct, yes.

Senator FAULKNER—Mr Carmody, what other elements of the department were involved in these investigations? Was there anything in the IT area, for example?

Mr Carmody—No, not directly. The Strategic Operations Division, as part of the work that it did, received some of the situation reports back from theatre, for example, and therefore, in an IT sense I suppose, went back and surveyed all of those reports. There are daily reports covering 12 months. I suppose in that sense they searched the databases, if that is what you mean by an IT search.

Senator FAULKNER—Who conducted that search?

Mr Carmody—That was conducted by the Strategic Operations Division.

Senator FAULKNER—What did that turn up?

Mr Carmody—It turned up one reference in a situation report over a period of 12 months to the ICRC.

Senator FAULKNER—Can we have the date of that sit rep please?

Mr Carmody—You certainly can, if you will bear with me for a moment. It was 4 December 2003.

Senator FAULKNER—Just so we are clear, this is a sit rep from what is now called CJTF7—is that right?

Mr Carmody—No. This is a situation report from CJTF633. This is the report from the Australian national headquarters back to Australia.

Senator FAULKNER—Of course—CJTF7 is the coalition.

Mr Carmody—It is the coalition. They report through this report that comes back to Australia.

Senator FAULKNER—Are you able to indicate to the committee what the nature of that commentary is?

Mr Carmody—Situation reports are actually all classified.

Senator FAULKNER—I understand that.

Mr Carmody—The general nature—

Senator FAULKNER—Let us go to another question then. Who were the addressees?

Mr Carmody—Of the situation reports back to Australia?

Senator FAULKNER—Of this particular sit rep. Has it got a number?

Mr Carmody—I have referred to it by date. I do not know if it has a number.

Senator FAULKNER—Let us just call it the 4 December 2003—

Mr Carmody—It was the standard daily situation report back to Australia from theatre. It comes back principally to what was Headquarters Australian Theatre, which is now the Joint Operations Command. They send back a situation report on a daily basis and probably have since, if I understand correctly.

Senator FAULKNER—So it is the daily sit rep from the Australian task force headquarters?

Mr Carmody—Yes.

Senator FAULKNER—Is there anything you are able to say to the committee in relation to the nature of the reference here?

Gen. Cosgrove—I can read it into the record. This is an extract from that sit rep. It is the only extract in the situation report that deals with an ICRC reference.

Senator FAULKNER—I am always loath to do these things. Are you able to say what the classification on this report is? You may not be able to say.

Gen. Cosgrove—I do not want to say what the classification of the report is.

Senator FAULKNER—That is why I am asking whether you are able to say that.

Gen. Cosgrove—No.

Senator FAULKNER—But it is classified?

Gen. Cosgrove—Yes. But I am going to—

Senator FAULKNER—Do you feel comfortable reading it into the record?

Gen. Cosgrove—Yes—only this section. The report noted that:

HQ coordinated SECDET ASLAV—

ASLAV is a vehicle—

support for Major O’Kane, embedded Australian CJTF-7 legal officer, for a visit to Abu Ghraib jail to confirm the CJTF-7 response to concerns raised by the ICRC about conditions at the prison. CJTF-7 was unable to provide adequate force protection for the visit.

Senator FAULKNER—We will come back to that after the break.

Proceedings suspended from 12.30 p.m. to 1.37 p.m.

CHAIR—The Senate Foreign Affairs, Defence and Trade Legislation Committee is now back in session dealing with the 2004-05 budget estimates. We continue with the portfolio overview and major corporate issues of the Department of Defence.

Vice Adm. Shalders—Mr Chairman, I am able to table the questions that we discussed this morning. There are three sets of questions. To set the context for the documents that we will table, the first set of questions was to those who had been deployed on third country deployments. There were 106 of those people and, as a result of their responses to that first questionnaire, we identified 23 who we were further interested in. The second set of questions relates more to detention: exposure to detention and detainees. That set of questions was issued to the 302 people we spoke of this morning and, just to update that figure, we have now been able to make contact with 300, so we are still missing two of the 302. You will note when I table both sets of questions that they are classified ‘staff-in-confidence’ but of course that will be when they are completed. Incomplete questionnaires, which are the ones we are tabling, are unclassified. The third series of questions, those questions which were put to the 15 who were refined from the larger list, were the questions that were put by the Defence Legal Service interviewer. So there are three sets of questions, and I am now able to table those for the committee.

Senator CHRIS EVANS—Can we agree on a title so that we can identify which ones are which?

Senator FAULKNER—That is a good idea, and perhaps what the acronyms stand for might be helpful.

Senator CHRIS EVANS—Yes, like SOD.

Mr Smith—SOD is the Strategic Operations Division, TCD is third country deployees—Australian service personnel who are embedded in the US or UK armed forces for the time being—and TDLS is the Defence Legal Service.

Senator FAULKNER—Thank you for that, Mr Smith. Vice Admiral, the strategic operations questionnaire is the one that went to everybody—is that right?

Vice Adm. Shalders—That is correct. It went to the 302 identified who might have had some exposure.

Senator FAULKNER—That is the first one and it goes to 302.

Vice Adm. Shalders—In fact, it was the second in the series. The first in the series was the third country deployment questionnaire, rapidly followed by the SOD questionnaire.

Senator FAULKNER—That is what I was trying to establish. Did the third country deployment questionnaire go to the same people?

Vice Adm. Shalders—No, the third country deployment questionnaire went to those who had been or were deployed with third countries, the US and the UK.

Senator CHRIS EVANS—How many of those were there?

Vice Adm. Shalders—One hundred and six.

Senator FAULKNER—At a similar time, the strategic operations deployment one goes out to 302 people.

Vice Adm. Shalders—That is correct.

Senator FAULKNER—So there are two completely distinct sets of people that quite a similar questionnaire goes to, effectively. Is that how it works?

Vice Adm. Shalders—There were 106 third country deployment people. Of that 106, 23 were sent the survey which is labelled TCD.

Senator FAULKNER—I see.

Gen. Cosgrove—That would have been on the basis of an overview of what jobs they were doing and whether it was remotely possible that they had an interest in this area.

Senator FAULKNER—The point here is that obviously they are similar in nature. Is that fair to say, Vice Admiral?

Vice Adm. Shalders—Yes, they are.

Senator FAULKNER—I think what you are suggesting to the committee is that these first two, strategic operations and third country, are going out at a similar time.

Vice Adm. Shalders—That is correct.

Senator FAULKNER—Then the follow-through questionnaire is the defence legal questionnaire, which is the third one.

Vice Adm. Shalders—That is right.

Senator FAULKNER—Did that go to 17 people?

Vice Adm. Shalders—Fifteen people.

Air Cdre S. Harvey—I just point out that that one is listed as restricted but obviously that was on the basis of information being filled in, so we can declassify that. The questionnaire itself obviously is not classified.

Senator FAULKNER—Let's come back to that. General Cosgrove, thank you for providing that extract from the classified sit rep dated 4 December 2003. Could you indicate for the benefit of the committee whether that visit from Major O'Kane went ahead.

Gen. Cosgrove—He made a number of visits and I do not know whether he visited immediately afterwards. I am simply reporting that that was the only reference found in Australia to the ICRC issue, through the medium of reports out of our national headquarters in Baghdad back to the joint operations command.

Senator FAULKNER—I think you made the point that was done as a result of a thorough checking of that, an electronic checking, if you like.

Gen. Cosgrove—That is correct.

Senator FAULKNER—Could you now indicate to the committee on how many occasions and on what dates Major O’Kane visited Abu Ghraib prison.

Air Cdre S. Harvey—I do not have that information immediately at hand, but if you bear with me I will go through the list. It was on 27 August 2003, 4 December 2003—

Senator FAULKNER—Can I interrupt you there? That would seem to indicate, General Cosgrove, that the visit referred to in the sit rep actually did go ahead. It gives the same date.

Gen. Cosgrove—The minister and I have been in a side discussion. I would like to clarify that the previous answer I gave was concerning reports from the national headquarters back to joint operations command on the issue of ICRC—that oblique reference; the one that I read into the record.

Senator FAULKNER—Yes, reports from national headquarters to operational command regarding ICRC. We will come to other reports from other places regarding other issues at a later stage, but I do appreciate you making that clarification. I think we understood that, General, but it is useful for the record. Thank you for that. I was just indicating there that, given the date of the sit rep and the evidence that Air Commodore Harvey has just given, it is quite likely that the sit rep referred to the 4 December visit of Major O’Kane to Abu Ghraib. I do not know whether you can confirm that or not, but it seems logical anyway. Would that be correct, do you think, Air Commodore?

Air Cdre S. Harvey—I believe that is the case, yes. I believe we got up to 4 December. To continue the list: 17 December 2003, 2 January 2004 and 4 January 2004.

Senator FAULKNER—Thank you. Can I ask you about other officers attached to the Defence Legal Service who also undertook visits to Abu Ghraib prison.

Air Cdre S. Harvey—I am afraid I do not have that information to hand, and I am not quite sure whether I will be able to get it at short notice.

Senator FAULKNER—This would, I assume, be available to you via your survey work?

Air Cdre S. Harvey—My point is that I do not immediately have it to hand, but we can certainly take it on board.

Senator CHRIS EVANS—But it is the answer to the first question in your own survey.

Air Cdre S. Harvey—Sorry?

Senator CHRIS EVANS—The first question in your survey says:

During recent ADF operations in connection with Iraq, have you ever visited the Bagdad Central Confinement Facility (also known as the Abu Ghraib Prison) or any other PW, detention or prison facility in Iraq?

Air Cdre S. Harvey—Yes.

Senator CHRIS EVANS—I guess we are asking: what was the answer to that question?

Air Cdre S. Harvey—I will take it on board and we can check the results of that, if you like. I want to remind you that the questions we asked in our survey were a derivative of the list that we had been provided. So it has been a filtering process.

Senator CHRIS EVANS—What has been the point of that, though? Are you saying to me that you cannot rely on it being totally accurate in the sense that something might have slipped through the net?

Air Cdre S. Harvey—It is accurate in the sense that it is reports of those people from the larger survey who have been in contact with detainees and prisoners that we were able to then follow up with another questionnaire.

Senator CHRIS EVANS—But it is fair to say that you would have at least picked up the majority of them—or are you telling me that it would not necessarily be foolproof?

Gen. Cosgrove—Of the people who were initially surveyed, a judgment was made as to which ones responded with information necessary for them to go through a second questioning process. An individual might have said that they had had some experience or contact or visit or what have you, but emphatically no or just no to every other question and that may have been enough for them to be put to one side. The air commodore would not necessarily know of those. But if your question is who visited—

Senator FAULKNER—That was my question. My question was about other Australian persons. Thanks to the evidence of Air Commodore Harvey, we know that Major O’Kane visited Abu Ghraib prison on five occasions between 27 August 2003 and 4 January 2004. That is correct, isn’t it, Air Commodore—that is your evidence?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Are you able to tell the committee, Air Commodore, how many other Australian defence personnel visited Abu Ghraib prison?

Air Cdre S. Harvey—I cannot tell from personal knowledge, but I have been provided with information which suggests that six other lawyers attended the prison in addition to Major O’Kane.

Senator FAULKNER—I appreciate that my question was about lawyers so I thank you for that answer. Can you, or someone else at the table, indicate whether any other ADF personnel, not necessarily from Defence Legal Service or lawyers, visited the prison.

Gen. Cosgrove—We will be able to find that out for you, Senator. Obviously, if we asked the question in the relevant questionnaire we would expect that there would be an answer available. I am looking now at the questionnaire and it says: ‘Did you visit any coalition PW or detainee detention centre?’ Plainly, we needed an answer to that so I presume we know the answer to that and we can tell you how many went. If there is other information, such as why, we would be able to tell you that. I would just be a bit careful about the names.

Senator FAULKNER—I did not ask for names; I asked for numbers.

Gen. Cosgrove—I am just making sure—

Senator FAULKNER—I think we are on the same wavelength here. I have not asked you for a name, General Cosgrove.

Gen. Cosgrove—We surveyed people who remotely might have visited. There was no point in asking an LAC maintainer who never left the air base whether they visited Abu

Ghraib. We can find that out for you and we can tell you the numbers and the circumstances in a tabular form.

Senator FAULKNER—Given the notoriety of the issue I do not think it is an unreasonable expectation: are you able to give the committee an indication now of how many personnel, apart from Major O’Kane on five occasions and six other lawyers, visited Abu Ghraib prison?

Gen. Cosgrove—Not without returning to the records to check to see who indicated that they visited the prison.

Senator FAULKNER—I thought you might have the tabulated responses to this questionnaire available.

Senator Hill—The answer would seem to indicate that we have not, so we will have to get that information for you.

Senator FAULKNER—Would you describe any of those who visited as officers holding senior rank?

Gen. Cosgrove—Could you define ‘senior rank’, Senator?

Senator Hill—I think it would have to be above major.

Senator FAULKNER—My definition might be a little different from yours, respectfully, General.

Gen. Cosgrove—The newspapers describe a lance corporal as a senior ADF officer.

Senator CHRIS EVANS—With all due respect to the majors and below in the room, I think we have established today that they are certainly not senior so we would have to start from above major.

Gen. Cosgrove—We will have to check that. We should not shoot from the hip on this. We anticipated that having, if you like, disqualified from further consideration the vast majority of these officers, they were no longer of particular interest. Plainly, you are interested to know who visited the jail for any reason. We can find that out.

Senator FAULKNER—Is there, at the Australian representative organisation in Baghdad, a defence liaison or defence attache? You may be able to assist me, Vice Admiral, with the correct terminology.

Gen. Cosgrove—It is called the temporary liaison officer.

Senator FAULKNER—Do we know whether the temporary liaison officer or officers at the Australian—

Gen. Cosgrove—We cannot exclude the possibility that they are on our list. We will look at that.

Senator FAULKNER—They would have been interviewed, wouldn’t they?

Gen. Cosgrove—I imagine so.

Senator FAULKNER—I would imagine so too, because the whole idea was to be all-encompassing, wasn't it, to try to catch the lot effectively and catch up with everyone who may have had a contact?

Senator Hill—That is right.

Senator FAULKNER—I worry when I hear the response, 'You would imagine so.'

Senator CHRIS EVANS—You have given us the questions. I assume you are interested in the answers. Therefore I assume you have tabulated the responses or at least have a summary of the responses.

Senator Hill—What they wanted to establish was whether anyone had witnessed any abuses. That is the bottom line of this process. You have asked us to go back to a line at the top and that was basically whether they had visited that particular jail. Going back and looking at the returns should be able to establish that list.

Senator CHRIS EVANS—You asked a very specific question: did you visit any coalition detention centre et cetera?

Senator Hill—Yes.

Senator CHRIS EVANS—Wouldn't we have a table that said 13 of the 302 said yes?

Gen. Cosgrove—We know that of the 298 personnel who responded, 60 confirmed contact with PWs or detainees and/or visits to detention facilities. Fifteen of those were followed up in order to clarify their responses. So I imagine that we are going to provide you with the details, less names, of 60 people who visited detention centres or had contact with the PWs or detainees with a brief description of the circumstances. Because you have particularly asked about the TLO, the temporary liaison officer, if one of those was there, that will be identified. You could run through every appointment of every ADF person in Iraq and ask me whether they were asked and I would have to sit here and say that I imagine so. Until we get to the stage of saying, 'Here is the list,' we are going round in circles.

Senator FAULKNER—Firstly, I am not going to ask you such a question, you will be relieved to know, and so will everyone else.

Gen. Cosgrove—I am very relieved, thank you, Senator.

Senator FAULKNER—You are not going to be asked such a question. But in relation to the temporary liaison officer deployed to the Australian Representative Office in Baghdad, one would assume that if it is a thorough and complete survey then the answer is yes. My only concern is your answer—again a qualified one—that you imagine so. I would have thought that it would be—

Gen. Cosgrove—I do not know why you keep zeroing in on that, Senator. If I provide you by the close of the hearing today with information on the temporary liaison officer, perhaps that will persuade you that it has been a comprehensive and thorough check.

Senator FAULKNER—You misunderstand, I think.

Gen. Cosgrove—No, I do not misunderstand you, Senator. I will provide you with the information.

Senator FAULKNER—I appreciate that. I think you misunderstand that my only concern about this is the comprehensiveness of the survey. I just want to be assured of its comprehensiveness. That is one example and you correctly pointed out that I could ask you about any number of officers, and I am not going to do that.

Gen. Cosgrove—I would probably say to you, ‘I imagine so,’ for each of those officers—with the exception of Major O’Kane.

Senator FAULKNER—What assurances can you or some other witness at the table provide to us about the comprehensiveness of the survey?

Vice Adm. Shalders—I can run through the methodology that we used to refine the list if you require me to. Is that what you are after?

Senator FAULKNER—I just wanted an assurance that, as far as the ADF is concerned, the survey has been as comprehensive as possible. That is what I hope you would be able to say to the committee.

Vice Adm. Shalders—I can give you—

Gen. Cosgrove—That should come from me and I will give you that assurance. But if you want to ask whether a particular person was asked, and why not, and that means that it is not comprehensive, then I do not have the information to have that discussion with you.

Senator FAULKNER—You will be relieved, because I do not want to ask that, General Cosgrove.

Gen. Cosgrove—I am relieved.

Senator FAULKNER—What I would like to ask is whether Major O’Kane’s numerous visits to Abu Ghraib prison indicate in any sense that he was following up on allegations of prisoner abuse or mistreatment as part of his responsibilities. Would someone be able to assist us with that, please?

Air Cdre S. Harvey—The visit on 4 December indicates that he attended Abu Ghraib prison to address issues of mistreatment allegations and draft a reply.

Senator FAULKNER—And draft a reply to whom?

Air Cdre S. Harvey—To draft a reply to allegations by the US Army military police and military intelligence.

Senator FAULKNER—So he would have been tasked in this by the Staff judge advocate?

Air Cdre S. Harvey—Yes, I imagine that is the way it would have come through. It would have been a tasking as a line officer in the joint headquarters.

Senator CHRIS EVANS—Do you have similar information on his other visits? You picked out that one when Senator Faulkner asked you about the visits.

Air Cdre S. Harvey—Yes.

Senator CHRIS EVANS—Do you have a description of his function for each of the visits?

Air Cdre S. Harvey—I do. I just need to check to see whether there is anything classified in the references.

Senator CHRIS EVANS—Maybe you could take us through them in chronological order.

Air Cdre S. Harvey—The visit to the prison on 27 August 2003 was to provide legal advice.

Senator CHRIS EVANS—To whom would he provide legal advice in the prison? I gather he was not representing one of the prisoners.

Air Cdre S. Harvey—No, he was not. He visited the prison with a view to developing some advice to prepare a letter for signature by DSJA, which is the deputy staff judge advocate. I think that answers the earlier question: he was basically there at the direction of the deputy staff judge advocate.

Senator FAULKNER—Does this letter go to matters pertaining to abuse or mistreatment allegations?

Air Cdre S. Harvey—No, it is to do with the interrogation program. On 4 December—

Senator BROWN—To do with what aspect of the interrogation program?

Air Cdre S. Harvey—It says that he attended to prepare a letter for signature by the deputy staff judge advocate confirming interrogation techniques in the US Army interrogation manual in accordance with the Geneva conventions.

Senator CHRIS EVANS—So his job was to confirm that the interrogation techniques at Abu Ghraib prison were being conducted in accordance with the Geneva convention?

Air Cdre S. Harvey—My understanding of it was that he was sent out there by the Staff judge advocate on a tasking to look at draft interrogation procedures they were going to adopt. His function essentially, as I recall him describing it, was to compare the proposal that had come up in the detention facility with the US Army interrogation manual and ensure that it complied with the Geneva conventions. He took that task back to the joint task force, where he prepared advice which was sent up the chain. He does not remember whether that advice went off. It went up the chain for approval by higher authorities, I imagine.

Senator BROWN—Air Commodore, can you tell us if that is the same as the interrogation rules of engagement?

Air Cdre S. Harvey—No, it is not. The interrogation rules of engagement, as I understand it, were ‘no foreign’. So no foreign officers were allowed to participate in that process.

Senator BROWN—What is the difference between those two?

Air Cdre S. Harvey—I am not sure I entirely understand because I was not there, but I imagine the rules of engagement are the actual operating instructions regarding how they go about doing it whereas what he looked at was more of a one-step-up in terms of a policy document operating within the prison. As I said, his task was essentially to compare that with the United States doctrinal basis—the interrogation manual—to ensure it was in compliance with the Geneva convention requirements.

Senator BROWN—So the rules of engagement are a subset?

Air Cdre S. Harvey—I am sorry?

Senator BROWN—The rules of engagement became subsidiary to the policy document that was being developed at that time?

Air Cdre S. Harvey—I have no idea, I am afraid. I have no idea about the sequence of the process.

Senator BROWN—Was the aim of that visit on 27 August to ensure that those rules or the policy that was being drawn up was consistent with the Geneva convention?

Air Cdre S. Harvey—The way he described it was that he was comparing it with the interrogation manual, which was the US Army doctrinal basis, but he was also confirming that it complied with the Geneva conventions.

Senator BROWN—Did he find that the two were consistent?

Air Cdre S. Harvey—I believe he did. Having said that, I just remind you that his process was to provide advice back to his deputy staff judge advocate—the British officer I mentioned before. So the advice that he prepared did not go out under his signature. I imagine it was sent out by a higher authority, who would have reviewed it, obviously.

Senator CHRIS EVANS—Are you able to tell us whether the policy that he vetted was adopted or not?

Air Cdre S. Harvey—No, I cannot.

Senator FAULKNER—So the only way we could be assured about precisely what occurred is to ask Major O’Kane himself?

Senator Hill—No. It goes further up the chain. That is the point. That is the difficulty when you want to interrogate junior officers. They do not make the final decisions.

Air Cdre S. Harvey—I might be able to elaborate on that. What actually happened was that, soon after drafting that letter, I think, he went on a detachment to another place in the country. When he returned he asked whether the letter had been sent off. He was not able to get an answer. He, himself, does not know the answer to whether that advice actually went off.

Senator FAULKNER—Are you going to tell us about the 4 December 2003 visit?

Air Cdre S. Harvey—Yes. That was to attend Abu Ghraib prison to address issues of mistreatment allegations and the accuracy of contents of draft reply by US Army military police and military investigators.

Senator FAULKNER—How was he going to address mistreatment allegations?

Air Cdre S. Harvey—I understand that he visited the prison to get information from the people in the prison. Obviously he was geographically dissociated from the prison. It was necessary in order to prepare a reply to speak to the various people who were involved in the interrogation processes. That is on what he based the draft letter that subsequently came out.

Senator FAULKNER—On his visits—on this one, for example—can you indicate, Air Commodore, whether Major O’Kane went alone or whether he was accompanied by any other Australian personnel or by personnel from our coalition partners, please.

Air Cdre S. Harvey—I do not know the answer to that.

Senator FAULKNER—Do you know the answer to this in relation to any of Major O’Kane’s visits?

Air Cdre S. Harvey—No, I do not.

Senator FAULKNER—Was this question not asked of Major O’Kane in the inquiries that were undertaken?

Air Cdre S. Harvey—I have not asked him that question.

Senator FAULKNER—Did you not see it as relevant—

Air Cdre S. Harvey—No, I did not.

Senator FAULKNER—whether Major O’Kane conducted these inquiries with or without others being present?

Air Cdre S. Harvey—With respect, I do not see the relevance of the question.

Senator FAULKNER—We might get to its relevance in a little while. I think it is relevant. What about checking the accuracy of the content of the letter? How was Major O’Kane able to confirm that?

Air Cdre S. Harvey—Obviously I do not have the details but I imagine he spoke to the people there and was able to gather enough information to be able to prepare a response.

Senator FAULKNER—Do we know which people he spoke to?

Air Cdre S. Harvey—I do not have any details of that.

Senator FAULKNER—Did you ask him?

Air Cdre S. Harvey—I did not ask him because my reasons for speaking to Major O’Kane were essentially to ascertain whether he had observed any incidents of mistreatment or abuse—not the detail about what he did on every visit in performing his duties.

Senator BROWN—This is surely going to be an important question. It would be unlikely that on five visits to presumably the prison authorities anybody would see abuse if it were taking place. The question is: what information about abuse had been drawn to his attention, gathered and further investigated? Did the major go to the cell blocks where the abuse was alleged to have taken place at that time?

Air Cdre S. Harvey—I do not know the answer to that.

Senator BROWN—I am following up on Senator Faulkner’s question. Do you know whom he spoke with or at what rank or level of officer in the prison system his questions were answered?

Air Cdre S. Harvey—No, I do not know the answer to that question.

Senator BROWN—Is it possible to find that out for the committee?

Senator Hill—Yes, we can find that out.

Senator FAULKNER—This is a massive responsibility, isn’t it, Air Commodore, to give to an officer so junior that he is not competent to front a Senate estimates committee?

Senator Hill—I do not think that is for the air commodore to answer.

Senator FAULKNER—Don't you?

Senator Hill—It seems to me to be a normal task for a defence lawyer, the same as those with other tasks have normal tasks as well.

Senator FAULKNER—I think many will think it is a very heavy burden of responsibility to put on this particular officer. However, that is perhaps not unusual. But I think that level of responsibility would be commensurate with attending an estimates committee like this and answering for himself questions on these particular roles and functions.

Senator Hill—We have had that debate.

Senator CHRIS EVANS—So that I am clear, do you know whether or not on 4 December Major O'Kane interviewed any of the prisoners?

Air Cdre S. Harvey—I do not know the answer to that question.

Senator CHRIS EVANS—Can you describe for me again what you thought his task was?

Air Cdre S. Harvey—On 4 December?

Senator CHRIS EVANS—Yes.

Air Cdre S. Harvey—The only description I have is: 'Attended the prison to address issues of mistreatment allegations and accuracy of contents of draft reply by US Army MP and MI.'

Senator CHRIS EVANS—So he was trying to verify the accuracy of a draft reply by US MPs to allegations of mistreatment inside the prison—is that right?

Air Cdre S. Harvey—That is the information I have got, yes.

Senator CHRIS EVANS—So he had been tasked to review a draft response to allegations of mistreatment of prisoners?

Air Cdre S. Harvey—As I understand it, what he actually did was go out there for the purpose of dealing with people at the prison to enable him to go back and then draft a reply which would be prepared for signature by a superior.

Senator CHRIS EVANS—Do you know who had made the allegations of mistreatment that he was responding to?

Air Cdre S. Harvey—My recollection is that this relates to the Red Cross report, the so-called October Red Cross report, if there is one.

Senator CHRIS EVANS—Are you sure of that?

Air Cdre S. Harvey—That is my understanding.

Senator CHRIS EVANS—I just want to be clear: do you know that this was in response to the ICRC report?

Air Cdre S. Harvey—I cannot answer that in the sense that I was not there, so obviously the level of definition becomes a bit of a problem, but that is my understanding.

Senator CHRIS EVANS—I am not trying to hang you; I am just trying to understand how you know that because we have had this discussion about whether there even was an October

report. So I can understand how you might have some difficulty answering that question. But as you are the only witness we have got, this is your gig. How do you know that?

Senator Hill—That comes with seniority.

Senator FAULKNER—Doesn't it also come with the additional knowledge, Senator Hill, that has been provided by General Cosgrove, who has read into the *Hansard* record of this Senate committee hearing an element of a sit rep which does go to the issue of the ICRC? Let us not be here at cross-purposes. As I understand it, that is quite clear from what General Cosgrove has told the committee. I think you would confirm that, wouldn't you, General?

Gen. Cosgrove—I would confirm that they were the words used in the sit rep.

Senator FAULKNER—Thank you.

Senator BROWN—I am sorry I was not here this morning; the fog got in the way. Can you tell me if, in Major O'Kane's visits, including that earlier one, there was also an element of response to the Amnesty International report of 23 July last year, released in Baghdad publicly. By way of helping the committee on that matter, when and how did Defence react to the Amnesty International report alleging prisoner abuse?

Air Cdre S. Harvey—Major O'Kane does not mention any reference at all to an Amnesty report, so I do not believe he has any knowledge of it.

Senator BROWN—Could you ask if he had knowledge of that Amnesty report—I reiterate that it was released publicly at a press conference in Baghdad—and, if so, what component of these visits was involved in responding to that report?

Air Cdre S. Harvey—I am pretty sure the answer to the second part of the question is that the visit had nothing at all to do with the Amnesty report. I would have to take on notice the preceding question of whether he had knowledge of the Amnesty report.

Senator BROWN—Thank you. The other part of my question was about the response—how that Amnesty report was received in Defence and what reaction there was to it.

Senator Hill—That probably goes to Mr Carmody. Did the strategic and policy area of the department address the Amnesty report?

Mr Carmody—To my knowledge, we did not. I have no knowledge of Defence actually receiving the Amnesty report. Given that we were not responsible for any prisoners, I am not certain that we had a reason to follow it up.

Senator BROWN—There is always that responsibility with the taking of prisoners. That report says amongst other things:

... the organization—

that is, Amnesty International—

has received a number of reports of torture or ill-treatment by Coalition Forces not confined to criminal suspects. Reported methods include prolonged sleep deprivation; prolonged restraint in painful positions, sometimes combined with exposure to loud music; prolonged hooding; and exposure to bright lights. Such treatment would amount to 'torture or inhuman treatment' prohibited by the Fourth Geneva Convention and by international human rights law.

Surely that was a significant report to be placed before the government and the defence forces engaged in Iraq.

Senator Hill—I think it is reasonable to assume that the joint command would have noted that report, as they have responsibility for the management of prison facilities, but I do not know whether they responded to it in any way.

Senator BROWN—I do not want to assume anything, Senator Hill; I would like to have that confirmed. I wonder if you could establish for the committee how that particular report was received, what the reaction to it was and how it was conveyed to the government at the time.

Senator Hill—You said it was conveyed to the government. If you are correct and it was released publicly then the whole world knew of it. In relation to the response by the joint headquarters, that might be difficult for us to ascertain now because, as we said in estimates this morning, the most senior person that we had in the joint command at that time was of a colonel rank. We can ask but I think the chances are that he would not have been involved in any response.

Senator BROWN—Would you ask? The whole world may have known about it but I am asking specifically about when you or the government knew about it, what your response was to it and how you came to know about it?

Senator Hill—My recollection is that the first time that I knew about it was when it was referred to on about 11 May. It might have even been you, Senator, who raised the Amnesty report. But at that time I had become aware of the February report of the ICRC and that raised issues as to whether other bodies had made any reports. It was mentioned that there was a belief that there had been an Amnesty report, and since then I have heard mention of a human rights international report, but I am not sure when that was put out.

Senator BROWN—I will come back to this later because I am aware that I am cutting across the specific questions that other senators are asking about Major O’Kane and his visits to the prison, but when I come back to it later I will be asking about this report publicly released in Baghdad. It cannot have failed to have been brought to the notice of the government through the embassy, if not the defence forces.

Senator Hill—As I said, if you are correct and it was released publicly then the whole world had knowledge of that. The point we have been trying to make is that we did not run the prisons and we did not interrogate the prisoners. After a thorough search we found no-one who had any knowledge of abuses. I have said that the first time that I knew of the abuses of the type that were portrayed in early May was in early May. You can say, ‘But you should have been aware of the allegations back in January because they appeared on a CNN report,’ but the point I made this morning was that if that is so then the whole world knew of that as well. But nobody was pursuing it at that time. It was pursued after the photos and evidence of the abuses became apparent in early May.

Senator BROWN—The question, Minister, is: if the whole world knew about it how come you did not? I will come back to this matter later because I am aware that it is a different matter to the one immediately at hand, but it is a very important one and I would ask you to

check, in the meantime, on what response there was from the embassy in Baghdad and what relay of information came to you or anybody else in government at the time.

Senator Hill—That is another question.

Senator BROWN—It is.

Senator Hill—I was thinking that we could see whether there was a response from the Australian representative office. That would have been a response back to DFAT. We will check to see whether there was any response from our defence liaison officer in the ARO who, as we said this morning, is a sort of defence attache. If there was a response it probably would have been at the foreign policy level.

Senator BROWN—Thank you. I ask you to check to see whether your office, the foreign minister's office or the Prime Minister's office was made aware of that Amnesty report—as the whole world, in your words, must have known about it.

Gen. Cosgrove—On the last *Hansard* entry for Senator Faulkner, I want to reiterate that the sit rep—which you correlate to the other remark passed by Major O'Kane—that reports the only reference to ICRC in that relevant part reads:

... to concerns raised by the ICRC about conditions at the prison CJTF-7 was unable to provide adequate force protection for the visit.

It was, in that more general sense, concerns raised by the ICRC about conditions at the prison.

Senator FAULKNER—Thank you, General Cosgrove. I understood that. I was merely making the point that, because of the discussion or interplay that was going on here in the committee, I thought it useful to remind the committee as to what the sit rep said. It might be useful, Air Commodore, if we could try to keep ploughing through the five meetings. We know that on 27 August there was work done regarding interrogation, program and techniques by Major O'Kane at Abu Ghraib prison. We know on 4 December—

Senator Hill—If you express it like that, I think it is ambiguous. You know that he was asked to give some legal advice as to compliance with US doctrine and the Geneva convention.

Senator FAULKNER—We know that on 4 December the issues that Major O'Kane had, mainly in relation to mistreatment allegations and the element that General Cosgrove reminds of us in terms of the ICRC report contained in the sit rep. Just for the purposes of trying to plough on, we can come back to this, let's go to 17 December 2003 so that we can perhaps get the full picture.

Air Cdre S. Harvey—I think we were up to 17 December. Major O'Kane attended Abu Ghraib as the staff judge advocate representative during the transfer of an HVD, high-value detainee, from the Persian Gulf.

Senator CHRIS EVANS—What was his role there?

Air Cdre S. Harvey—He attended because he was involved in the transfer of a prisoner essentially. He probably was not there that long.

Senator CHRIS EVANS—This was not an Australian prisoner though.

Air Cdre S. Harvey—It may not have been.

Gen. Cosgrove—It could not have been one of our prisoners; we did not have any.

Senator CHRIS EVANS—I was just making sure you remembered the line: the 59 that were captured weren't ours. The SAS blokes are always amused to hear that.

Senator BROWN—What was his involvement in that transfer?

Air Cdre S. Harvey—It says that he was the SJA representative, so as a representative of the legal section essentially, I imagine he was there for legal purposes.

Senator BROWN—I am at a loss to know what those legal purposes would be. Is that to see that the prisoner was being properly charged?

Air Cdre S. Harvey—I have no idea, I am afraid.

Senator Hill—It would have been paperwork I think, but we can check that as well.

Senator BROWN—Thank you.

Senator FAULKNER—Can we move to 2 January 2004?

Air Cdre S. Harvey—On 2 January he attended Abu Ghraib for meetings with US Army, military police and military investigators and gave a presentation on the Geneva convention compliance and also in relation to ICRC visit coordination.

Senator FAULKNER—Can you tell us a little more about that particular visit? First of all, did you ask Major O'Kane about the details of that visit in your discussions with him?

Air Cdre S. Harvey—Yes, I did.

Senator FAULKNER—Can you share with us any further information about the nature of that particular visit?

Air Cdre S. Harvey—Yes, I can. The reason for the visit, essentially, was as a pre-visit ahead of ICRC visits to the prison. Apparently, previous visits to the prison had been a little bit less than well coordinated, so Major O'Kane was given the role of attending the prison and advising them of the procedures that would apply in relation to ICRC visits.

Senator FAULKNER—Advising 'them' being advising who?

Air Cdre S. Harvey—The staff essentially, I imagine.

Senator FAULKNER—Advising the prison staff.

Air Cdre S. Harvey—That is right. He met with US Army military police and military investigators, so I imagine they are the people. He also advises that he gave a PowerPoint presentation on the laws of armed conflict, in particular the Geneva conventions.

Senator BROWN—As they related to prisoners?

Air Cdre S. Harvey—Essentially, that is correct. That is my understanding. In other words, on the obligations, responsibilities and the like.

Senator Hill—If I can just interrupt for a moment, I am concerned about the fact that we have a large number of senior personnel sitting around waiting. It seems to me to be unproductive use of their time. I wonder if it would be possible to get some guidance as to when they should come back. In the meantime they can go and do something more useful than listening to the Senate.

CHAIR—I would have to discuss that with my colleagues.

Senator CHRIS EVANS—That assumes there is something more useful than listening to the Senate.

Senator Hill—I have assumed that.

Senator CHRIS EVANS—I find that hard to comprehend.

Senator FAULKNER—It is probably the first assumption you have made today that is a reasonable one, Senator Hill.

CHAIR—Can I get some guidance from Senator Evans and Senator Faulkner.

Senator CHRIS EVANS—It was my intention to ask some questions about the Colonel Collins matters under the intelligence section, which I suspect we will not get to until tomorrow.

Senator Hill—We were not expecting any questions on that subject, but now that you have given us notice—

Senator FAULKNER—I would be keen for Mr Henderson from corporate services and perhaps Mr Kenny and Air Vice Marshal Hammer to stay for questions that might intersect with this.

Senator CHRIS EVANS—After we get through this matter we will probably go to corporate issues and capital budget, so we would want to keep the people from corporate and budget on call. I do not think we will get much beyond outcome 1 and 2 tonight.

CHAIR—The short answer is that those responsible for outcome 3 and beyond can leave. Outcomes 1 and 2 will certainly not be on before 7.30, and we will tic-tac on that closer to the time.

Senator FAULKNER—Does that help, Minister?

Senator Hill—So anyone from output 3 on can go?

Mr Smith—Apart from Kenny, Henderson and Hammer.

Senator Hill—And they should be back tomorrow morning?

CHAIR—Yes, they should be back tomorrow morning.

Senator Hill—Okay. Thank you.

CHAIR—Having had a discussion about the program, we will proceed.

Senator CHRIS EVANS—So we are up to 4 January?

Air Cdre S. Harvey—The last visit was 4 January 2004. He attended Abu Ghraib prison—with the staff judge advocate, the commander of 205 military investigators and the MP battalion commander—for commencement of the ICRC inspection. I recall him saying that this visit was related to the one earlier. The prebrief happened a couple of days before. You may recall that the 2 January visit was setting up the arrangements for the visit and 4 January was the visit that followed.

Senator FAULKNER—Did the meeting two days earlier, on 2 January—the Geneva convention training exercise—seem to indicate that, in respect of this training exercise for US

personnel, there were concerns that their understanding of the convention had been found wanting, or was it a standard briefing? Are you able to identify a reason for that briefing taking place?

Air Cdre S. Harvey—No, I am not, from the knowledge that I have got of the matter. He described it as a very standard one describing the provisions of the Geneva convention, so it leads me to think that maybe it was just a routine, regular briefing session.

Senator FAULKNER—Are you able to say whether such briefings are routine for personnel?

Air Cdre S. Harvey—No, I am not able to say that at all.

Senator CHRIS EVANS—It may have been routine but in a sense it was designed to anticipate a visit of the ICRC two days later, so it was preparatory.

Air Cdre S. Harvey—It could be. I do not know. I guess he is the only one who knows. It could have been that he was doing a visit out there to make arrangements for the prison, so this was an opportune time to make a presentation as well while he was there. You must remember that we saw that special requests had to be made to get ASLAVs and things, so obviously getting to the prison was not an easy thing to do. It may have been the case that he simply used this as an opportunity to kill two birds with the one stone.

Senator FAULKNER—I suppose it does beg the question whether memories were being refreshed for a visit from the ICRC, which is the point that Senator Evans makes. You are not able to help us with that?

Air Cdre S. Harvey—No, I am sorry, I cannot.

Senator CHRIS EVANS—So who was he in the company of on 4 January?

Air Cdre S. Harvey—On 4 January he was in the company of the staff judge advocate, which I presume is the staff judge advocate from his joint task force.

Senator FAULKNER—How do we know that he was in the company of the staff judge advocate on that date yet on other dates we do not know if he was in company with anyone or not?

Air Cdre S. Harvey—It is just the information that I have.

Senator FAULKNER—That is information provided by Major O’Kane?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—So you did not ask him whom he accompanied?

Air Cdre S. Harvey—No, I merely asked what the purpose of the visit was.

Senator FAULKNER—Are you satisfied that this information is thorough in the sense that we just do not know who he was with, if he was with anyone and, if he was, whom he was with on these other visits?

Air Cdre S. Harvey—The only other information is the information that he provided in his weekly reports, which were fairly limited but basically gave the reason why he was going to the prison.

Senator FAULKNER—Which reports were those?

Air Cdre S. Harvey—You may recall that he had a reporting chain to the Australian side. His reporting chain was essentially to a colonel—

Senator FAULKNER—In the Australian joint task force?

Air Cdre S. Harvey—in the CJ-7.

Senator Hill—No, not in the Australian headquarters.

Senator FAULKNER—To a colonel in CJTF-7?

Air Cdre S. Harvey—He reported to the Australian colonel in Combined Joint Task Force-7. It may have been mentioned before that those reports subsequently went up.

Senator Hill—That is not quite correct either. He does not report to that colonel but he keeps that colonel informed of what he is doing.

Senator CHRIS EVANS—Can we go back to the staff. The staff judge advocate was there on 4 January. Who else was there?

Air Cdre S. Harvey—Commander 205 military police and commander 205 military intelligence brigade.

Senator CHRIS EVANS—This is an American military intelligence brigade commander?

Air Cdre S. Harvey—That is correct. And a military police battalion commander.

Senator FAULKNER—It was obviously quite a high-level group even though, of course, Major O'Kane is not at a high enough level to come to this estimates hearing.

Senator Hill—Senior officers went with him.

Senator CHRIS EVANS—The American military intelligence and the American military police commanders were there as part of the ICRC. I presume this means that the International Committee of the Red Cross had a delegation visiting the prison as well.

Air Cdre S. Harvey—That is right. It was a regular visit by the ICRC and obviously those commanders were there during the visit.

Senator CHRIS EVANS—What was Major O'Kane's role in this visit?

Air Cdre S. Harvey—Major O'Kane's role was primarily to make coordination arrangements for the visit; hence his visit two days before on 2 January. I think while he was there he was also asked to stay and assist with the visit.

Senator CHRIS EVANS—Coordinating arrangements; he had no responsibilities at the prison or with the prison staff. What was he doing?

Air Cdre S. Harvey—He was obviously the representative of the combined joint force. He went there to make sure that the arrangements for the visit were in place so that when the ICRC arrived in a couple of days they were able to conduct their visit and get the maximum benefit out of the visit.

Senator FAULKNER—Is that the military police battalion that has been alleged to be responsible for the abuses in Abu Ghraib prison?

Air Cdre S. Harvey—I do not know the answer to that.

Senator CHRIS EVANS—The prison is staffed by MPs, I gather, is it not?

Senator Hill—I do not think it is, but we should check that. The one that is in all the trouble is the reservist MPs.

Senator BROWN—I gather from this that Major O’Kane had a wider range of duties in relation to that visit than legal advice. In fact, he was acting as a host, if you like, to make sure that the arrangements went well for the Red Cross. He was taking on the role of ensuring that the Red Cross was facilitated, and he was liaising with the prison authorities to make sure that their visit was as comfortable as possible and that they got to do what it was that they wanted to do. He was not there as a legal adviser to the forces; he was there as an organiser for the Red Cross?

Air Cdre S. Harvey—I suspect you are right. His role essentially was as the visits or liaison officer. Because of the ICRC’s connection with international law those duties were decided to be allocated to him by his superiors.

Senator BROWN—He gave a presentation on compliance with the Geneva convention. Is that available?

Air Cdre S. Harvey—I have seen a copy of it. I do not know whether it is classified. We could certainly have a look at it.

Senator BROWN—Would you find out and let us know, please. Could you explain to me—

Air Cdre S. Harvey—Just to answer that last question, I might point out that all I have seen is the PowerPoint slides rather than a transcript of the presentation itself.

Senator BROWN—Yes.

Senator Hill—We can check and see if it can be made available.

Senator BROWN—Thank you. I am sorry if this was asked this morning, but could you explain to the committee how the cross-over relationship of ensuring the Australian interest as against the interest of the combined forces worked as far as Major O’Kane is concerned.

Senator Hill—We dealt with that at some length this morning.

Senator BROWN—Could you just give me a brief summation of it?

Senator Hill—Major O’Kane held a line position in the joint military headquarters. As such, he was not accountable to an Australian—with direct accountability to an Australian military officer. In this instance, it seems that his superior was a British officer. There was a more senior Australian, a colonel, in the joint military headquarters. Major O’Kane and the other Australian officers who were working in various roles there were to keep him informed of what they were doing. Basically, if there was something out of that that the colonel thought was of consequence to Australia, he would report that to the Australian military headquarters in Baghdad. If they thought it was something that would be of concern to Canberra, they would then send that on to Canberra.

Senator BROWN—How did this work when the prison arrangements became a matter of criticism by a number of international organisations? I guess by early December, after earlier approaches, there was a more comprehensive report from the International Committee of the Red Cross on the application of the Geneva convention. Was Major O’Kane in the position of explaining to the Red Cross the point of view of the prison authorities and/or the US command or was he in the position of explaining and ensuring, for example with the visit of the Red Cross, that it was the Australian determination or interpretation of the international conventions—the Geneva conventions—that was his guide in that circumstance?

Senator Hill—He was providing legal advice to the joint coalition military headquarters. The coalition included countries that have accepted different obligations under the international conventions. It is possible, I would think, for any competent lawyer to distinguish between the two. And the ICRC does not need advice from him on what the obligations are under the Geneva convention.

Senator BROWN—Faced with the difference between the interpretation of the convention by the ICRC—which we might expect is the internationally recognised expert on the matter—and the US command, what was the position of Major O’Kane?

Senator Hill—He interprets. He gives a legal interpretation. He could set out what are the US obligations under the Geneva convention; he could set out what are the Australian obligations under the Geneva convention.

Air Cdre S. Harvey—I might point out that the United States is a signatory to the Geneva conventions, as is Australia. I think the nature of the presentation, as I recall seeing it, was essentially a descriptor of the provisions actually taken from the documents themselves. So there would not have been any difference in the legal basis between the two countries.

Senator CHRIS EVANS—Are they not signatory to some of the protocols?

Air Cdre S. Harvey—They are not signatories to the additional protocol, but the point is that I think the presentation was based upon the Geneva conventions themselves, which are universally signed by Australia and recognised by Australia and the United States. It was a common legislative basis, if you want to use that parlance, that he was presenting on. It was a descriptive lecture of the provisions of the conventions which applied to both nations.

Senator BROWN—He was by that time in January aware of the concern by the International Committee of the Red Cross about what was going on at the prison and other facilities. He had been to the prison on 4 December to investigate those allegations and he had drafted a report back to the Red Cross. Can you tell the committee what his view was regarding the Red Cross allegations and, prior to that, the Amnesty allegations which were public, whether or not that was received in toto by the US command and whether his report went back to the Red Cross as he had written it or whether some editorial change had occurred?

Senator Hill—There is a whole series of questions there. As I understand it, he writes a draft report for his superiors and they then determine what they pass on. They may take other legal advice—I do not know. I do not think it was a case of him reporting as such—is that correct?

Air Cdre S. Harvey—As I understand it, he prepared the draft of the response to the allegations. You mentioned an investigation. I do not know whether it can be characterised as an investigation. He certainly went out to the prison and spoke to the relevant people to get the relevant information and prepared a response. I recall that he also spoke and liaised with another Judge Advocate General in the office and prepared the reply, which was signed at one star level. Obviously that one star officer would have been responsible for signing off on that report. I am not able to say the letter he drafted in reply was exactly the letter that went off, because obviously the superior may have put other things in it and certainly the other legal officer that was involved in providing some input also would have had a say on input.

Senator BROWN—Can you find out if there was a change—if he was asked to make a change or if a change was made to his draft response—and, if so, what it was?

Senator Hill—We can ask, but we may not know that because the ICRC does not report to us and obviously there have been major changes in the staff judge advocate's office in the joint headquarters. We can endeavour to find out.

Senator BROWN—I am not asking for the ICRC report, Minister.

Senator Hill—No. They would know the final response, because they would have got it. I am not sure who else would know the final response now, but we can make inquiries and see what we can find out.

Senator BROWN—I am asking for any changes between what Major O'Kane drafted up and what went to the international committee.

Air Cdre S. Harvey—I will certainly take it on board, but I think the end result is that I do not think even Major O'Kane would know the answer to that question. He prepared his draft and provided it to his superior but he may not have seen the signed reply.

Senator BROWN—Is there any reason why that draft should not be made available to the committee?

Air Cdre S. Harvey—It is not our document, for a start, and also, because of the nature of the content, I imagine it may well be classified.

Senator BROWN—Would you find out and, if so, why it is classified?

Air Cdre S. Harvey—Again, it is not our document, which is the problem. It is not really out document to release. I think we would have to approach the Americans to see whether they were prepared to release it. I doubt whether they would, because it is a confidential communication to the ICRC.

Senator BROWN—Would you make that approach?

Senator Hill—And it is a draft by one of the legal advisers to the joint command.

Senator BROWN—But Australia is part of this force and Major O'Kane is aware of that. I would have thought that surely such documents are jointly owned and are jointly being prepared. If they are not, where does Australia get cut out of this process and where does its responsibility end in this process?

Air Cdre S. Harvey—Essentially the reply that was drafted was in response to ICRC initiated correspondence. That correspondence would have been provided to the American

authorities as the detaining power. In a sense, Major O’Kane was working on the document, preparing a response on behalf of the United States as the detaining power. So that is why, as I said before, it is a confidential communication between the detaining power essentially and the Red Cross. So the ability of that to be released to third parties would be extremely doubtful, I think.

Senator Hill—Advice to us is that in his opinion internees were not being held or interrogated contrary to the Geneva convention.

Senator FAULKNER—How did you get that advice?

Senator Hill—That is what he advised us.

Senator FAULKNER—Advice from whom?

Senator Hill—Major O’Kane.

Senator FAULKNER—To whom and how recorded?

Senator Hill—To Defence.

Senator FAULKNER—And how recorded? You have just quoted it—where are you quoting from?

Senator Hill—A brief to me.

Senator FAULKNER—Under whose signature?

Senator Hill—Acting Director General, Defence Legal Service.

Senator FAULKNER—Who is that?

Senator Hill—On that particular day it was Colonel Andrew Dunn.

Senator FAULKNER—Did this come about as a result of your interview with him, Air Commodore?

Air Cdre S. Harvey—It is a bit hard without seeing the ministerial submission, which I have not seen, but obviously the acting director general would have provided the advice based upon inquiries that he made or maybe one of his staff made.

Senator Hill—I said this morning that I asked a series of questions to try to better understand myself the state of knowledge of relevant people. The question that I asked in that regard was as a result of O’Kane’s contact with the ICRC at Abu Ghraib. I asked whether he formed the view that prisoners were being held or interrogated contrary to the Geneva convention. The answer that came back was no. So after his contact and his professional dealings with the ICRC that was his view.

Senator FAULKNER—How was the answer adduced? That is what I am trying to establish. All we know about is that Air Commodore Harvey had a couple of conversations with Major O’Kane and, even though it is hard to hear what is being mumbled into the record, I accept that you do have such a brief in front of you and that you very faithfully read it into the record. But how do we know and how are we satisfied that that properly and accurately reflects Major O’Kane’s views? How were these views gleaned from Major O’Kane, for heaven’s sake?

Senator Hill—We would have to ask the Acting Director General—

Senator FAULKNER—Yes, we would.

Senator Hill—of Defence Legal Service as of that day.

Senator FAULKNER—Can we do that please. Can we now know why you have been able to read that into the record when previously we were told that the contact with Major O’Kane had been via Air Commodore Harvey in a couple of conversations, none of which had either transcript or record? Let us nail that down please, Minister.

Senator Hill—No, you do not. You know that the Defence Legal Service had a number of conversations—and Air Commodore Harvey has referred to his—and that in part they were following up questions that I had asked and that I had been briefed on the outcomes of those inquiries. This is one outcome that is relevant to the question that Senator Brown had asked. On that particular day it seems that Air Commodore Harvey must have been unavailable, because there was an acting director general, and he signed it.

Senator FAULKNER—Are there any notes at all of any detail or evidence or statements adduced or gleaned from Major O’Kane, Air Commodore? There is no paper trail, is there, with Major O’Kane?

Senator Hill—There is a paper trail if someone is interviewed and if almost contemporaneously a brief is written to me on the outcome.

Senator FAULKNER—He has not signed a statement, has he, Senator Hill? Of course not.

Senator Hill—That is not the only way you do this.

Senator FAULKNER—Of course it is not.

Senator Hill—One way is that you contemporaneously record the outcome.

Senator FAULKNER—Yes, but it was not contemporaneously recorded—we know that. It was neither done by statement nor contemporary record. So we are relying now on someone’s memory, which has been shot up in a brief to you. No wonder senators at this table are sceptical about what you read into the record.

Senator Hill—When you are not doing well you raise your voice. The questions were asked certainly within about a day or so of the brief being returned. To me that is contemporaneous.

Senator FAULKNER—Who had contact with Major O’Kane that allowed you to have those comments reported to you in a brief of that nature?

Senator Hill—The brief is signed by Andrew Dunn, Colonel, Acting Director General, Defence Legal Service.

Senator FAULKNER—I am sorry; I do not know Mr Dunn’s rank.

Air Cdre S. Harvey—Colonel.

Senator FAULKNER—Is Colonel Dunn available?

Air Cdre S. Harvey—I think he may be interstate, actually, today, but we could check that.

Senator FAULKNER—So he is not available?

Air Cdre S. Harvey—My recollection is that he is interstate.

Senator FAULKNER—When did Colonel Dunn speak to Major O’Kane?

Air Cdre S. Harvey—This is a ministerial response, of course. It happened when I, obviously, was away. So it is hard for me to answer that question. Only Colonel Dunn can answer that question.

Senator FAULKNER—We know that you, Air Commodore, as Colonel Dunn’s direct superior, did not take any notes of meetings and discussions you had with Major O’Kane. Did Colonel Dunn?

Air Cdre S. Harvey—I think that question would have to be asked of Colonel Dunn.

Senator FAULKNER—Surely someone has checked the record. What about you, Mr Carmody? You had oversight of this inquiry. Did you check any notes or records? I do not think there were any.

Mr Carmody—I did not check any notes or records. I have signed a number of briefs to the minister on the basis of information that has been obtained, but I have not reviewed any notes or records except in the context of reviewing the sit rep that I mentioned to you this morning—the 633 sit rep back to Australia—and looking at the classified situation reports that were written by Major O’Kane to his immediate superior.

Senator FAULKNER—We know that there was a sit rep from the Australian joint task force headquarters—I think that is correct, isn’t it?

Mr Carmody—That is correct.

Senator FAULKNER—That was the sit rep of 4 December. We know that. We know, from the evidence that General Cosgrove has given to the committee, that that is the only report from our national headquarters to our operations centre regarding ICRC. That is correct, I think, isn’t it, General Cosgrove?

Gen. Cosgrove—That is correct.

Senator FAULKNER—What can you tell us about Major O’Kane’s other reporting in other areas, either from CJTF-7 or from the Australian joint task force headquarters, not limited just to matters pertaining to the International Committee of the Red Cross? Are you able to provide information for the committee in relation to those matters that goes to the issues of interrogation procedures and allegations of mistreatment and abuse of prisoners? Can you help us with that, Mr Carmody? You have the overview of the investigation.

Mr Carmody—I can help you with some of that. I understand that Major O’Kane provided 25 routine classified situation reports, which were in very brief dot point format, to the colonel who was his superior. Of those, we have reviewed 18 reports. There was nothing of significance in those reports which was passed by his immediate superior to the JTF, except for the reference that came back, that I mentioned to you earlier and that you have referred to, which is the report coming back to Australia, the report General Cosgrove mentioned. So the

routine reporting that was provided by Major O’Kane and his judgments of the things he was involved in or any concerns that he had were not serious or significant enough except for that particular issue to make their way back through the chain of command to Australia.

Senator FAULKNER—Let us just have a look at that. There are 25 routine sit reps from Major O’Kane to his immediate superior, who is of the rank of colonel in CJTF-7—is that correct?

Mr Carmody—Can I clarify that?

Senator Hill—The immediate superior is not quite correct. To the senior Australian officer in the joint command.

Senator FAULKNER—To the senior Australian officer in CJTF-7?

Mr Carmody—Correct.

Senator FAULKNER—Of those 25 routine sit reps, you have checked 18?

Mr Carmody—We have been able to obtain 18—that is correct. I have not been able to obtain the other seven, and I can explain why, if you wish.

Senator FAULKNER—By all means.

Mr Carmody—The JTF-7 is a US organisation, so the reporting he was providing to the senior Australian was on the US system. We have asked for that information to be checked, and we have gone to the theatre to ask for those situation reports. We have only been able to recover the number that we have, which is 18 out of the 25. To me, that is not surprising.

Senator FAULKNER—Are you saying the only addressee of those sit reps is the senior Australian officer who is of the rank of colonel in the CJTF-7?

Mr Carmody—That is my understanding, yes. He was providing the reports that said roughly what he was doing and saying, ‘Day to day, I am happy, healthy and gainfully employed,’ to the senior Australian in the joint task force, as was raised and discussed this morning.

Senator FAULKNER—Of the 18 that have been located so far, can I ask you if you have read them?

Mr Carmody—Yes, I have. I have looked at a dot point summary of each.

Senator FAULKNER—Dot points? Are they provided in a dot point summary or have you only seen a dot point summary?

Mr Carmody—I am sorry, let me explain. They are very brief dot point reports; they are not long situation reports. It is essentially an email to the senior Australian that says, ‘This week I have done or am doing this, this, this and this. These are the highlights of my week.’ I do not think he used that terminology but that is essentially what was there.

Senator FAULKNER—Can I ask you then, having seen the dot points of 18 of these 25 routine sit reps—in that circumstance—are you able to say if at any stage those dot points included matters relating to interrogation programs or techniques, mistreatment allegations, abuse allegations or any concerns relating to prisoner treatment at Abu Ghraib prison or any other prison in Iraq?

Mr Carmody—No, they do not. He has not raised any concerns in those situation reports.

Senator FAULKNER—When you say ‘concerns’—

Mr Carmody—The matters that you mentioned. We could run through them if you wish.

Senator FAULKNER—No. If, for example, we have a sit rep for the week including 2 and 4 January, would those meetings find their way into the sit reps?

Mr Carmody—In some cases they do but not in all cases. In fact, that does not. There are references in weeks 17, 18, 19 and 20 that relate to the ICRC but, going back to your point, there is nothing that relates to interrogation and the points that you raised.

Senator FAULKNER—Do they go to the visits to Abu Ghraib prison, for example?

Mr Carmody—They say things like ‘reviewed ICRC reports on detention facilities—preparing position paper’.

Senator FAULKNER—That is it?

Senator BROWN—When was that?

Mr Carmody—It was 28 November.

Senator CHRIS EVANS—Do you had the sit rep report for 2 and 4 January?

Mr Carmody—I will have to check which ones we have recovered. I do not have that knowledge with me. All I have knowledge of are the four sit reps that referred in any way to the ICRC. My presumption and my very clear understanding is that none of the other sit reps at all mentioned ICRC, nor did they mention any of the other keywords, if you will, that Senator Faulkner used.

Senator FAULKNER—Of course, you checked this with Major O’Kane?

Mr Carmody—I did not. It was checked with Major O’Kane. It was also checked with the senior Australian to whom the reports were sent.

Senator FAULKNER—The colonel?

Mr Carmody—The colonel, who advised that he did not have or report any concerns relating to the abuse of Iraqi detainees. He did not have any concerns nor did he report any because none were raised with him.

Senator FAULKNER—Does this go to 18 of 25 sit reps?

Mr Carmody—That is correct. These are the situation reports. It does; that is correct.

Senator FAULKNER—Do we know for which period the sit reps are missing? Which weeks?

Mr Carmody—I can find that information for you. I do not quite know, but we can find it relatively quickly.

Senator BROWN—Could you just refresh my memory as to when the ICRC report was first noted by Major O’Kane?

Senator Hill—I am sorry?

Senator BROWN—When was the ICRC report of abuses at Abu Ghraib prison delivered?

Senator Hill—We have had a discussion about that this morning. I said this morning that there was a significant report put down in February by the ICRC—put down since it was delivered to the Coalition Provisional Authority and to the occupying powers. That covered the period from March last year until November. It basically looked at detaining practices, the treatment of detainees and interrogation techniques; it looked at all of those issues across the Iraq. It seems that in working up to that—in the development of the February report—the ICRC may well have produced working papers during the course of the year about particular facilities or particular issues.

Senator BROWN—That is not so, because the report was forthcoming in October—not as a process for working up to February, but a report in toto describing abuse became available in October.

Senator Hill—I believe such a working paper was produced in relation to Abu Ghraib in October. That is the one to which Major O’Kane is drafting a response in November.

Senator FAULKNER—But you now have copies of those working papers don’t you, Senator Hill?

Senator Hill—Yes.

Senator FAULKNER—You said this morning that you did not, so I assume that they have been provided very recently—is that right?

Senator Hill—I said what this morning?

Senator FAULKNER—My understanding this morning was that we had evidence here at the table that you had not received copies of those working papers.

Senator Hill—I did not say that this morning. I could have said, because it would have been correct, that those papers were not Australian papers and were not to my knowledge ever sent to the commanders of the Australian contingent in Baghdad and therefore were never sent to either our department or Foreign Affairs or other departments in Canberra.

Senator FAULKNER—When did you receive copies of those working papers?

Senator Hill—The first time that I saw ICRC working papers that relate to October was last night.

Senator FAULKNER—When were they received by government?

Senator Hill—They it seems were part of documents that Major O’Kane brought back to Australia as part of his—

Senator FAULKNER—When did Major O’Kane arrive back in Australia?

Senator Hill—So in a strict sense they are not Australian documents. They are ICRC documents, which, as you know, the ICRC is at pains to keep confidential. Nevertheless, he brought two papers back to Australia, which have been identified and which may well be—we do not know yet because we are trying to get it clarified with the ICRC—what some people have been referring to as reports.

Senator FAULKNER—When did Major O’Kane arrive back in Australia?

Senator HILL—I think he came back—

Mr Smith—He left Iraq in February. I do not know when he returned to duty here.

Senator FAULKNER—Can you say when he returned to duty, Air Commodore?

Air Cdre S. Harvey—All I have is that he departed Iraq on 10 February. It would be a couple of days after that.

Senator FAULKNER—I see. What happened to these working papers or reports in Major O’Kane’s possession? Did they get stuck on a file or what?

Air Cdre S. Harvey—I understand that Major O’Kane brought them back for personal purposes, so they were not brought to the attention of people.

Senator FAULKNER—So are you saying that they did not perceive it to be the property of Defence? Is that the point that you are making?

Air Cdre S. Harvey—No, what I am saying is that I was not aware of the papers until a couple of days ago.

Senator FAULKNER—When did you become aware of the papers?

Air Cdre S. Harvey—I became aware of the papers on Friday.

Senator FAULKNER—On Friday. Was that part of your investigation or conversations that you have reported with Major O’Kane, or was it a third party that informed you?

Air Cdre S. Harvey—I am sorry?

Senator FAULKNER—In other words, did your knowledge of the ICRC report or working papers come about as result of a direct conversation with Major O’Kane, or as a result of some third party informing you that he had them?

Air Cdre S. Harvey—I recall that it was Major O’Kane who first raised it with me. He mentioned the fact that he had them on Friday.

Senator FAULKNER—What happened then? What did you ask him to do?

Air Cdre S. Harvey—Immediately I found out that they were in his possession, I had them secured.

Senator FAULKNER—What does secured mean?

Air Cdre S. Harvey—I made sure they were locked under appropriate security arrangements, given their nature.

Senator FAULKNER—Where were they secured—in Defence somewhere?

Air Cdre S. Harvey—Do you mean physically?

Senator FAULKNER—Yes. Was it in Russell somewhere?

Air Cdre S. Harvey—He had the documents in his office in R.G. Casey and that is where we secured them.

Senator FAULKNER—Did you then inform the government that these documents had been located?

Air Cdre S. Harvey—Yes, we did.

Senator FAULKNER—When did you do that? Did you inform CDF or Mr Smith? Just tell me what happened.

Mr Carmody—Sorry, I was not listening to the question.

Senator FAULKNER—As a result of a conversation between Air Commodore Harvey and Major O’Kane, it was established that Major O’Kane had in his possession documents—I am saying ‘documents’ because it was said in the plural—including an October working paper or report of the ICRC. I am trying to understand what happened when this was established by the air commodore. What did you do with it? Were copies made, has it gone around the department, was government informed, and was the minister informed? The Prime Minister knows about it, because he has talked about it in the House of Representatives during question time. No-one spoke about it here at this estimates.

Mr Carmody—What I was doing in response to it was trying to verify whether or not the ICRC working papers, as these things are referred to, provided by Major O’Kane are in fact the ICRC report that everyone is talking about or are they not. That is what I was trying to ascertain, because the documents are not conclusive. For example, the ICRC report that was published on the Internet in February—the final report—has an entirely different look and feel. It looks like a report. It does not have ‘working paper’ on it, it does not have anything else on it; it looks like an ICRC report. Whereas the working papers that I was looking at do not look like that.

Senator FAULKNER—What do they have on the front cover, for example?

Mr Carmody—‘Working papers’—referring to a visit, ‘Working papers’ and a classification.

Senator FAULKNER—Do they document abuses, Mr Carmody?

Senator Hill—Can I settle the timetable. I received a brief on these working papers yesterday—Sunday. On Saturday my office had been told that these working papers had been discovered and were being examined, but basically it was unclear as to whether they were the report or not. On the face it, they did not seem to be the report. That is the timetable.

Senator FAULKNER—Thank you.

Senator CHRIS EVANS—Did someone inform the Prime Minister? I notice he was out in the media on Sunday. I assume someone would have told him.

Senator Hill—I am not going to talk about when I talked to the Prime Minister, but the Prime Minister would not have been told that we had discovered a report if we did not know it was a report.

Senator CHRIS EVANS—You are saying there was no further advice given to the Prime Minister following the discovery of the documents on Friday?

Senator Hill—After I got a brief yesterday, obviously further advice was given to the Prime Minister on these working documents.

Senator FAULKNER—Let me ask you this, Mr Carmody: what abuses do these October working papers document? Is it best to use the terminology ‘working paper’? If ‘working paper’ is on the front, let us use that terminology. Are they dated, by the way?

Mr Carmody—Yes, one of the working papers has an October date and one has a November date.

Senator FAULKNER—Could you give us those two dates, please.

Mr Carmody—If you can hang on, I think I can. I think it is 30 October and 6 November. I might need to verify it, but I am pretty certain that is correct.

Senator FAULKNER—Can you indicate how many pages these working papers are?

Mr Carmody—One working paper is about eight to 10 pages long and one is about four pages long.

Senator FAULKNER—Were these discovered in the process of the legal services investigation, Air Commodore Harvey, or after it had concluded?

Mr Carmody—Can I respond to that?

Senator FAULKNER—You did not conduct it, but the buck stops with you, I suppose, so feel free.

Mr Carmody—The working papers were actually provided to us with some other documentation on 11 May by Major O’Kane, but at the time we were not looking at any issues relating to October reports. You might recall that the first references to October reports were in articles in the *Sydney Morning Herald* last Wednesday or Thursday, which was the first time we really started to focus on the October reports. Prior to that, we were focusing on the questions that we were being asked and trying to resolve the allegations of abuse, whether or not any Australians had been involved and all of the issues that were rolling. Let me say the issue was rolling very quickly. Major O’Kane had handed over some documentation to us on the 11th—

Senator FAULKNER—To whom?

Mr Carmody—It was to the department. It was to one of my staff.

Senator FAULKNER—What level staff are we talking about? Was it just filed? What happened then?

Mr Carmody—It was accepted by the staff member and I do not think it was just filed. It was with a range of documentation that he had when we were trying to go forward and answer questions. Its significance was not realised at that point in time.

Senator FAULKNER—But you understand its significance, Mr Carmody.

Mr Carmody—I understand its significance now. I was not aware of it at the time.

Senator FAULKNER—What we now know is that these reports were officially placed in the hands of the department on 11 May 2004. In fact, the existence of the October working papers has been known to the Australian government since 11 May.

Mr Carmody—The working papers are working papers. They are not complete. There might be other papers. In the October report, if such an October report is provided by the ICRC, if there is one—

Senator FAULKNER—So when Mr Howard says that—

Mr Carmody—Can I finish?

Senator FAULKNER—Sure.

Mr Carmody—If there is, it may contain those working documents and it may contain other documents. As I said, it is very different from the final report. The statements made by the ICRC seem now to confirm that these are a series of working papers leading up to a final report and not a report.

Senator FAULKNER—Yes, but when Mr Howard told the House of Representatives in question time today that the working papers have just come into Defence's possession that is not right, is it? They came into Defence's possession on 11 May. It is just that no-one checked. No-one checked, did they, Mr Carmody?

Senator Hill—You cannot ask the witness to interpret what Mr Howard is saying. What the witness has said, as I understand it, is that Major O'Kane handed over a pile of his personal possessions that he brought back but the significance of these working papers was not appreciated.

Senator FAULKNER—So you are embarrassed by this, are you, Senator Hill?

Senator Hill—It was not appreciated until basically this last weekend. The sequence is as I have put it to you.

Senator FAULKNER—Mr Smith, are you embarrassed by this?

Senator Hill—Am I embarrassed?

Senator FAULKNER—No, I asked Mr Smith.

Senator Hill—You asked me first.

Senator FAULKNER—You ignored the question so I am now asking Mr Smith.

Mr Smith—Senator, I would have preferred that officers had seen the significance of it at the outset but, as Mr Carmody has explained, an October report was not an issue on 11 May.

CHAIR—We will take a short break.

Proceedings suspended from 3.30 p.m. to 3.47 p.m.

ACTING CHAIR (Senator Ferguson)—I call the committee to order. I believe General Cosgrove has a couple of clarifications that he wishes to make.

Maj. General Cosgrove—I refer you to Admiral Shalders, who wants to provide the committee with some information referred to earlier. After him will be Mr Carmody, who will give some clarifications.

Vice Adm. Shalders—The information that I am about to give responds to a question this morning relating to the number of legal officers in the various headquarters. In the CPA headquarters since May 2003—when that headquarters stood up—and continuing, we have had at least one lieutenant colonel equivalent. There are currently two colonel equivalents in the CPA headquarters, but since May we have had at least one lieutenant colonel. In the Australian headquarters we have had a lieutenant colonel equivalent throughout the period, and that continues. During the period February through August 2003 we had an additional

legal officer at the major rank. At the third headquarters, CJTF7, commencing in July we had a major equivalent in that position.

Mr Carmody—There are two points that I would like to make. In the first one I would like to correct my response to Senator Faulkner. I mentioned that the four sit reps that I was referring to from Major O’Kane were the only four sit reps that mentioned ICRC. That was in fact not correct. They were the only four sit reps that mentioned ICRC and the words ‘report’ or ‘reports’. In some of the other sit reps there were touching references to the ICRC by Major O’Kane to the senior Australian.

The second point that I would like to make is that I have the dates of the situation reports that we have recovered from Major O’Kane. The situation reports were for 12 September and 22 September—there were two reports of that date and I do not know why that is the case, but there were—26 September, 3 October, 10 October, 17 October, 14 November, 21 November, 28 November, 5 December, 12 December, 19 December, 26 December, 2 January, 9 January, 17 January and 23 January. That makes up the 25 situation reports that we have recovered.

Senator CHRIS EVANS—Is it fair to say that the major gap is in the early period of his deployment?

Mr Carmody—The longer we went back to try to obtain the records from United States, the more difficult it was. So the gap is in the earlier period of his deployment. I think he arrived in July, so July, August, September are the reports we do not have. There is a period from 17 October to 14 November which we do not have and I will verify that. It occurs to me that he was probably on leave and out of the country at the time. It might be logical but I can confirm that.

Gen. Cosgrove—Mr Carmody, you said 25 reports were recovered. Do you mean 18?

Mr Carmody—I am sorry, 18 of the 25—I apologise.

Senator FAULKNER—You mentioned reference to the International Committee of the Red Cross in another context. Can you just be a little more precise about it? I do not quite understand what that means.

Mr Carmody—The four reports that I mentioned—28 November and 5, 12 and 19 December—referred to the ICRC and reports. When we were doing the search we started to focus on the October report, which is why that was there. They are the ones that we drew out because of that interest. The other references to the ICRC are things like ‘met with ICRC’, ‘facilitated meeting with ICRC’ and that sort of thing, but not ‘ICRC and report’.

Senator FAULKNER—Let’s go to the fact that these working papers were provided by Major O’Kane on 11 May this year. You have indicated they were provided to a more junior officer in your area.

Mr Carmody—That is correct, Senator.

Senator FAULKNER—Can you indicate to the committee, please, the context of that?

Mr Carmody—My understanding is that we were asking him to hand over any documents that he might have, and he handed over these documents and I am presuming some others.

That was on 11 May. I was under the impression at that time that that was all he had. We subsequently checked and recovered more documents from him.

Senator FAULKNER—Was it part of the process of the investigation? It wasn't, was it—the handing over of documents?

Mr Carmody—No.

Senator FAULKNER—Why did somebody go to Major O'Kane and say, 'Could you please hand over these documents?' That is what I do not think we understand.

Mr Carmody—The other side of it was when we were endeavouring to compile information on what had occurred and what the time lines were. It was someone saying to Major O'Kane, 'Can you explain your interaction with the prisons and with prisoners? Did you see any of this? What did you do? What didn't you do during the time?' He said, 'I have got some documents,' and produced some documents. To reiterate the point, we were focused at that time not on the reports per se and we did not recognise the significance of the working papers.

Senator CHRIS EVANS—Sure, but you are saying that it was on 11 May. Was this part of Air Commodore Harvey's 15 narrowed down interviews that were part of the survey? How did someone come to have a conversation with Major O'Kane on 11 May? Why?

Mr Carmody—We knew Major O'Kane had been the legal officer in the theatre. There were conversations with others as well. I have some advice which I will refer to. The thrust of the discussion with Major O'Kane was to find out about his visits to Abu Ghraib and his general awareness of detainee issues, especially his knowledge of abuse and the nature of the photographs, because it was at the time when the issue of detainee abuse was still high in everyone's minds.

Senator CHRIS EVANS—That was a couple of weeks after that. Why on 11 May?

Mr Carmody—I presume it was still—

Senator CHRIS EVANS—You cannot presume, Mr Carmody. Somebody from your section, as I understand it, interviewed Major O'Kane months after he had returned from Iraq and weeks after the photos came out. Was this part of Air Commodore Harvey's investigation? Was it part of a separate investigation you were doing? Why was Major O'Kane interviewed on 11 May?

Mr Carmody—It was more part of the general responsibility that I had assumed about 10 May, which was to try and garner all the information we had available on this particular issue because things were popping up and questions were being asked.

Senator CHRIS EVANS—Do you mean parliamentary questions?

Mr Carmody—I think questions generally were being asked. It was really a question of focus and he was one we knew had been there.

Senator CHRIS EVANS—Had he already been interviewed by Air Commodore Harvey?

Mr Carmody—I do not know the answer to that question.

Air Cdre S. Harvey—No, I think that occurred after.

Senator CHRIS EVANS—Air Commodore Harvey, you had not interviewed Major O’Kane on 11 May in pursuit of your survey activities?

Air Cdre S. Harvey—I would have to check that but my collection is that it was after 11 May. I will have to check that.

Senator CHRIS EVANS—Perhaps you could take that on notice.

Senator FAULKNER—Just on that, Air Commodore, did the fact that Major O’Kane had provided this material to another officer in Defence become clear in your investigations and your communications—or to anyone else in the legal services branch of Defence?

Air Cdre S. Harvey—No. As I mentioned before, I only became aware of the existence of the documents last Friday. It was not something that I had cause to look at or to know about.

Senator FAULKNER—This was handled outside the formal investigation process but doesn’t it also bring into question the effectiveness of the actual formal investigation that has been referred to here? There was a full investigation carried out in Defence and no-one found out, right through the processes—and even after the conclusion of that investigation—that these important working papers of the ICRC of October and November 2003 had been provided by Major O’Kane to another official in Defence. What does that say about the investigation?

Mr Smith—Let me make clear that there was not a formal investigation. Strategic Operations Division conducted a survey of officers. That was what was undertaken and that was what we spent time talking about earlier. That is a different matter from a formal investigation. We have not claimed that.

Senator FAULKNER—What does it say about the survey? How shoddy is that?

Mr Smith—The survey addressed the questions to all those military personnel: where have you been, what have you seen and heard and so on?

Senator FAULKNER—Yes, a wide-ranging investigation involving 302 personnel in Defence and a matter that has been subject to an extraordinary amount of public debate, and the response is totally inadequate.

Gen. Cosgrove—That is unfair, Senator.

Senator FAULKNER—Why is it unfair?

Gen. Cosgrove—For a start, it is not an investigation. That has been put on the record. You keep saying ‘investigation’; it is not an investigation. Secondly, we have survey information available to us which comprehensively covers the issues of the time. It is all very well to keep saying, ‘The investigation didn’t show up that there were some documents,’ but that is to say that the questions asked in the survey were not adequate to the task and I do not accept that. They certainly canvassed the sorts of issues which would have revealed to us if Australians had been involved in abuses, had been involved in the mistreatment of prisoners, and I would have thought that they were reasonable questions and fairly comprehensive.

Senator FAULKNER—Yes, but that is not at issue, General Cosgrove. How do you feel, as Chief of the Defence Force, now knowing that Major O’Kane, an officer in the Australian Army, provided these reports to a Defence official—and I think it is fair to say to a senior

Defence official—on 11 May and this came to light weeks later? That is, to say the least, embarrassing in the extreme, isn't it?

Senator Hill—The point that is being made is that the October working reports were not really the issue that was being investigated. In the first instance, although we were confident that no Australian military personnel had been associated with any improper dealings with prisoners, that needed to be established and there was a thorough process to determine that. Secondly, there was a process to determine whether they had any knowledge of abuses before we all became aware of them in May. That process has been quite thorough as well, because it basically identified those who had had any contact with the prison system, and then there was an investigation in greater depth of those few individuals. What apparently was not appreciated was that these working papers of the ICRC were in the hands of one of these individuals. But the issue of the so-called ICRC report of October was only more recently raised. I guess if it had been on the agenda on 11 May then the officials that took possession of Major O'Kane's personal documents might have tended to focus upon it. I can understand how this has occurred—as new questions are raised, it is a new process and the work that has been done before is not necessarily clawed back into that process.

Senator FAULKNER—Have you been able to establish when these reports came into Major O'Kane's possession?

Senator Hill—As I understand it, it would seem that Major O'Kane brought copies of these working documents back with his personal papers, and we think he came back some time in February.

Senator FAULKNER—I did not ask when he came back to Australia; I asked when the reports came into his possession.

Senator Hill—I presume that he saw an October report in or about October, but when he actually physically took possession of that working document I do not know.

Senator FAULKNER—Let us try not to presume; let us see if those responsible for—

Senator Hill—And I cannot see that that is really relevant either.

Senator FAULKNER—I think that it is relevant; these are matters of opinion. Let's not presume; let's see if Air Commodore Harvey, who has been in direct communication with Major O'Kane, can assist on that.

Air Cdre S. Harvey—My understanding was that Major O'Kane had brought these documents back with him when he returned from overseas rather than have them faxed or sent out by someone else.

Senator BROWN—There were a number of occasions, Mr Carmody, that you have referred to where Major O'Kane made touching references to the ICRC to his senior officer. Which were those occasions?

Mr Carmody—They were mentioned in the series of situation reports that I referred to. There is just the series of dot point, weekly situation reports.

Senator BROWN—In which one?

Mr Carmody—I would have to go through and check them all. We can do that if you wish.

Senator BROWN—Could you do that? If we go back a bit further to his report on the development of prison interrogation and other matters, on 27 August he sent a letter back to his commanding officer. Is that letter classified or can it be made available?

Mr Carmody—A lot of the documentation that I understand Major O’Kane has was probably classified. Of course, it belongs to the US headquarters whence it came.

Senator BROWN—That was the development of overall policy about rules of interrogating and handling prisoners at Abu Ghraib. It may well have been at other places as well. We know that in September the *Interrogation Rules of Engagement* came out of that. These have been subject to a great deal of recent analysis and criticism.

Senator Hill—What is that?

Senator BROWN—The *Interrogation Rules of Engagement*. These are the rules for interrogating prisoners, which came out of Guantanamo Bay, and were transferred by Major General Geoffrey Miller to Abu Ghraib and developed for Abu Ghraib after 27 August but during September and before the subsequent visits by Major O’Kane to Abu Ghraib. What I am trying to establish here is what role that document from the visit of 27 August from Major O’Kane played in drawing up these *Interrogation Rules of Engagement* which I am happy to circulate if anybody has not seen them. Can you tell the committee if that letter from Major O’Kane in August did contribute to and is consistent with these *Interrogation Rules of Engagement*, which were those that were used after Major General Miller’s visit to Abu Ghraib, which set the rules, if you like, under which much of the subsequent abuse occurred at Abu Ghraib and elsewhere.

Senator Hill—I thought that the air commodore said that the task did not relate to the rules of engagement for interrogation.

Air Cdre S. Harvey—My understanding was that the *Rules of Engagement* was a foreign document to which Australians, by virtue of not being US citizens, were not allowed access. I cannot verify that we are talking about the same document here of course, but the document that Major O’Kane worked on, I believe, was more of a one-level-up type of document and basically dealt with the proposed interrogation program. As I said earlier today, although you may not have been here, it involved a process of comparing a document which had been prepared in the prison system with the intelligence manual of the United States Army and confirming that it comports with that manual and also obviously the Geneva convention requirements.

Senator BROWN—What I am asking, then, is whether that report from Major O’Kane was consistent with these *Interrogation Rules of Engagement* which precipitated out of the various information going back to command in the next month or so.

Gen. Cosgrove—The only way that we will be able to establish that is if we can get a copy of that from you.

Senator BROWN—I have a copy here. I presume the clerk will be so good as to take it, and I will table it.

Gen. Cosgrove—We can take it on notice.

ACTING CHAIR—I presume, Senator Brown, that these are the same ones that were displayed at the US Senate hearings two weeks ago.

Senator BROWN—They are. I will table those, if I may. The Red Cross papers of 30 October and 6 November were in, and then there was a major paper claiming abuse of prisoners on 4 December. Consequent to that, Major O’Kane made a number of visits to Abu Ghraib. Did he speak to any prisoners?

Air Cdre S. Harvey—That question was asked this morning. I am not quite sure.

Gen. Cosgrove—You have asked that, and I think we have taken it on notice: did he speak to prisoners? I remember you asking that before.

Senator BROWN—I may have given it on notice. We do not have an answer to that?

Gen. Cosgrove—No. You asked that question in your earlier time in the hearing, and I think we took it on notice.

Senator BROWN—I would think that, if a legally trained person was going to establish whether or not the claims of abuse were true, it would be reasonable to assume that the detainees as well as the detainers would be asked about that. That is reasonably logical, isn’t it?

Gen. Cosgrove—It is not clear he was doing an investigation or whether he was there in relation to the responses to whatever the allegations were. That is something, again, that we need to check with him.

Senator BROWN—On 2 January he made a visit to Abu Ghraib and then again on 4 January. The first visit, we have been told, was to prepare for the Red Cross’s delegation that was coming on the fourth. But we have also been told that he gave a presentation to prison authorities, on that first visit, about the Geneva conventions as they related to prisoners. You are going to provide at least his slide presentation, if not the commentary that went with it. I want to establish here, looking at those two visits, whether it was Major O’Kane’s intention to inform the prison authorities on 2 January, two days before the Red Cross arrived, what the rules were that were being investigated. Was he simply presenting the rules to the prison officers? One would ask why on earth they had not been presented with these rules at the outset and certainly long before that. Or was the nature of his presentation a briefing to the prison officers, who were by this time potentially seriously in trouble, so that they could put the best face on the situation they were in for the Red Cross visitors two days later?

Gen. Cosgrove—In characterising it that way it is very hard to give an answer to that, because you have characterised the purpose of the visit. You have imputed a particular reason for it to Major O’Kane. One thing I will tell you is that he would not have dreamt up the idea of going there himself. He was an officer in the chain of command and would have been sent there. In relation to the reason he went there, we have an outline of why he went. We have already announced that. We will need to check whether any of the sorts of imputations you are suggesting about his visit are in accord with his own version.

Senator BROWN—It would be much easier, of course, if the major were here so that he could speak for himself.

Gen. Cosgrove—It is not an issue that I can discuss with you.

Senator BROWN—What I do want to ask then, in following up this role, is that on 2 January he was talking to a group of jail officers who had already been in charge of a team which had committed criminal abuse of prisoners. I ask why, under those circumstances and presumably knowing that, Major O’Kane made that presentation at that late time and what other interpretation could we put on his presentation on 2 January? Why on earth make a presentation to these prison officers?

Gen. Cosgrove—That is a rhetorical question. I am in a poor position to take up that question. Even to give a speculative answer is not something that I can do. Major O’Kane is one of the respondents to a survey which says that he observed no abuse or mistreatment. I just cannot respond to the question.

Senator BROWN—What I can ask you then, General, is why that survey does not ask when each of the officers surveyed first knew of claims or allegations of abuse at this or other facilities? That is a question that is missing, but surely it is ‘the’ important question. We are presuming here that Major O’Kane did not speak to prisoners. Let me make that presumption; we will change it if he did. But if he did I cannot see how he could have failed to have got corroboration of the claims. Either way, he knew when he spoke on 2 January to those prison officers that there were serious claims of criminal abuse of prisoners going on in Abu Ghraib. What I want to know—

Gen. Cosgrove—I am sorry, Senator, you have made a statement and I do not know how you can support that.

Senator BROWN—Because he was aware of the reports from the International Committee of the Red Cross—wasn’t he?

Gen. Cosgrove—But you are suggesting that there was criminal abuse involved in there.

Senator BROWN—I am not just suggesting it; that was found by Major General Taguba when he investigated exactly the same matter. He corroborated it.

Senator Hill—As I understand it, he investigated the allegations that were discovered in January. They turned out to be of a criminal nature, and criminal prosecutions have followed.

Senator FAULKNER—But have we been able, Minister, to establish yet in relation to these issues what the content is of the ICRC working documents of October and November which came into Defence’s possession on 11 May and the extent to which they might deal with this broad issue of abuse and mistreatment? I do not know whether this is best directed to Mr Carmody or to the air commodore, or whether General Cosgrove would prefer to answer it himself, but has someone been able to make an assessment about the contents of these particular documents?

Mr Carmody—I might start. I have read the documents. The difficulty I face is that the documents are marked that they are strictly confidential and intended only for the authorities to whom they are presented and must not be published in full or in part without the consent of the International Committee of the Red Cross.

Senator CHRIS EVANS—Just like the February one.

Mr Carmody—That is correct. And I did not publish the February one. I actually do not know what position I am in. I know that in the press release put out by the ICRC about the February one they were profoundly disturbed by the fact that this information was released and referred to their longstanding practice of delivering it only to the authorised addressee.

Senator CHRIS EVANS—Can I help you by saying that the Prime Minister and others seem to have been passing opinions on what these October reports might deal with. It seems to me that we need to at least get some general description about these, given that that is where the debate seems to be turning at the moment. You are in receipt of a report you should not be in receipt of—that is the first thing—so you have probably breached something already by having a copy, Mr Carmody. I promise not to report you. It seems to me that we are after some general description of the nature of the reports rather than anything specific.

Mr Carmody—The February final report refers to the events of the preceding period. It refers to all of the ICRC reporting. That is already in the public domain. My view is that that is the best point to refer to.

Air Cdre S. Harvey—Obviously without going to the contents of the report—the point has been made that these reports are confidential and if these reports regularly become available it has the potential to damage the important humanitarian mission of the ICRC—Major O’Kane described it to me that, when he read the report and received the tasking, he regarded this as no more than another task that he had in his in-tray. Admittedly it was an ICRC working paper but it was a matter that he had to deal with in competition with other matters. I take some significance from the fact that one of our legal officers assessed it that way in terms of what that tells me—namely, that it is clearly not allegations of the type that appeared subsequently in February.

The other issue is that Major O’Kane indicated to me that if there were matters of Australian national concern, he would have referred them up through his Australian chain of command. The third point we can maybe make comment on and draw upon is the fact that these Red Cross working papers were given to the detaining power by the Red Cross. Once they got these reports, the American detaining power marked them down to a British officer. It then went down to an Australian foreign officer at major rank to work on. I would be very surprised if the United States authorities would have marked those papers down to an Australian foreign officer of that rank if they involved allegations of the magnitude we have seen recently reported. As I said, we cannot go into details but, to my mind, there are a couple of points that put into context and distinguish the character of these working papers from what subsequently appeared in February.

Senator FAULKNER—Let us look at the broader context for a moment if we can. On 11 May a newspaper reported:

... federal cabinet ordered an urgent review to determine what, if anything Australian military and intelligence officers knew of US mistreatment of prisoners in Iraq.

This is really a question to you, Minister. Are you able to indicate whether cabinet or the National Security Committee of cabinet resolved on or around 10 May to find out what could be established about prisoner abuse? Are you in a position to be able to indicate to the committee whether that occurred?

Senator Hill—No, I cannot indicate that. But I have said today that I have wanted those issues thoroughly examined. I have asked that it be done. On several occasions I have followed up with specific questions as information came my way. Basically that is what has been happening during the course of this month that gets us to this point today. The bottom line, which I think we should reiterate, is that Australians were not running the prison system, they were not interrogating prisoners and they were not the occupying power to whom the Red Cross reports.

Despite speaking to the commanders, the rotation of Australian national command, and now a broad range of offices under that command, there was no evidence of abuse witnessed by Australians. We have spent a whole day on this and what we have got to is the point that we know that some Australian lawyers—at least one working for the joint headquarters and a rotation working for CPA—had some contact with the issues and with the Red Cross's process in particular. But even out of an interrogation of them there has been no suggestion that they knew of abuses of the type that were portrayed in May and which have led to criminal prosecutions.

Senator FAULKNER—Is it true that Defence withdrew a photo of Major O'Kane which was taken at the Abu Ghraib jail from its web site?

Gen. Cosgrove—Yes, that is correct.

Senator FAULKNER—Can you say when that occurred?

Gen. Cosgrove—During May. I could not give you an exact date, but we could find that out. It was on the front cover of a legal newsletter. It showed Major O'Kane by himself standing, it looked like, outside the main gates of the prison. Under all circumstances, it was an innocent photo but one, given the sensitivity of the time, which was not one to have on a web site or newsletter.

Senator FAULKNER—Was that the cover of the Defence Legal Service journal?

Air Cdre S. Harvey—It appeared on what we call *The Buzz*, which is an internal newsletter of the Defence Legal Service. It is a monthly newsletter where we communicate information about what our lawyers are doing and other general information.

Senator FAULKNER—Did that occur around May 11 too? Can you be precise, as it is a legal services branch journal?

Air Cdre S. Harvey—It certainly was the May edition. I would have to get back to you on exactly what time that was.

Senator BROWN—What was the accompanying text?

Air Cdre S. Harvey—The accompanying text was simply a description that one of our legal officers had been deployed to Iraq.

Senator FAULKNER—Was that the caption?

Air Cdre S. Harvey—That was the tenor of the story.

Senator FAULKNER—Is it just the photo that has been withdrawn or has the whole publication effectively been withdrawn?

Air Cdre S. Harvey—No, the whole publication has not been withdrawn. I might just point out that this newsletter is primarily intended for internal use for the information of reserve and permanent legal officers. The photograph and the article appeared on the intranet—in other words, within Defence network. The article and the photograph never appeared on the Internet accessible web site, the reason being that it is standard practice not to include anything that could be of operational intelligence value to an outside party. So this article was never included in accordance with standard policy. The photograph was simply removed from the edition of the newsletter that appeared on the intranet.

Senator FAULKNER—Let us nail down this issue of what text has been withdrawn as well. Was there an accompanying article withdrawn as well?

Air Cdre S. Harvey—There was indeed.

Senator FAULKNER—Why was that?

Air Cdre S. Harvey—I think the article was withdrawn.

Senator FAULKNER—It either was or it was not; we have to be precise about this.

Air Cdre S. Harvey—I am searching for my recollection. I would like to take that on notice so I can check and give you an accurate answer. The covering article, from recollection, did not even refer to Abu Ghraib prison; it was simply a general sort of descriptor of the fact that we had a legal officer who was serving overseas.

Senator FAULKNER—Who made the decision that the photograph was to be withdrawn?

Air Cdre S. Harvey—That was my decision.

Senator FAULKNER—Did you seek advice?

Air Cdre S. Harvey—No, I did not.

Gen. Cosgrove—Had he sought my advice, I would have told him to remove the photo.

Senator FAULKNER—Sure, but the issue is whether he sought advice not—

Gen. Cosgrove—I actually think I gave a direction when I heard the photo was there, which was, 'Remove the photo.' My direction and his decision might have met in the middle.

Senator FAULKNER—Was the minister's office consulted?

Gen. Cosgrove—No, not at all.

Senator FAULKNER—Not by you, Air Commodore?

Air Cdre S. Harvey—No, certainly not by me.

Senator FAULKNER—There was no communication to or from the minister's office on this issue?

Air Cdre S. Harvey—None whatsoever.

Senator FAULKNER—I am informed—perhaps it is unreliably; I do not know—that Defence have had a lot of written and oral requests from journalists about the whole issue of POW abuse in Iraq. Are there any standing instructions in relation to responses to such journalists' questions at the moment? Are there any special instructions?

Air Cdre S. Harvey—There are standing departmental instructions that apply across the board, not just specifically in relation to this particular incident, which basically lay down procedures for members of the Department of Defence, including ADF members, in their dealings with the media.

Senator FAULKNER—Is it only the standard instructions that apply in relation to this? Have any special instructions been issued?

Air Cdre S. Harvey—They would not have been initiated by my office, but I am not aware of any.

Senator FAULKNER—It would be handled by Defence PR?

Air Cdre S. Harvey—If there were any sort of general instruction in a particular case, I imagine it would be.

Senator FAULKNER—Can someone assist us with that?

Gen. Cosgrove—This is under our ‘Defence Instruction (General)’. I do not have it to hand, but we have levels of direction on public affairs issues. This is at the highest level because of the sensitivity of it. No special instruction would need to be given apart from classifying this as a sensitive issue. Those instructions have been extant for quite some time.

Senator FAULKNER—They date from 2002, don’t they?

Gen. Cosgrove—Maybe early 2003.

Senator BROWN—General Cosgrove, these *Interrogation Rules of Engagement*, which were the rules governing what happened in Abu Ghraib and other detention centres in Iraq, allow among other things for the presence of military working dogs while prisoners are being interrogated. Is that something that the Australian Defence Force would agree with?

Gen. Cosgrove—It is not within our doctrine, but I do not want to get into the details of our doctrine, apart from answering that question.

Senator BROWN—What about the holding of—

Gen. Cosgrove—I am not going to answer questions on the details of our interrogation techniques, except to say that they comply with the Geneva convention.

Senator BROWN—I am not really asking about the interrogation techniques; I am asking about the Geneva convention. It is very important for me and I am sure for the committee to know about this nation’s interpretation of the Geneva convention. I would have thought that the presence of military working dogs in interrogation would be outside the Geneva convention; it is outside the Geneva convention in expert analysis I have seen. Remember the convention prohibits the use of humiliating, degrading and fearsome—I am using my own word there—techniques which coerce prisoners in a way which is inhuman. I think it is important that we know where Australia would have drawn the line differently with the treatment in Abu Ghraib.

Major General Taguba has talked about the criminal abuse of prisoners. I want to know about the *Interrogation Rules of Engagement*, which was in Abu Ghraib at the time. One of our military officers at least was right at the centre of the determination of the interpretation of the Geneva convention vis-a-vis these rules, which are inherently contradictory because

they say on the one hand that they are in keeping with the Geneva convention but here they are measures which any reasonable interpretation would say are in breach of the convention. Which of these interrogation rules of engagement is in keeping with the Geneva convention either as Major O’Kane saw it or as we as Australians see it?

Senator Hill—We said a little earlier that Major O’Kane had given a form of advice on the Geneva convention in the course of his duties and he had done it through a slide presentation. We said we would see whether we could put that on the public record, and we can do that. We now table a copy of that presentation.

Senator BROWN—Thank you. We have also heard that the major found that the treatment of prisoners at Abu Ghraib was consistent with the Geneva convention.

Senator Hill—That is right.

Senator BROWN—It manifestly was not.

Senator Hill—The treatment of prisoners in his observation and to his knowledge was in accordance with the Geneva convention.

Senator BROWN—He went to the prison—

Senator Hill—But as we now know there were clearly some serious abuses. When the abuses became known in January they were investigated and prosecutions have followed.

Senator BROWN—He went to the prison knowing, first of all, that these are the rules of engagement.

Gen. Cosgrove—No, Senator, you have asserted that. You are saying that he knew that those were the rules of engagement. You put a question on notice; we have accepted the task of finding out whether there is any relationship between his briefing—his activity concerning the Geneva convention and interrogation doctrine—and this. You are saying that he knows of this. You have to wait for that answer, Senator.

Senator BROWN—Can you tell me how any legal officer could go to the jail to investigate the complaint of the Red Cross and not ask for the rules?

Gen. Cosgrove—You are suggesting that he knew this. In fact, there is another answer. While you were in the chamber DGTDLs Air Commodore Harvey said that our understanding is that that was a ‘no foreign’ document. It may be that the major has not even seen it.

Senator BROWN—I ask you again, General: is it not the case that if you went to a jail to investigate the complaint you would have to ask for the rules?

Senator Hill—You can ask another question when I have finished answering the last one. What we discovered this morning is that the major is one of what we believe to be a large legal team. He was given specific jobs to do. One of the specific jobs he was given to do it seems was to give a lecture on the Geneva convention. I think, Senator Brown, in the questions that you are asking you are unfairly implying of him something that may well not have been the case. In fact, I do not think it could be the case because the evidence that has been put before the committee is that he believed the prisoners were being treated in accordance with the convention and were being treated humanely.

Senator BROWN—I am saying that in September these became the rules running that prison and that it is not feasible that a legal practitioner and a military officer going to investigate what is happening in a prison would not ask what the rules are, and not cite the rules as a basic component of a report back. I am also saying that these written rules are in complete breach of the Geneva convention—and an egregious breach of the Geneva convention.

Senator Hill—This is not really the place for you to be making assertions, but you have done so.

Senator BROWN—What is your response?

Senator Hill—That it is not a question. I might have a view on it but I am not going to give you a legal opinion as to whether any particular conduct is in accordance with the Geneva convention. Certainly I think some of the abuses that became known in May could not, by anyone's interpretation, be consistent with the convention. Not surprisingly, they led to prosecutions.

Senator BROWN—But what I am saying is that these breaches were known throughout the prison system by at least the commanding officers much earlier than May—in December and January. If you look at the Amnesty International report you will see that they were known way back in July prior to that. The prime difficulty here is that you are saying this became available in May. On the face of the evidence, it is not just that the Australian major was involved here but that there were reports in his notes going to his senior officer about the complaints from the International Committee of the Red Cross. I think it is self-evident, until we hear otherwise, that the rules of running that prison would have to be investigated by anybody who was going to look into those complaints. How the rules were being applied is another matter. We do not know whether the major spoke to prisoners or not. But there is a very great difficulty here of an Australian expected standard which was breached at Abu Ghraib with at least one Australian involved and an inability—

Senator Hill—Not involved.

Senator BROWN—Involved in knowing about it.

Senator Hill—No, you do not know that.

Senator BROWN—Yes, I do.

Senator Hill—In fact he is saying he did not know about it, so do not be unfair.

Senator BROWN—I do know, because he was responding to the ICRC reports in October, November and December.

Senator Hill—You said that we should all have been aware of this from July last year from the Amnesty report and should have been on our guard. But I do not recall anybody asking questions on this issue in the second half of last year. I do not even recall you, Senator Brown, asking questions on it. And, as I said this morning when you were not here, even after allegations of gross abuses were made public in January there was still no public interest in the issue.

Senator BROWN—Over your objection, Senator Hill, I spoke—

Senator Hill—When the public interest was aroused was when we all saw those photos in May and we realised that there had in some instances been gross abuse. The only good part was that the US had discovered the abuses itself back in January, had instituted an investigation and, as a result of that investigation, had established facts that it was putting before a court where people were in fact being prosecuted.

Senator BROWN—I raised the matter of the abuse of the rights of prisoners at a joint sitting of the parliament in October, I recollect. What I did not know at the time was that the commanding officer from Guantanamo Bay had gone to Abu Ghraib.

Senator Hill—I do not think you were referring to Iraq at all at the joint sitting, were you?

Senator BROWN—Very clearly I did, by asking the President to abide by international law.

Senator Hill—You did not ask about Iraq at all, and nobody was asking at that time. But in May of course everybody became wise. Even the Labor Party suddenly became interested in the issue.

Senator CHRIS EVANS—Just for the record, Minister, you will find in the *Hansard* that I have asked a lot of questions about prisoners and the agreement entered into for the treatment of prisoners. It has been a subject of discussions at estimates, and I think you finally provided me with a copy of the agreement late last year.

Senator Hill—On the transfer of prisoners?

Senator CHRIS EVANS—Yes.

Senator Hill—But not allegations of gross abuse.

Senator CHRIS EVANS—No, but there was interest for some time in the treatment of prisoners and how we organised that.

Senator Hill—Everybody became interested in that after May.

Senator BROWN—No, that is not correct. The problem here is that—

Senator CHRIS EVANS—Not much hangs on it, but I did want to put the record straight that what you said is not correct.

Senator Hill—What I said is correct as it relates to gross abuse. You were asking questions about how we were going to manage prisoners, and that was fair enough.

Senator BROWN—The question arises here: what is the Australian position vis-a-vis the treatment of prisoners at Abu Ghraib and indeed Guantanamo Bay?

Senator Hill—The Australian position is that there should be compliance with the Geneva convention. Beyond that, whether you want to argue or not that in specific circumstances it might not apply, they should always be treated humanely.

Senator BROWN—Is that the same as this? Here is the American authority saying that this is compliance with the Geneva convention. My question to you is: where is the difference between the Australian position and this one?

Senator Hill—You asked me what the Australian position is. We comply with the Geneva convention and we treat prisoners humanely.

Senator BROWN—That is ducking the question.

Senator Hill—There has been no evidence to suggest that Australian forces have acted otherwise, even though some would seem to want to drag them into this.

Senator BROWN—There is clear evidence. We did not know about the Red Cross committee reports at the time, but representatives of ours did. It is very important for this committee to determine where the line is drawn as far as Australian commitment to the Red Cross is concerned.

Senator Hill—We know that one Australian lawyer became aware of the concerns of the ICRC as expressed through working documents and participated in the development of a response. That is the correct process. If the ICRC in its inspections sees things it is unhappy about it brings that to the attention of the party that has control over the issue, and we would say that that party should respond positively.

Senator FAULKNER—On that issue, Senator Hill, could I just ask this. We have heard about the report of late October and early November, but could you indicate to the committee whether one of those was a report developed to be provided to the United States and the other shorter version as I understand that—Mr Carmody perhaps might like to comment on this—was provided to the UK? I am talking now about the October and November reports, respectively—October for the US and November for the UK. This goes to what is on the front cover, effectively.

Senator Hill—I do not think that is so. It seems to me that one of the issues is that the party to whom these working papers is directed is not identified.

Senator CHRIS EVANS—The ICRC says in its press release:

This report summarizes a series of working papers handed over to coalition forces.

We are discussing working papers. The ICRC says the February report is a summary of those working papers. Do you disagree with that ICRC view of the world? Is there something you know that they don't?

Senator Hill—No, I accept the February—

Senator CHRIS EVANS—So we have working papers that are summarised in the February report. It is a fair, Mr Carmody, to say that the working papers that you have your position—

Senator Hill—Hang on, you are asking another question. Can we just deal with the previous question first? The October working papers I do not believe identify the party to whom they are directed. It would seem that there was a covering letter with them, but we do not have that covering letter—that is part of our challenge in seeking to clarify exactly the status of these working documents. You then asked a question about the February report.

Senator CHRIS EVANS—I just want to understand. We were talking to Mr Carmody about the October and November reports, which have been in the possession formally of Defence since 11 May but in the possession, obviously, of Major O'Kane probably since some time in October-November last year. They were the working papers which are summarised in the ICRC report in February. Is that fair?

Mr Smith—They were two of, Senator. There may have been many more.

Senator CHRIS EVANS—That is right. But, as I understand from a reading of the February report of the ICRC, what they essentially said is that that report summarises the concerns that they had raised with the coalition forces throughout 2003—I think it is March to November. No, their press release reads:

... 14 places of detention throughout Iraq between 31 March and 24 October 2003.

Senator Hill—It certainly says that during that period they visited places, collected allegations and conducted interviews, and that the report summarises their findings and recommendations. I am not sure that it specifically refers to any particular working papers, does it?

Senator CHRIS EVANS—The press release of 7 May 2004 from the ICRC says:

This report summarizes a series of working papers handed over to coalition forces. ICRC delegates' findings were based on their observations and on private interviews with prisoners of war and civilian internees during the 29 visits the ICRC conducted in 14 places of detention throughout Iraq between 31 March and 24 October 2003.

That is what the ICRC said their report represented.

Senator Hill—I am not quarrelling with it but the report on its face does not seem to be quite written in that way. It clearly relates to the work—as I said in the parliament on the 11th—that they had been conducting in Iraq between March and November of last year.

Senator CHRIS EVANS—So is it fair to describe these reports—

Senator Hill—It is one of the reasons we were puzzled by the suggestion of an October report.

Senator CHRIS EVANS—Is it fair to characterise these working papers in the same way that the ICRC does, that these are working papers handed over to coalition forces that represented reports on their visits to prisons inside Iraq?

Mr Carmody—The working papers themselves do not contain a covering letter. They are not encapsulated in anything, therefore they are not formally addressed to anyone. My presumption is that they are documents that have been passed across or delivered but they are not under cover of anything which says 'enclosed are the following documents', referring to 'this, this and this'.

Senator CHRIS EVANS—They do deal with the treatment of prisoners at Abu Ghraib prison.

Mr Carmody—They do deal with two separate ICRC inspection events.

Senator CHRIS EVANS—Are they both of Abu Ghraib prison?

Mr Carmody—No, Senator, they are not. One is of Abu Ghraib prison.

Senator CHRIS EVANS—So the suggestion that somehow these were two versions of the one report is not right; these are clearly two separate and distinct reports?

Mr Carmody—That is my understanding, yes.

Senator CHRIS EVANS—One deals solely with Abu Ghraib prison?

Senator FAULKNER—Can you identify that by date or month?

Mr Carmody—I am not sure that I can, Senator. I do not know which one is which, but I will check that and I might be able to identify which one is which. I am not certain and I do not have the information in front of me.

Senator CHRIS EVANS—But the second one relates to another prison apart from Abu Ghraib?

Mr Carmody—Yes, correct.

Senator CHRIS EVANS—Was Major O’Kane involved with that inspection? Is that why he had possession of those—

Mr Carmody—My understanding is that he reviewed both working papers, otherwise he would not have had the working papers in his possession.

Senator CHRIS EVANS—So it is fair to assume, therefore, that he would have been involved with a visit to another prison as part of the process?

Mr Carmody—We have a list of all the visits that Major O’Kane made.

Senator CHRIS EVANS—They are the visits he made to Abu Ghraib prison, as they were described to me. We would probably need to go back to make sure that we asked Air Commodore Harvey the right question—whether that was the totality of his visits to prisons or the totality of his visits to Abu Ghraib.

Air Cdre S. Harvey—It is the totality of his visits. I do not believe that he visited the other facility but I am only going on what he has reported to me.

Senator CHRIS EVANS—He obviously had some involvement with this other report but as far as you know he had not visited the other facility?

Mr Carmody—I have no knowledge; I am relying on the Director General of the Defence Legal Service. The information that I have is that the visit to Abu Ghraib was the 6 November report—or working papers, I am sorry.

Senator FAULKNER—It seems to be interchangeable.

Mr Carmody—I am sticking with the title on the document.

Senator FAULKNER—Understood.

Gen. Cosgrove—Mr Chairman, could I offer a clarification. It is now senators 2, CDF nil. With regard to our public affairs DI(G) on public comment and dissemination of information by Defence members, we are using the one of 25 March 2002. We did look at it earlier last year, before Iraq, but we did not change it.

Senator FAULKNER—So it is the standing Defence Instruction (General), which actually emanated out of the ‘children overboard’ committee and issue.

Gen. Cosgrove—There is one other issue for senators. I would just like to place on the record the approximate structure of the staff judge advocate branch of the coalition headquarters. I think this is a good contextual thing, because it tells you that this ADF major is in a certain context—a US colonel, a United Kingdom lieutenant colonel, seven US majors, six US captains and one ADF major.

Senator CHRIS EVANS—Could I just be clear, Mr Carmody, on this: the report on Abu Ghraib prison by the ICRC that was in the possession of Major O’Kane was dated 6 November?

Mr Carmody—To be absolutely clear: the document that was marked ‘working papers’ referring to Abu Ghraib prison was dated 6 November.

Senator Hill—So perhaps we should refer to it as the November working papers.

Senator CHRIS EVANS—Perhaps, but it is also the case that his visit to Abu Ghraib prison on questions to do with ICRC matters is recorded as 4 December.

Senator Hill—Whilst that is being researched, can the secretary just respond further to Senator Brown.

Mr Smith—Senator, you said at one stage a little while ago that when Major O’Kane visited Abu Ghraib on 2 January you assumed he was aware that there had been criminal abuses there. Could I remind you that Major O’Kane’s own recollection is that he heard about the seriousness of the issue—that is, that there were serious abuses and mistreatment—at about the same time as the CNN media report in late January. That is to say, those sorts of abuses and serious mistreatment in that definition were not embraced in those two working papers that he had read.

Senator BROWN—This is different from the interpretation that we are getting from the Red Cross itself, which makes it clear that it was a summary document brought out in January and that in fact the earlier documents had incorporated the substance of the complaint.

Senator Hill—In January?

Senator BROWN—Yes.

Mr Smith—It depends on what documents, and the question there is whether Major O’Kane had seen them. All we know is that he has seen those two.

Senator FAULKNER—But we also know, Mr Smith, don’t we, that in the words of previous evidence provided here one or two other ADF officers were aware of the reports?

Mr Smith—But we know that no Defence personnel were aware of the allegations of abuse or serious mistreatment before the public reports in January.

Senator FAULKNER—We also know that yours and General Cosgrove’s statement mentions the October 2003 ICRC report on detainee treatment on three occasions—and I am not critical of this—and it may have been a November 2003 report, or it might be two reports.

Mr Smith—It might be both.

Senator FAULKNER—Yes, there may be two. I accept in relation to these sorts of matters that as time has moved on more information has become known to those involved. Would you accept that the October 2003 ICRC report identified in your statement may refer to a November report or it may refer to two reports? Would that be fair?

Mr Smith—That would be fair.

Senator CHRIS EVANS—On page 13 of my copy of the February ICRC report it refers to a mid-October 2003 visit of the ICRC. It talks about them having visited Abu Ghraib correctional facility and the isolation section and it says:

During the visit, ICRC delegates directly witnessed and documented a variety of methods used to secure the cooperation of the persons deprived of their liberty with their interrogators. In particular they witnessed the practice of keeping persons deprived of their liberty completely naked in totally empty concrete cells and in total darkness, allegedly for several consecutive days. Upon witnessing such cases, the ICRC interrupted its visits and requested an explanation from the authorities.

This was in mid-October 2003. It seems to me, Mr Carmody, that when we are talking about a November report and Major O’Kane visiting the prison on 4 December it is in the context of the ICRC already having raised with the authorities serious concerns about the mistreatment of prisoners, including of them being held naked et cetera. This is a contemporary matter that Major O’Kane must have dealt with. So when people seek to characterise these things as only coming to light later it seems to conflict with what the ICRC says—that in mid-October 2003 they were making their concerns known about such treatment.

Mr Carmody—I can only respond by saying that in reviewing the reports that Major O’Kane forwarded through his Australian chain of command I found that he did not report any concerns. That is the only information that I have.

Senator CHRIS EVANS—We are operating under this difficulty: you and the minister have obviously seen these October-November working documents but you feel that because of the accepted sensitivities of the ICRC reports you are unable to provide them to us or to describe them in any great detail. Of course, there has been a bit of debate that somehow all this stuff was news later on but was unknown at the time, despite the ICRC describing their report as a summary of concerns raised between March and November and despite them contextualising it all in that period. The February report makes it very clear that they raised, during a visit in October 2003, concerns about serious abuse of prisoners or serious mistreatment of prisoners. We can get into this argument about what the abuse consisted of—that is why I quoted the report exactly—but you know what I am alleging. I am alleging exactly what they said in the document which is on the public record—that is, that prisoners had been left naked for long periods in total darkness et cetera. That was the context in 2003, before Major O’Kane visited it and before the documentation was prepared for the November report. It seems to me that the ICRC’s description of the February report being a summary is probably correct and that we are dealing with very serious concerns back in October-November.

Senator Hill—I think there are a couple of things. Firstly, each of the legal officers that we had attached to the various commands there claims that they did not know of the abuses of the type that became evident in May until May. There seems to be a qualitative difference in that regard. You can get into this argument about whether there is mistreatment or serious mistreatment that is a lesser fault, but nevertheless a fault, within the system but my reading of the February report of the ICRC that has been made public paints a pretty grim picture of these facilities and the way in which it was alleged that they were operating. Even then there seems to be, by those who were on the ground, a qualitative difference between what was being put forward within that report and what became evident in May that led to prosecutions.

Senator CHRIS EVANS—I am sure that is right because, quite frankly, this is what the ICRC saw when they were on an escorted inspection of the prison. If you are asking me whether I think the prison guards were engaging in the worst of the practices now revealed, while the ICRC was in the prison, I think we would all accept that they probably were not—not in the middle of an inspection. The fact that that information came through photos taken by MPs et cetera, when obviously there was not that sort of inspection process happening, revealed the worst excesses. That is just commonsense. I think we would all accept that. But what we have got is an ICRC report. When I read the February report of the International Committee of the Red Cross, their only specific reference to Abu Ghraib is referring to their mid-October 2003 inspection. They are not talking about January or February. They are saying they were in there in mid-October. I do not know whether they visited on more occasions. Clearly we know they went back in on 4 December. I do not know whether that was a follow-up visit or whether they were in there on more occasions. I think we know they had 29 inspections of 14 facilities in that period. Do we know how many times the ICRC went into Abu Ghraib during this period?

Mr Carmody—No, I do not know.

Senator FAULKNER—In relation to Camp Cropper, in this same report—the February report that Senator Evans is quoting from—paragraph 43 is headed “‘High value detainees” section, Baghdad international airport’. That is Camp Cropper, isn’t it?

Mr Carmody—I believe it is.

Senator FAULKNER—It says:

On 30 October 2003, the ICRC wrote to the Detaining Authorities recommending that this policy—which is the policy that is described—be discontinued and replaced by a regime of internment consistent with the—coalition force’s—obligations under the Geneva Conventions.

So, again, there was correspondence from the ICRC to the detaining authorities, in this case in relation to what was going on at Camp Cropper on 30 October 2003. You are aware of that, of course, Mr Carmody.

Mr Carmody—I am now, yes.

Senator FERGUSON—General, when did you first become aware of the existence of the *Interrogation Rules of Engagement* that Senator Brown was flashing around?

Gen. Cosgrove—Somebody showed it to me a short time ago.

Senator FERGUSON—So you have never been aware of the existence of this document until today?

Gen. Cosgrove—No, I had never heard of it.

Senator FERGUSON—Is it reasonable to assume that Major O’Kane was not aware of its existence either?

Gen. Cosgrove—I do not know that. We will have to ask him. It is not something he has referred to, that anybody supporting me can say. I would prefer to ask him whether the high-level documents that he was dealing with included any reference to this. I suspect not, but I will have to wait until we get the answer.

Senator FERGUSON—It is just that a couple of weeks ago, when I had some time to kill, I watched the US Senate hearings into this same issue. It appeared as though this document was provided at those hearings and as though that was the first time that many senators at that hearing had ever heard about that document.

Gen. Cosgrove—An indicator is if this document that Senator Brown produced was labelled ‘no foreign eyes’. It would be unusual and, by US rules, illegal for a non-US officer to see that document.

Senator FERGUSON—I want to quote a couple of things from the document because Senator Brown chose to use a couple of lines in the document, such as ‘the presence of military working dogs’. The document actually contains three different areas, one of which is ‘Approved approaches for all detainees’, which includes things like establishing your identity, repetition, emotion or love or hate and all of those sorts of issues. But where he quoted about the presence of military working dogs it says that it requires the CG’s approval and that all requests must be submitted in writing. From what I can remember from the US Senate hearings, General Sanchez said at no stage was any approval ever given for the use of any of those items that required the CG’s approval.

Gen. Cosgrove—I believe that was his evidence. I accept that and take it at face value.

Senator FERGUSON—It also talks further down about safeguards. Amongst the safeguards are that approaches must always be humane and lawful—this is under their own interrogation rules of engagement; that detainees will never be touched in a malicious or unwanted manner; that wounded or medically burdened detainees must be medically cleared prior to interrogation; and that the Geneva conventions must apply. So, while we have had Senator Brown talking about the Geneva conventions, of course these rules were broken by some people who are now being criminally prosecuted but, in fact, the rules of engagement strictly precluded those things that he talked about.

Gen. Cosgrove—That is my reading of the document too, Senator, but it is not our document. In relation to Senator Brown’s question on notice, we will follow that up.

Senator FERGUSON—Everyone is responsible, it says, for ensuring compliance, and violations must be reported. It would appear as though the interrogation rules of engagement in fact have worked, because the violations were reported, which is why criminal charges have been laid against people who broke the rules. So, while it is easy for people to pick out the bits that suit them in these rules of engagement, in fact the rules of engagement worked, which is how these atrocities—they can be termed such—or the abuses have actually come to light in the first place.

Gen. Cosgrove—I take your point.

Senator BROWN—My question was about the fact that, further down in that box on the bottom, it says that the use of the techniques are subject to the general safeguards as provided,

as well as specific guidelines implemented by the 205th military commander FM34-52 and the commanding general CJTF7, for whom Major O’Kane worked. My question is: is it feasible that the major, working at the direction of the establishment under the commanding general to go and investigate what is happening at the prison in response to the complaints from the Red Cross, could not know what the commanding general’s own rules were?

Gen. Cosgrove—If that was classified ‘no foreign’ then it is more than feasible; it is highly likely.

Senator BROWN—Do you think it would be ethical for a commander general of the US forces who had written these rules and provided them to ask a subordinate officer from Australia to investigate the complaints about the implementation of these rules or breaches of the implementation of these rules and to prohibit that same officer from knowing what the rules were? That would be a totally contradictory thing and it would, in my assessment, be unethical to ask an officer to investigate something without giving the basic rules that the commander himself had set.

Gen. Cosgrove—You may have leapt to the conclusion that this officer was investigating rather than dealing at the jail in relation to the issue. We have on other occasions tried to be careful with the use of the word ‘investigate’.

Senator BROWN—He wrote a draft response as to whether or not what was happening there was consistent with the Red Cross rules.

Gen. Cosgrove—He was one of a colonel, a lieutenant colonel, seven majors, six captains and himself. It is at least possible that he performed a functionary role rather than leading an investigation.

Senator BROWN—You are saying that the colonels, the majors and the captains could know what these rules are, but not our major.

Gen. Cosgrove—No, the lieutenant colonel probably would not know because he is a United Kingdom officer.

Senator BROWN—You are saying that two of the officers taking part in this investigation—

Gen. Cosgrove—I am sorry; I am not suggesting any of those were involved in the investigation. I suggested that it was entirely possible that the Australian major was performing a function rather than leading an investigation.

Senator BROWN—But he drafted a response.

CHAIR—Order! Senator Evans has the call.

Senator CHRIS EVANS—I want to go back to the issue of the October and November reports. I appreciate, Mr Carmody, that you have some difficulties with the otherwise classified nature of them but I want to ask you this: do those reports canvass alleged breaches of the Geneva convention?

Mr Carmody—I do not think that I am in a position to respond to what is in the contents of the two working papers. I do not believe I can respond to the contents. As I said before, I

directed you to the February report. I would suggest that you would have to draw your conclusions from there.

Senator CHRIS EVANS—I am trying to nail down this suggestion about more serious allegations. Obviously, as I think I pointed out earlier, there is clearly evidence that emerged when the ICRC were not there that is perhaps more shocking and of a worse nature than when they were there. It is not counterintuitive for people that, while an inspection process is on, the behaviour might be better than when the inspectors are not in the prison, but it is a pretty key question that goes to whether or not these issues are serious. We have this argument about what is serious abuse and what is not abuse. That is why I frame it in that way. The important question is: were there allegations or reports from the ICRC being dealt with that suggested that the Geneva conventions had not been applied to prisoners?

Mr Smith—I would suggest that if there were then Major O’Kane would not know about them because, as I said earlier, his recollection is that he first heard about the seriousness of the issues at about the same time as the CNN media reported on 21 January.

Senator CHRIS EVANS—I find that very hard to accept, Mr Smith, with all due respect, because of the February report, which makes it clear that the ICRC made their concerns known in mid-October 2003. I accept that the shocking nature of the pictures obviously added a new dimension to the understanding of the treatment but clearly, in the middle of October 2003, the ICRC had serious concerns that the Geneva conventions were not being applied. What I want is some response about whether or not Major O’Kane was dealing with those reports and those concerns.

Senator Hill—Sorry, what was the paragraph of the February report?

Senator CHRIS EVANS—It was 3.2, point No. 27.

Senator FAULKNER—Don’t we know, Mr Smith, that Major O’Kane was actually drafting a US command response to the concerns of the ICRC? Don’t we actually know that from the evidence that has been presented previously at this committee?

Mr Smith—As I understand it he was drafting a response to one of those working papers. We do not know how many other working papers there were and we do not know what was in them as opposed to what was in the one that he was working on. We do not know whether he knew there were others and what they said.

Senator FAULKNER—Was he asked that in the investigation, Air Commodore?

Air Cdre S. Harvey—I think that the problem has been that it has only been fairly recently that we have come to the conclusion that there have been two working papers—

Senator CHRIS EVANS—Or more.

Air Cdre S. Harvey—Or more—that is right—so it is very hard to answer that question.

Senator FAULKNER—But we do know that Major O’Kane was assisting in the drafting—for all I know, he may have been the key drafter; do we know that?—of a response to concerns raised by the ICRC. That we do know. Whether it is the concerns of October or November, perhaps we do not know that; but we sure know that they are concerns of the ICRC.

Air Cdre S. Harvey—True.

Senator FAULKNER—That is true, isn't it?

Air Cdre S. Harvey—Absolutely.

Senator FAULKNER—And we know what the concerns of the ICRC are, don't we?

Mr Smith—We know now the range of them, but there were concerns initially about things like prison conditions and so on. There is a whole spectrum of concerns.

Senator FAULKNER—As a result of evidence given at this estimates committee today, we even know now about a visit to Abu Ghraib jail by Major O'Kane on 27 August going to issues relating to the interrogation program and techniques. So we know a great deal more now about some of what was happening in relation to the role of Major O'Kane in these particular matters. We know that also, don't we, Mr Smith?

Mr Smith—We know that he went there on 27 August. What he discussed in relation to interrogation techniques and so on, I do not know.

Senator FAULKNER—I appreciate that you may not directly know, but Air Commodore Simon Harvey has given a broad-brush outline to the committee—I have not pressed him, and I do not think other committee members have either, by asking for more detail—of what Major O'Kane was doing and the work he was undertaking on the visit of 27 August.

Mr Smith—I agree that we have a broad-brush understanding of it.

Senator Hill—It seems to me that the ICRC carries out an inspection, it carries out interviews of detainees and it brings to the attention of the authority any observations that it makes and any allegations that are made by detainees. It reminds the detaining authority of its obligations under the Geneva convention and seeks a response. The ICRC plans to go back subsequently and redo the process to see what, if any, changes have occurred. That is what, it seems to me, is happening in this process.

In relation to whether there were abuses that were in conflict with the Geneva convention, I think the most difficult part is really the obligation—and I am paraphrasing the convention here—that the detainees must not be humiliated, because that leads to quite difficult issues of interpretation. Obviously we know that if they are tortured—in what most people understand to be what torture amounts to—then that clearly is in breach of the obligations. But in a range of other activities, some of which were referred to in the document that Senator Brown has produced today, it is not so clear. Sleep deprivation is an interesting example. Whilst this document seems to say that, to a limited extent and with higher authority approval, sleep deprivation may be a legitimate tool in interrogation, the document nevertheless also goes on to say that you must comply with the safeguards—that is, in particular, that you have to comply with the Geneva conventions.

Senator FAULKNER—Can you say now whether the material that was provided—it includes a 30 October and 6 November report—by Major O'Kane to a senior officer in Mr Carmody's division in Defence included a copy or copies of a draft of the letter that Major O'Kane drafted or assisted in the drafting of in response to the Red Cross concerns and complaints? Did the material that Major O'Kane provided include a copy of that letter or copies of drafts of that letter?

Senator Hill—It included, as I understand it, a copy of the O’Kane draft response.

Senator FAULKNER—It did include a copy of the—

Air Cdre S. Harvey—My understanding is that it did include a copy of the draft letter.

Senator FAULKNER—What was the date on that O’Kane draft response?

Mr Carmody—The challenge was that the draft response referred to a letter which we do not have.

Senator FAULKNER—No, but you have got a draft of it.

Mr Carmody—No. The draft response refers to a letter, which we do not have, that contains a number of working papers. The challenge is that the draft response refers to a letter that we do not have and that appears to encompass the working papers. We do not know what is in that.

Senator FAULKNER—What is the letter you do have? It is what Major O’Kane either drafted or assisted in the drafting of, isn’t it?

Mr Carmody—Correct.

Senator FAULKNER—What is the date of that letter?

Mr Carmody—I will find out for you. It is 12 November.

Senator FAULKNER—Is there any reason—

Mr Carmody—I am sorry. The draft response was dated 24 December but it refers to a letter of 12 November, which we do not have.

Senator FAULKNER—Do we know whom the 12 November letter came from?

Mr Carmody—I do not know at this stage.

Senator FAULKNER—Who is the draft addressed to?

Senator Hill—We think it came from the ICRC.

Senator FAULKNER—That is a very logical response you have given. It is a reasonable assumption—I assumed that—but let us be clear if we can.

Mr Carmody—We will clarify it. I am pretty certain it came from the ICRC. It was a response.

Senator FAULKNER—That makes sense.

Mr Carmody—Therefore a 24 December response.

Senator FAULKNER—Is the letter that has been provided to you in the material from Major O’Kane his draft or is it effectively a copy of the letter that went in response to the ICRC?

Mr Carmody—It is his draft. It is an unsigned document. It was to be signed obviously by someone more senior.

Senator FAULKNER—Has it got a classification?

Mr Carmody—I do not know.

Senator FAULKNER—Is there any reason why that draft could not be provided to this committee?

Air Cdre S. Harvey—Apart from the obvious reason that it is a reply by an American official to an ICRC report—

Senator FAULKNER—No. It is an Australian draft for an American official.

Gen. Cosgrove—It cannot be determined an Australian draft. It was drafted by an Australian who was working for the Americans, so it is their property. If an American officer who was working in Australian headquarters writing information for use within the Australian government process decided he would give to the congress a copy of an Australian letter, I do not think we would be—

Senator CHRIS EVANS—That is an important point of clarification. I thought it was at coalition headquarters.

Gen. Cosgrove—Yes, but the detaining—

Senator CHRIS EVANS—Are we a member of the coalition?

Gen. Cosgrove—This was the detaining power. The detaining power in this case was the United States.

Senator CHRIS EVANS—This is not the US headquarters; this is the coalition headquarters.

Gen. Cosgrove—Yes, but in an official sense it was the United States part of the coalition replying to the ICRC.

Senator FAULKNER—It was not the US military headquarters. This was done for someone in CJTF7, which is the Coalition Joint Task Force—correct?

Gen. Cosgrove—Yes.

Senator FAULKNER—Australia is part of the coalition, isn't it?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—Who was the ICRC report addressed to—the coalition?

Senator Hill—The ICRC report was not addressed—the working papers were not addressed.

Senator CHRIS EVANS—As I understand it, they were addressed to the coalition.

Senator FAULKNER—Are you saying, General Cosgrove, that you would have to check with coalition partners before such a draft was made public?

Senator Hill—Can we take that one on notice? I think there are two issues. There is the one General Cosgrove is concerned about, which is the coalition relationships when officers are serving in line positions. The other issue is that the response obviously refers to working papers that the ICRC wishes to keep confidential. If we were to be permitted a reasonable time to consider those questions, I would appreciate it.

Senator BROWN—One of the difficulties here is that there has been no restriction in the Senate inquiry in the United States about documents being forthcoming because there had to

be consultation with other members of the coalition, including Australia. We are not asking Major O’Kane for it, because he is not here, but we are asking if you will clear the document to be presented to the committee.

Senator Hill—As I said, I would want to think about it because it is not an Australian document. Even the reply is not an Australian document as such; it was prepared within the coalition headquarters by an Australian who was working in a line position in that headquarters.

Air Cdre S. Harvey—The response that was prepared was clearly a response to an ICRC working paper which had been delivered to a detaining power. Therefore, the draft that Major O’Kane prepared was prepared for the detaining power, and the detaining power—an American official—signed it off. Again, that highlights the fact that we have to be very careful to make sure that we recognise that the reports of the ICRC are given to individual nations, even though it may be a bit confused by virtue of the fact that these people are located in a joint command. That may help you to understand why it is difficult for us to comment upon, or even to consider the release of, that document.

Senator FAULKNER—I think that you can chase this issue through, and I would imagine quickly. Apart from the niceties—and I think these things are important, obviously—or the courtesy of asking our coalition partners, I would hope that the issue of transparency would be uppermost. After all, the February report is clearly addressed to coalition forces, isn’t it? That is right, isn’t it? That is something that can be checked.

Mr Carmody—I thought the February report was provided to the detaining power. The fact that it was released more broadly than to the detaining power is what the ICRC has a problem with. The only detaining power is the United States in this construct, and that is to whom the February report was provided. I do not believe it was provided to the coalition.

Senator FAULKNER—We will get to that. I do not think that is entirely correct, but let us come back to it. Can you say to the committee, before we get to that point, what other detail or what other information—we have two working papers and one draft letter from Major O’Kane provided to one of your offsidiers, Mr Carmody—was provided?

Air Cdre S. Harvey—I have been through the documents that Major O’Kane retained. Apart from the documents that are mentioned, I recall there were two documents which were basically working documents which he obviously prepared in developing a response to the ICRC working papers. There were a couple of unsigned copies of letters that he had been involved in. As Major O’Kane explained it, the documents that he retained were not necessarily so because they were interesting but because they were a record of his time over there and the sort of work that he worked on. A lot of it included fairly innocuous documents such as PowerPoint presentations. There were some orders that he had drafted which, because they are classified, I cannot mention in detail. But there were no documents in the ones that I examined which raised any issue of detainee abuse or mistreatment, other than the ones that referred to the ICRC’s working papers that he was working on.

Senator FAULKNER—Thanks for that information, Air Commodore. Can you now say to the committee, please, what happened after this information was provided to Mr Carmody’s

offsider on 11 May? Did this go up the chain of command in Defence or was it brought to the attention of other officials or did it just sit there till Friday?

Mr Carmody—I can respond to that because it came to my attention on Friday, when I was first aware that these documents existed. It was not until Saturday that I really started reviewing them in detail and drawing the rest of the threads of this together. Up until that time they had been with the officer to whom the documents had been provided by Major O’Kane, and I was not aware that they existed. So they had not gone up the chain of command in Defence.

Senator FAULKNER—Or they literally remained with the officer of the Commonwealth who had received them from Major O’Kane until Friday. How come they suddenly appeared on Friday?

Mr Carmody—We were in the midst of bringing all the data together that we have on this particular issue. As you know, I was coordinating it and trying to draw all the threads together, and it was brought to my attention that Major O’Kane had handed over some working papers. In fairness to the process, there was a lot going on in terms of developing questions, investigating what was going on, asking questions and responding, so the first time this actually came to my attention was then.

Senator FAULKNER—You said a moment ago, although it may not have been you, Mr Carmody, but one of the witnesses at the table told us, that it was believed the February 2004 report of the ICRC was not a report to the coalition forces. One of the witnesses said that.

Air Cdre S. Harvey—I think we have to be a little bit careful. I think the issue was not so much whom it was addressed to but whom it was actually delivered to. My understanding is that, even though the report may refer to being addressed to coalition partners—

Senator FAULKNER—It does, doesn’t it?

Air Cdre S. Harvey—That is my recollection, but I am pretty confident in my knowledge that Australia did not receive a copy from the ICRC of that report, when we are a coalition partner.

Senator FAULKNER—This report begins:

In its "Report on the Treatment by the Coalition Forces of Prisoners of War and other protected persons in Iraq", the International Committee of the Red Cross (ICRC) draws the attention of the Coalition Forces (hereafter called "the CF") to a number of serious violations of International Humanitarian Law.

That is the first sentence of the executive summary of the ICRC’s February 2004 report so, when I said to you I believed that this was a report to the coalition forces—to the coalition—I think there is some strength in that argument.

Senator Hill—I think that when they talk about coalition forces they are clearly talking about those of the coalition that are in occupation. There were and there are still are over 30 countries in Iraq as part of the coalition, but they do not have the international law obligations that the occupying powers have. The occupying powers are identified by the Security Council resolution as the United Kingdom and the United States. What reinforces my point is the fact that it was to the United States and the UK that the report was delivered.

Senator FAULKNER—Mr Smith, I want to be assured on one issue. Can I be assured that none of those graphic pictures of Iraqi prisoners being abused appear on any internal Defence web site or intranet site or email? I ask that question very deliberately, Mr Smith.

Mr Smith—Very deliberately, Senator, I say: to the best of my knowledge, not.

Senator Hill—There are, what, 80,000 or 90,000 people all with email access. What are you asking the secretary?

Senator FAULKNER—I am asking whether the secretary is aware of whether those pictures have been on any Defence web site or intranet site or on other electronic mail or computer generated site within Defence.

Mr Smith—Not that I am aware of.

Senator FAULKNER—Could I check with information systems division or Air Vice Marshal Hammer—I am not sure who is responsible and what the situation is in relation to having those issues checked through?

Mr Kenny—We are not aware of any of these images or other forms of graphic on web sites or elsewhere in our email systems.

Senator FAULKNER—Sorry?

Mr Kenny—We are not aware of those images or other graphics being anywhere in our information systems.

Senator FAULKNER—Has a check been done in the department?

Mr Kenny—We would check for incoming via semi-automated means. We screen all incoming email for images and other items that would be considered offensive.

Senator FAULKNER—Has such a check been made?

Mr Kenny—The check happens automatically at the gateway, which is where images come in. We also as a matter of course through our information security officers check network drives for offensive material.

Senator FAULKNER—Has there been any specific tasking within the department in relation to those images of abused prisoners in Iraq?

Mr Kenny—Not to my knowledge.

Senator FAULKNER—If there had been, you would be aware of that, wouldn't you?

Mr Kenny—I would expect to be, yes. However, as the minister has pointed out, in an organisation of 80,000 or 90,000 people, I would not rule out that a unit commander had asked that a check be done on his own initiative. I am not suggesting that I know of that; I am saying that in a very distributed organisation some individual may have asked.

Senator FAULKNER—All I am trying to achieve, Mr Kenny, is an assurance that those images have not been displayed in any electronic format. I think you have given me that assurance.

Mr Kenny—I have.

Senator FAULKNER—The second issue I want to be assured of is in relation to whether there has been any tasking, Defence or ADF wide, about checking that. You have given me a qualified assurance about that.

Mr Kenny—It is only qualified in that I am not aware of it. I have not requested that that search be specifically done.

Senator FAULKNER—If there was any checking of such matters, Mr Kenny, would that be the responsibility of your division?

Mr Kenny—It would be the responsibility of my division or possibly the inspector-general's people might request it.

Senator FAULKNER—Is the inspector-general available? It is Mr Neumann isn't it? Did we send him off?

Senator Hill—He stayed just in case.

Senator CHRIS EVANS—He knows he may be called at any time, under any program.

Mr Neumann—I am not aware of any specific tasking or checking either.

Senator FAULKNER—You are not aware of any concerns, complaints or suggestions that this had occurred?

Mr Neumann—I have not received any.

Senator FAULKNER—I asked whether you are aware of any.

Mr Neumann—No.

Senator FAULKNER—Mr Kenny, you are not aware of any?

Mr Kenny—No. I should add another point. You asked about my division. Without taking you into the entrails of the Defence organisational structure too far—

Senator FAULKNER—I certainly do not want to go there. I understand once you go there you never get out.

Mr Kenny—Correct. There is another division involved. I am not aware of there being any checks there either.

Senator FAULKNER—What is that other division?

Mr Kenny—That is the operations division that is now responsible for regional staff. We would ask their staff to run the search.

Senator FAULKNER—I assume there would be no-one here from the operations division. Would that be right?

Mr Kenny—I can speak for them when I say I am not aware of their people having done a search either.

Senator FAULKNER—Would you mind checking with the operations division and letting us know?

Mr Kenny—I will.

Senator BROWN—I would like to ask about the response to the Red Cross report of 24 December. It has been reported that the officer in charge of Abu Ghraib, Brigadier General Janis Karpinski, commander of the 800th military police brigade whose soldiers guarded the prisoners, said that senior officers in Baghdad had treated the Red Cross report in ‘a light-hearted manner’. Did Major O’Kane speak with Brigadier General Karpinski when he went to the jail to investigate the matter?

Air Cdre S. Harvey—I am pretty confident that he did not speak to the brigadier general.

Senator BROWN—Who was the senior officer that he did speak to?

Air Cdre S. Harvey—That was a question on notice and I do have some information regarding that. People he met with at the prison on the visit of 4 December were: the commanding officer of 320th military police battalion, who was a lieutenant colonel; staff officers of the 320th military police battalion, joint interrogation and debrief centre, whose chief was a lieutenant colonel; staff from 205th military intelligence brigade; one or two members from the Abu Ghraib JAG cell; and about eight to 12 other persons who were in attendance. There were no other ADF personnel in attendance.

Senator BROWN—Did he find that any of these people were treating the Red Cross allegations in a light-hearted matter?

Air Cdre S. Harvey—No, in fact quite the opposite. Major O’Kane said he took the tasking very seriously and he found the people that he spoke with cooperative and helpful, and they helped him prepare his response.

Senator BROWN—One of the responses that has been reported from US Army officials to the report was to tell the Red Cross that spot inspections were out and that in future appointments would be necessary. Was that a recommendation that Major O’Kane was au fait with? Is that a recommendation the Australian defence forces would back, that is, the suspension of spot investigations?

Gen. Cosgrove—On the ADF response, I should answer that. I think that is a hypothetical question. I am unaware of the circumstances under which that conversation took place and whether or not it was a reasonable conclusion to have drawn. I do not think we could back it or indeed comment on it.

Senator BROWN—The Red Cross was taking spot investigations to a number of facilities in Iraq. What is the Australian position on spot investigations as against the requirement for appointments, which obviously allow for cover-up?

Gen. Cosgrove—I am not going to get into hypotheticals, Senator.

Senator BROWN—I am asking about policy here. I am asking about the position of the Australian defence forces.

Gen. Cosgrove—We have always cooperated with the ICRC on any of its activities. I think that is all we need to say, Senator. Otherwise we could get into an endless discussion of hypotheticals or theory, and I just think it is unreasonable.

Senator BROWN—I think we have to know Australia’s position about supporting the Red Cross’s ability to make spot visits to such facilities.

Gen. Cosgrove—But then that would lead to the next question and the next question and the next question. Can we just say as a blanket response that we will cooperate fully with the ICRC in its important work and we also abide to the letter by the Geneva convention.

Senator BROWN—You are effectively saying that you do agree that spot inspections—which is what the Red Cross was asking for and which it had received until December—should be abided by.

Gen. Cosgrove—I am saying that we will cooperate fully with the ICRC when we are on military operations and they have a need to interact with us. I think if we left it at that, that is a reasonable statement of Australia's policy towards the duties of the ICRC.

Senator BROWN—The American colonel who was the chief officer for Major O'Kane, Colonel Marc Warren, testified in the US Senate Armed Services Committee that it played a central role in drafting the interrogation policy that was used at Abu Ghraib, which is effectively this document.

Gen. Cosgrove—We do not think it is. We think that there are a number of documents.

Air Cdre S. Harvey—I think that what you are referring to there are the rules of engagement rather than the policy.

Senator BROWN—The interrogation policy. Yes, these are the rules of engagement but this is an interrogation policy as well. It is the manifestation of policy, isn't it?

Air Cdre S. Harvey—The rules of engagement are what the people at the ground level follow. I think that we discussed it. That was a 'no foreign' document.

Senator BROWN—But the policy is implemented by the commanding officer whose authority this document comes under. I am sure that is what Colonel Marc Warren was testifying that the office in which Major O'Kane worked drew up.

Air Cdre S. Harvey—I cannot comment upon that. All I can say is that that document is 'no foreign' so Major O'Kane would not have been involved in it and I have no basis to know who was involved in the drafting of the document or where it was drafted—whether it was drafted at the joint task force headquarters or whether it was drafted at the prison.

Senator BROWN—There have been a number of references to Major O'Kane in his weekly reports referring to the International Red Cross complaints. Some of them were detailed but some of them were touching references. These went to his commanding officer—

Senator Hill—No, they did not go to his commanding officer. I do not think any of them were said to be detailed.

Senator BROWN—To whom did they go?

Senator Hill—We have been through this twice today. It is a touch frustrating if we have to redo it all again now. The job was to sit here and put up with the pain like the rest of us.

Senator BROWN—To whom was he reporting?

Senator Hill—We have done that twice today. It will be in the *Hansard*.

Senator BROWN—I want to know how far up the line these reports went.

Senator Hill—Read the *Hansard*. It is all set out. Senator Evans asked very detailed questions on those subjects.

Senator BROWN—Thanks for your help there, Senator.

CHAIR—Read the *Hansard*, Senator Brown.

Senator BROWN—I did supply you with—

CHAIR—Order! I think we have had enough, Senator Brown. Senator Evans?

Senator BROWN—Senator Evans, would you mind if I tabled a document?

Senator CHRIS EVANS—Deal with the chair, Senator Brown.

Senator Hill—I will go through it all again, if that is the wish of the committee.

CHAIR—I think not.

Senator BROWN—Senator Hill, I wrote to you on 27 May and asked a series of questions. I would like to table that letter and after dinner I will ask you specifically what the response to those questions has been.

CHAIR—Thank you, Senator Brown. Senator Evans?

Senator CHRIS EVANS—Air Commodore Harvey, I go back to your earlier evidence about the involvement of Australian legal officers with Abu Ghraib prison and matters of prisoner welfare et cetera. When we first started talking about Major O’Kane’s role and his visits I thought you said that there were six other lawyers who had visited Abu Ghraib. I do not want to put words in your mouth, so perhaps you could take me back to the six other lawyers and what their involvement was. We then went down another track and never got back to that aspect. I was going to say ‘visited prisons’ but if that is not right, please clarify what you meant.

Air Cdre S. Harvey—I was asked whether any other legal officers had attended prisons. I indicated that about six had, although I am loath to name them because I think some of them have not been named in proceedings to date. I am not able, having regard to the information that is in front of me at the moment, to tell you exactly the purpose of their visits, if that is what you are asking.

Senator CHRIS EVANS—It was going to be one of my questions. We have concentrated on Major O’Kane because he has been in the newspapers, effectively, but clearly there are others who have been involved. So I want to canvass with you their involvement, their role. What can you tell me about those other six lawyers? I am not after their names, although a couple of them have obviously been named. I am interested in what role and interaction they had with the ICRC, if any. Just so that I am clear, the major role has obviously been through the coalition military headquarters. Major O’Kane was the one legal officer posted there—I think that was the evidence. I presume he was replaced by another officer in February—is that correct?

Air Cdre S. Harvey—Yes, he was.

Senator CHRIS EVANS—At one stage you gave some evidence that we ran a second legal officer at one of the headquarters. Was that two at the coalition headquarters or was that at our headquarters?

Air Cdre S. Harvey—That was at the Coalition Provisional Authority.

Senator CHRIS EVANS—So we ran two there.

Air Cdre S. Harvey—There were two legal officers posted there.

Senator CHRIS EVANS—So we have only ever run one at the coalition military headquarters—is that right?

Air Cdre S. Harvey—That is correct. That legal officer has been replaced, of course.

Senator CHRIS EVANS—So there was a legal officer before Major O’Kane?

Air Cdre S. Harvey—Yes, there was.

Senator CHRIS EVANS—And one since?

Air Cdre S. Harvey—There is one there at the moment, yes.

Senator CHRIS EVANS—The one who replaced him is in situ now?

Air Cdre S. Harvey—I believe that is the case.

Senator CHRIS EVANS—Is he at the rank of major as well?

Air Cdre S. Harvey—Equivalent rank, yes—squadron leader.

Senator CHRIS EVANS—What can you tell me about the six other legal officers’ involvement with prisons inside Iraq?

Vice Adm. Shalders—Senator, could I correct one point there. Major O’Kane was the first legal officer in CJTF7. There was not a preceding legal officer. He started in July 2003.

Senator CHRIS EVANS—Thanks for that.

Air Cdre S. Harvey—I am not able to answer that question in detail other than to give you a bit of insight in relation to the legal officers involved in the Coalition Provisional Authority, if you would like to hear a bit about that.

Senator CHRIS EVANS—You said you had identified six legal officers who had been in contact with the prison system—is that fair?

Air Cdre S. Harvey—When I said that, it was information provided to me, so I do not have the information behind it here. I think the question related to whether any other ADF legal officers had been to prisons. These may have simply been familiarisation visits or whatever rather than actually having some detailed dealing with the prison system.

Senator CHRIS EVANS—We will rule out that they were inmates; we will put that to one side. What do you know about their contact? You sent them a questionnaire. Were these six part of the 15 that you identified as your short-list?

Air Cdre S. Harvey—I would have to check the list to be sure about that. I am not 100 per cent sure.

Senator CHRIS EVANS—Are most of them in your short-list of 15?

Air Cdre S. Harvey—No, I do not think there are any legal officers on the list at all.

Senator CHRIS EVANS—I thought the short-list was of people who had contact with prisoners and the prison system. Are you telling me the short-list is a subset of those who are of most interest but the six lawyers who you now say visited the prison are not on the short-list? Have I missed something?

Air Cdre S. Harvey—No, the 15 people that Defence Legal Service got involved in interviewing were people that were of interest—if I could use that word—that came out of the list of, I believe, about 60 that had indicated that they had been to a detention facility or had extensive contact with prisoners. The purpose of that was to basically clarify issues that came up in the first round of culling—I suppose you could call it that. From recollection I do not think there were any legal officers in that final 15 list.

Senator CHRIS EVANS—Who were the 15? I do not want their names, but what sorts of people were they?

Air Cdre S. Harvey—I think we got asked that before. Certainly I would not mention their names. I think they were a fairly diverse group of people. Some were third-country deployment people; some were civilians. There is no descriptor that would describe them as a collective group. They are just people who came up as being people that we probably would want to ask some more questions and clarify some things with.

Senator CHRIS EVANS—Were they people who had ongoing contact with the prison system or people who might have had one exposure or one visit?

Air Cdre S. Harvey—Some of them were people who had indicated initially that they had been to prisons a number of times. Therefore we would want to find out a bit more detail to confirm exactly what they may have seen. Other ones were simply where a question was raised or left hanging and we really wanted to just close the loop—so it may have only been one particular visit but they said something of interest that warranted follow-up.

Senator CHRIS EVANS—So you are telling me that you have not interviewed these other six legal officers who have had contact with the Iraqi prison system?

Air Cdre S. Harvey—The other six legal officers who have been to the prison—I think the question actually was ‘who have been to the prison’, if I remember, rather than necessarily ‘in contact with prisoners’—I have not interviewed, no.

Senator CHRIS EVANS—So you are not able to tell me anything about their contact with the Iraqi prison system or their role in it because they have not been interviewed by you?

Air Cdre S. Harvey—They have not been interviewed by me. Most of the legal officers that we have not mentioned—and I know we have spoken about Muggleton and O’Kane; they were the two that had the major exposure to prisoners, although Muggleton was simply at the coalition provisional headquarters and dealing with some ICRC issues—were in fact outposted with various elements of the Australian Defence Force. So in light of the fact that Australia did not capture any prisoners of war or detainees, it is unlikely that they would have had anything more than just simply a passing visit to a prison or whatever.

Senator CHRIS EVANS—When you said Muggleton or O’Kane, did you mean Muggleton and Kelly?

Air Cdre S. Harvey—No, I meant Muggleton and O’Kane.

Senator CHRIS EVANS—I think Muggleton and Kelly are the other two names we have heard about lawyers.

Air Cdre S. Harvey—Yes, that is right.

Senator CHRIS EVANS—Tell me about Muggleton, then, and his involvement. You have obviously got some knowledge of his involvement. Is he a colonel?

Air Cdre S. Harvey—A lieutenant colonel. Colonel Muggleton was a lieutenant colonel located with the Coalition Provisional Authority. His sit reps—and this has been the major source of our information—indicated that he hosted regular meetings with the ICRC which were attended by joint task force staff, including Major O’Kane. These were indicated in his reports as being fairly low-level meetings discussing such process issues as prisoner overcrowding, documentation of detainees, passage of information on detainees’ families and continued detention of individuals who had been authorised for release. So they were fairly routine matters rather than anything of a substantive nature in terms of allegation. That really is the extent of his involvement in the matter.

Senator CHRIS EVANS—Earlier you made the point that, really, the question of the prisons and the management of the prisons et cetera was a question for the coalition military headquarters because they were under their control.

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—But in fact there was Australian involvement through the provisional authority in questions about prisoners through Lieutenant Colonel Muggleton’s role. What was his job?

Air Cdre S. Harvey—His role was essentially just that of a legal officer posted to the office of general counsel providing advice to the head of the Coalition Provisional Authority. His main focus was in relation to assisting the Coalition Provisional Authority to plan for the return of Iraq to democratic rule, elections and things of that nature. His issues were primarily strategic rather than—

Senator CHRIS EVANS—But he ended up having some involvement with the ICRC over the treatment of detainees.

Air Cdre S. Harvey—That is correct. As I said, they had a regular meeting, I think once every month or so, and he never reported back any major issues that came out of that.

Senator CHRIS EVANS—Is it fair to say that he was the CPA’s liaison with the ICRC?

Air Cdre S. Harvey—I do not know whether I can say that that was in fact the case. He was obviously one of a number of legal officers in the Coalition Provisional Authority. I am not sure whether that was his particular responsibility.

Senator CHRIS EVANS—Have you interviewed him?

Air Cdre S. Harvey—No, I have not interviewed him.

Senator CHRIS EVANS—So how do we know about him?

Air Cdre S. Harvey—We know about him through his situation reports. I should add that I have not personally interviewed him but one of my staff has been in contact with him.

Senator CHRIS EVANS—Has one of your staff been in contact with him in recent times?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Is he still in the country?

Air Cdre S. Harvey—He has returned now.

Senator CHRIS EVANS—He obviously had some contact with the ICRC and an involvement with some of the issues relating to detainees et cetera but not with issues relating to allegations of abuse or dealing with the ICRC concerns?

Air Cdre S. Harvey—That is correct. His reports had no reference to ICRC reports, so we draw from that—

Senator CHRIS EVANS—I think Mr Carmody said to us there was very little mention of that in Major O’Kane’s reports as well, so I think you would have to say that we would not necessarily take that as a conclusive judgment about his involvement. I am not so much concerned about what was in his reports at this stage but what we know of his role, because they may not necessarily be the same thing.

Air Cdre S. Harvey—Muggleton certainly was one of the ones that I recollect was captured in the 60 people. As I said, I recall that one senior member of my staff interviewed him for the purpose of ascertaining if he had any knowledge of abuse of prisoners of war, and obviously he did not.

Senator CHRIS EVANS—And you are confident that he had no contact with or no knowledge of ICRC reports regarding the abuse of prisoners?

Air Cdre S. Harvey—He indicated in his sit resps that he had no knowledge of the October report, but he did have knowledge of the subsequent report, which is the publicly released one on the web site. He was aware of the one with the more serious allegations.

Senator CHRIS EVANS—When did Lieutenant Colonel Muggleton in CPA become aware of the February report?

Air Cdre S. Harvey—In his sit rep, I think dated 9 to 15 February, he noted that the report had been delivered to Ambassador Bremer.

Senator CHRIS EVANS—In his sit rep of 9 to 15 February?

Air Cdre S. Harvey—Yes, the reports cover week periods, so I think it was the sit rep of 9 to 15 February.

Senator CHRIS EVANS—I think we will call it the 15 February report, because that was the last day it covered.

Air Cdre S. Harvey—I am not quite sure of the exact day, but I imagine it would have been sent on 15 February.

Senator CHRIS EVANS—Right. It was for the week preceding that. What did he report in his sit rep?

Air Cdre S. Harvey—He simply noted that the ICRC report, the February report, had been delivered to Ambassador Bremer.

Senator CHRIS EVANS—Did it contain a characterisation of that report?

Air Cdre S. Harvey—Yes, it did. He did not give any great detail but he described it as being a ‘detailed, comprehensive and highly critical’ report. Those were the words he used.

Senator CHRIS EVANS—So on 15 February Lieutenant Colonel Muggleton reported that the ICRC report had been given to Bremer and that it was highly critical of the treatment of prisoners?

Air Cdre S. Harvey—That is correct. He also noted that US authorities were investigating the abuse allegations, including the detention system in Iraq.

Senator CHRIS EVANS—Who did his sit rep go to?

Air Cdre S. Harvey—His situation reports were provided to a number of addressees in Canberra, to Headquarters Joint Task Force 633 and to the Australian Representative Office in Baghdad.

Senator CHRIS EVANS—So he did not have to report through the senior Australian officer?

Air Cdre S. Harvey—It is worth noting that this position is a bit different in the sense that Lieutenant Colonel Muggleton replaced an Army colonel and the provision of that officer was in response to a request from United States authorities. The officer did not have a formal reporting chain back to Australia while working in the Coalition Provisional Authority, other than through these sit reps. These reports went to the places I mentioned but they were also onforwarded to other government departments, including Attorney-General’s and DFAT, because they were obviously interested in monitoring what was happening within the Coalition Provisional Authority.

Senator CHRIS EVANS—So it is fair to say that his 15 February report regarding the highly critical ICRC report was distributed fairly widely?

Air Cdre S. Harvey—The report or the comment?

Senator CHRIS EVANS—His sit rep.

Air Cdre S. Harvey—I have just described where it went. It was onforwarded to other government departments so, yes, it—

Senator CHRIS EVANS—What you are telling me is that it had much wider distribution than Major O’Kane’s.

Air Cdre S. Harvey—Absolutely.

Mr Carmody—Major O’Kane’s did not come back to Australia.

Air Cdre S. Harvey—That is right—it was only to his superior in theatre.

Senator CHRIS EVANS—Obviously we will come back to that. So this is a report that came to a number of people in Canberra and to people outside the Department of Defence as well—to other departments.

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—So it is fair to say that his report on 15 February was available to a number of different sources back here in Australia?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Was that the first time Lieutenant Colonel Muggleton's—I keep thinking of Harry Potter with this Muggleton thing—situation reports included reference to the ICRC report?

Air Cdre S. Harvey—The February report?

Senator CHRIS EVANS—Yes.

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Do his earlier situation reports refer to earlier ICRC reports?

Air Cdre S. Harvey—No. A review of his weekly sit reps has indicated that there was no reporting of the existence of an October working paper.

Senator CHRIS EVANS—Do his earlier sit reps contain any reference to ICRC issues going to abuse of prisoners or reports on prisons inside Iraq et cetera?

Air Cdre S. Harvey—Only to the extent that I have mentioned about the low-level issues—conditions and process matters. There was certainly no reporting on allegations of abuse or anything like that.

Senator CHRIS EVANS—And no reporting on responses to draft ICRC reports et cetera?

Air Cdre S. Harvey—No, there was not.

Senator CHRIS EVANS—What was the period of Lieutenant Colonel Muggleton's posting in Iraq?

Air Cdre S. Harvey—He deployed to Iraq in November 2003. You are going to ask me when he came home, aren't you?

Senator Hill—I was told mid-December 2003 and I was told that he had concluded in mid-February 2004.

Air Cdre S. Harvey—He concluded in mid-February.

Vice Adm. Shalders—I can help there. Muggleton was in his position in Iraq between 9 November and 18 February.

Senator CHRIS EVANS—There you go, Minister; you always learn something at estimates.

Senator Hill—You do, don't you?

Senator CHRIS EVANS—Was there someone in the position, prior to 9 November?

Air Cdre S. Harvey—There was, indeed.

Senator CHRIS EVANS—What rank was that person?

Air Cdre S. Harvey—That was a colonel.

Senator CHRIS EVANS—Was that a straight replacement in the position?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Has someone else gone into the spot now?

Air Cdre S. Harvey—Yes, they have.

Senator CHRIS EVANS—What rank are they?

Air Cdre S. Harvey—A colonel and a group captain. You may recall that we mentioned that we have two now in the coalition force in Iraq.

Senator CHRIS EVANS—Why was Lieutenant Colonel Muggleton's posting so short?

Air Cdre S. Harvey—Lieutenant Colonel Muggleton is a reservist and it was for his personal reasons.

Senator CHRIS EVANS—When he was originally posted was it anticipated he would be there longer?

Air Cdre S. Harvey—Ideally, these postings are for a six-month period. That is the strong preference. The demand for legal officers for overseas deployment postings is such that we occasionally use reservists and obviously when we can only get a reservist who can serve a period shorter than six months then we may have to consider taking them. The preference is to have someone serve a normal six-month posting.

Senator CHRIS EVANS—Are you telling me that Lieutenant Colonel Muggleton's posting was not cut short but that that was the period he deployed for?

Air Cdre S. Harvey—That is my understanding.

Senator CHRIS EVANS—It struck me that it was a very short period. So he shipped out a couple of days after he filed his ICRC report?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—That was his last sit rep, was it?

Air Cdre S. Harvey—Yes, that was his final sit report.

Senator CHRIS EVANS—Has his replacement, who I believe is a colonel, covered ICRC issues in his situation reports?

Air Cdre S. Harvey—I cannot recall because I have not looked at them for some time. You must remember that we looked at the Muggleton reports in the context of whether he had reported anything to do with detainee issues that may have related to allegations that came out in the press. Obviously by this time we had public knowledge about the allegations of what had happened. That is why I have had not had a cause to go back recently and look at the reports. I imagine they would have referred to the routine meetings with the ICRC, if he took over that function, but I am not aware of the exact details.

Senator CHRIS EVANS—Perhaps you could take that on notice for me. I am interested in Colonel Muggleton's replacement's reports not in the sense that they might have dealt with day-to-day mundane matters but in the sense of whether they reported on the ICRC report on the question of prisoner abuse and whether they reported on the investigations of those

matters—whether they report on germane matters, effectively. This was his last report, which you tell me was the first time these issues were the subject of reporting, so I would be interested to know whether his successor continued to provide reports on those matters.

Air Cdre S. Harvey—I have some further information: on 22 to 29 February, the group captain, who was one of the people to replace Muggleton, reported in his weekly situation reports that he had facilitated meetings with the ICRC and senior coalition officials, including Bremer, and that their response to the report was one of shock. They undertook to follow up the allegations.

Senator CHRIS EVANS—So the 29 February report of the group captain, who is the second and more junior of the officers now in the legal team—

Air Cdre S. Harvey—He is not the most junior.

Senator CHRIS EVANS—Is he the senior, is he?

Air Cdre S. Harvey—It is an equivalent rank.

Gen. Cosgrove—The only way to say it is that he has been a group captain longer than the other chap has been a colonel.

Senator CHRIS EVANS—My apologies to the group captain.

Air Cdre S. Harvey—I might add that that report also indicated that the ICRC reacted positively to the response.

Senator CHRIS EVANS—Could you describe this for me again: he filed a report on 29 February indicating that Mr Bremer and the other officials were shocked by the contents of the ICRC report?

Air Cdre S. Harvey—They were shocked but they undertook to follow up the allegations. The suggested resolution was to appoint a new commander of US prisons to Iraq and to undertake a senior military review of detention centres that improved training. As I said before, the ICRC reacted positively to that response.

Senator CHRIS EVANS—Did the situation report of the group captain that was filed on 29 February receive the same distribution as Lieutenant Colonel Muggleton's?

Air Cdre S. Harvey—Yes, it did. The only thing I need to point out is that these reports were coming back via electronic means. I understand that there was some difficulty in some cases in actually getting reports back to particular people but, in terms of broad distribution, it was similar.

Senator CHRIS EVANS—I see Mr Carmody helped you out with that. I was going to come to Mr Carmody in a second. Was that the only subsequent report from the officers attached to the CPA that dealt with these ICRC matters?

Air Cdre S. Harvey—I cannot say that. That certainly was the only one that happened before the allegations became public in terms of the photographs appearing and so forth.

Senator CHRIS EVANS—We have two fairly significant reports from our legal officers and the Coalition Provisional Authority on 15 February and 29 February that go to the ICRC report and to the CPA reaction to that report that are distributed reasonably widely inside the

system. Mr Carmody, when you started interviewing people around 10 or 11 May, for reasons that still are not clear to us—we have not actually got an answer about who requested this investigation and why or when—

Mr Carmody—There was not an investigation. There was a request, as I said, for me, to me or directed to me from the CDF to coordinate, which is what I did.

Senator CHRIS EVANS—The minister is also indicating he made a number of requests. We just never quite detailed the dates or the reporting lines. Who else did you interview around 10 or 11 May, apart from Major O’Kane?

Mr Carmody—I did not conduct any interviews at all. I understand that Major O’Kane was spoken to. A number of checks were carried out at the same time, such as—and this was an initial check—trying to get in contact with the officer who was the senior Australian officer he would have reported to to see whether any reports of abuse and what have you had been reported to them. This was before we had access to any of the situation reports. People were going very quickly to the first indication of anyone who might know anything about the allegations that had started to come out in the media. I think it is fair to say that the thread was being pulled to see who was connected to whom and to see who to ask questions of.

It is also fair to say that we started at that time trying to work out who might have had contact with detainees or prisoners. We originally thought that there would be very few but we started to come to the conclusion that, no, people driving ASLAVs had actually driven people to the detention centre and therefore they may have seen something—that there were a range of people who might have been in a position to see something. That is when we started to go more broadly to what is now the joint operations centre—through the Strategic Operations Division to the joint operation centre—to start at the point of everyone who had ever been in theatre and then narrow that number down to the logical people, which brought us down to the 60. There were a lot of activities happening at the one time but on the 10th and the 11th we did not really know straight off where to start. We had to go into theatre and say, ‘Who might have done this? Who might have had contact?’ and start from there.

Senator CHRIS EVANS—How did you choose to start with Major O’Kane? Why didn’t you start with Lieutenant Colonel Muggleton—or did you start with Lieutenant Colonel Muggleton?

Mr Carmody—I do not recollect why we actually started with Major O’Kane. It might have been that we knew that he was in theatre at the time. I am not actually certain of the response.

Senator CHRIS EVANS—He had a photo on the front of *The Buzz*.

Mr Carmody—I am not actually certain of the response. I did not note that until the next day, I think.

Senator CHRIS EVANS—I am trying to get a sense of it. Obviously, Major O’Kane was a person who you would go to fairly quickly. He had been in country working at coalition headquarters. I would have thought that Lieutenant Colonel Muggleton was another who you would have gone to quickly. He was at the CPA as a legal officer. He had been in country at the relevant period and is now back. Did you interview Lieutenant Colonel Muggleton?

Mr Carmody—I think the Director General of the Defence Legal Service has answered that or one of his staff did.

Senator CHRIS EVANS—I asked him the question.

Mr Carmody—I did not interview Lieutenant Colonel Muggleton.

Senator CHRIS EVANS—The reason I am trying to make the distinction is that, as I understood it, Air Commodore Harvey took responsibility for the survey aspects of the Defence inquiries and that at the same time, or as an evolving process, you took some responsibilities for overall coordination and someone from your office interviewed Major O’Kane before Air Commodore Harvey got to that point. What I am asking you is: did your office interview anybody else?

Mr Carmody—I do not know the answer to that question but I can certainly check relatively quickly. The reason that it started that way is that one of my divisions—the international policy division—is dealing with Iraq issues all of the time. So the first place that I went to say, ‘Start tracking this down,’ is the staff who work for me dealing with Iraq matters. They would have based their initial inquiries on their knowledge of who to go to in the first instance. That is how we started to build up the picture. You could understand that we were doing it quickly, trying to find out where we were. Then, very soon after that, we built to the fact that the inquiry was not narrow but quite broad and to answer it comprehensively we needed to survey. We had been dealing with particular people and everyone had been dealing with particular people. We felt that we had to survey more broadly. It started as a range of activities which I sought to draw together.

Senator CHRIS EVANS—I accept that and that is consistent with the earlier evidence but I would be interested in knowing, given that your inquiry seemed to have a slightly different focus to the survey that Air Commodore Harvey was undertaking, who else was interviewed.

Mr Carmody—I can take that on notice and get back to you.

Senator CHRIS EVANS—It seems that Air Commodore Harvey or an officer from his section spoke to Lieutenant Colonel Muggleton. Who else did your section speak to, Air Commodore?

Air Cdre S. Harvey—My section spoke to the 14 people who came out of the initial survey. Just so it is clear, the joint operations area basically initiated the process with the first two questionnaires and my role was essentially to follow up with interviews of people of interest. That was those 14 people.

Senator CHRIS EVANS—But you told us that those 14 people did not include the six legal officers, so I presume Lieutenant Colonel Muggleton was not one of them.

Air Cdre S. Harvey—I am sorry; could you say that again?

Senator CHRIS EVANS—When I asked you about the subset of 14 people of interest which your survey had identified—I probably ought to use a different phrase; I think the police use that a bit more accusingly than we are meaning to—you told me that the six legal officers were not part of that subset.

Air Cdre S. Harvey—That is my recollection. I might check that but I am pretty sure.

Senator CHRIS EVANS—Was Lieutenant Colonel Muggleton part of the subset or not?

Air Cdre S. Harvey—I will take that on notice and check.

Senator CHRIS EVANS—But your office interviewed him at some stage?

Air Cdre S. Harvey—They did indeed, yes.

Senator CHRIS EVANS—Was that part of the survey or was it part of something else?

Air Cdre S. Harvey—I will have to check that.

Proceedings suspended from 6.29 p.m. to 7.37 p.m.

CHAIR—I call the committee to order. General Cosgrove, I understand you have some additional answers that you would like to give now.

Gen. Cosgrove—Mr Carmody and Air Commodore Harvey would like to provide some additional information to the committee.

Mr Carmody—I have three points of clarification. The first one was a question on the Internet version of *The Buzz* magazine. The intranet version was published on 3 May. I became aware of it on 11 May. I am not a recipient and, as you know, I started investigating this activity around that time. I forwarded a submission to the minister's office saying that this document was on the intranet. As it transpires, the Director General of the Defence Legal Service had withdrawn that item on 10 May, which I was not aware of. There was a follow-up submission or question from the office the next week when there was a media article suggesting that this item had been withdrawn. There was a question from the office to us asking whether this item had been withdrawn. It was responded to by the Director General of the Defence Legal Service. That is the first clarification.

Senator FAULKNER—Mr Carmody, would you mind taking on notice—I appreciate one of these things is a photo—to provide the copy that was also removed? It is an article plus photograph, is it? Have you been able to establish that yet?

Mr Carmody—It is a photograph and a brief article.

Senator FAULKNER—Could you please take on notice to supply a copy of the brief article and the photograph.

Mr Carmody—Certainly, Senator. With respect to the second question, you asked about initial inquiries and who else my staff had spoken to or interviewed. On the 11th my staff interviewed Major O'Kane and Colonel Muggleton. These were the only two people they spoke to in person and this was part of our initial inquiries. The officers then contacted in theatre, to ask the questions, Colonel Muggleton's replacement; the additional colonel in the Coalition Provisional Authority; the three TLOs—in other words, the first of the TLOs, the second TLO, who had just returned, and the third TLO, who was in theatre; and two other officers who are integrees within the Coalition Provisional Authority. This was all part of our initial string pulling to try to identify what we knew about the incident.

Senator CHRIS EVANS—So you, if you had forgotten, knew on 11 May about Colonel Muggleton's sit reps?

Mr Carmody—We knew on 11 May where Colonel Muggleton had been employed. I do not think we had copies of his situation reports at that time. But his situation reports had come back from theatre so, to clarify, yes, we would have known.

Senator CHRIS EVANS—We will come back to that. But Lieutenant Colonel Muggleton would have been at that interview able to tell you what he knew about ICRC investigations, reports and follow-up.

Mr Carmody—Yes, and whether he had clarified anything in addition to his situation report.

Senator FAULKNER—Who conducted those interviews? We know that Air Commodore Harvey conducted the discussions—I think he did—with Major O’Kane.

Mr Carmody—An officer on my staff spoke to both Major O’Kane and Colonel Muggleton on the 11th.

Senator FAULKNER—So this is separate to any of Air Commodore Harvey’s processes?

Mr Carmody—Yes, it is. The third item is in response to the question from Senator Brown on the Amnesty International report. We have no record of the Amnesty International report of July 2003 being formally received. I will say though that I have been made aware that on 14 May this year, the National Director of Amnesty International (Australia) wrote to the Prime Minister, the defence minister, the foreign minister, a number of members of the opposition and Senator Brown, enclosing the July 2003 report and a press release referring to an open letter. We received that document in the department on 27 May and we have been tasked to develop a response. I understand from my staff’s discussions with the Department of Foreign Affairs and Trade today that they are considering one whole-of-government response rather than a response from each of the addressees. That is being coordinated by the Department of Foreign Affairs and Trade.

Air Cdre S. Harvey—I have a few answers that I would like to provide. The question was asked: did Major O’Kane have knowledge of the Amnesty report? The answer is no. There was a question about the visit by Major O’Kane to Abu Ghraib prison on 17 December, which was described as being the SJA rep for a high-value detainee transfer, and the question of his role. His role was to make sure that legal requirements were met—in particular, chain of custody aspects related to the detainee. The purpose of the visit on 4 December was to attend the prison on behalf of Combined Joint Task Force 7 to obtain information from US Army 800th MP brigade and 205th Military Intelligence Brigade on allegations and comments in the October 2003 ICRC working paper in order to prepare a draft reply to the working paper.

Did Major O’Kane go in the company of any other personnel or with other ADF personnel during his visits to Abu Ghraib? On 27 August 2003 he attended with deputy staff judge advocate to and from, and was taken by a US Army Humvee, which I presume is a vehicle. On 4 December he visited the prison. He was taken there by the Australian security detachment, ASLAV, with several Australian national headquarters members. On 17 December he was transported by a US Army armoured vehicle. Also on 2 January he was escorted by a US Army armoured vehicle, and they were the only people who attended with him. On the 4 January to 8 January 2003 visit, he was dropped off by the Australian security detachment, ASLAV, with Australian national headquarters members on 4 January and picked

up on 8 January. The trip back to Camp Victory for another meeting on 6 January by US Army armoured vehicle was made in the morning and returned by Army Blackhawk in the afternoon.

The question in relation to whether any changes were made to the draft letter that had been prepared by Major O’Kane for eventual signature by the commander of the 800th Military Police Brigade cannot be answered. As I said before, he drafted the response but he did not see the signed copy. Did he visit the cell blocks at Abu Ghraib? He visited on three occasions. He went once for a familiarisation visit and he visited on the second and third occasions as part of the ICRC visit team in January 2004. He did not witness any mistreatment during those visits.

Senator FAULKNER—Sorry to interrupt you. Did he say when the visit for familiarisation occurred?

Air Cdre S. Harvey—I will have to check that. Did Major O’Kane’s letter of advice on interrogation methods contribute to, or was it incorporated into, the US *Interrogation Rules of Engagement*? Not to his knowledge. Did Major O’Kane speak with any security internees during his visit? The answer to that question is that on one occasion during the ICRC visit Major O’Kane spoke briefly to a security internee in a cell block during the service of a Geneva convention detention document on the security internee. The internee spoke English. It was only a short conversation of four sentences. The detainee indicated that he wished to talk to someone in authority about some information he had. There was no mention of any abuse at that stage—or at all.

There was a request made for—if we could get access to it—the final response signed off by the commander of the 800th Military Police Brigade. That question, I feel, will have to be taken on notice because we have confirmed that certainly US approval and perhaps ICRC approval will be required, so that might take a little while. What was the information source for Colonel Dunn’s min rep? The source of the information was Major O’Kane. Was the military battalion that was under investigation for alleged Iraq abuse present during Major O’Kane’s 4 December visit in connection with the October working paper of the ICRC? The answer is yes, members of that battalion were present. In relation to the Muggleton interview, I want to clarify that he was not one of the 15 people who had been interviewed but he was spoken to to clarify issues in his sit reps. In answer to your question, Senator Faulkner, the familiarisation visit to the cells was the visit on 4 December.

Senator CHRIS EVANS—We finished off by talking about the Muggleton sit reps. That might be the best place to start again. Could you clarify for me the distribution list on those sit reps of first Lieutenant Colonel Muggleton and then the group captain? They were from the same place, as I understand it.

Air Cdre S. Harvey—That is correct—the Coalition Provisional Authority. Those reports were sent by email, as I mentioned before. They went into the Department of Defence and a number of areas in Defence including, I think, strategic and international policy and also my own office.

Senator CHRIS EVANS—Can you detail those for us, please?

Senator FAULKNER—Could we be definitive about this? Would it be possible to go through the actual addressees in the department?

Air Cdre S. Harvey—It is difficult in the sense that this was sent electronically and I believe that the addressees changed over a period of time. The best I could do is give an indication of the sorts of areas.

Senator FAULKNER—If you could assist us with as much detail as you are able to provide, it would be appreciated.

Air Cdre S. Harvey—Certainly. Copies went to international policy and the Strategic Operations Division, as it was known, and a copy was also relayed to the Defence Legal Service. I believe copies were also forwarded to the Attorney-General's Department and DFAT, and some of the later reports in the very end days may also have gone on to PM&C.

Senator FAULKNER—What about those of 15 February and 29 February? Would they have gone to PM&C?

Air Cdre S. Harvey—I am pretty sure that PM&C was only added fairly late in the piece. I am pretty sure those reports would not have gone.

Senator CHRIS EVANS—That is fairly late in the piece though, isn't it? You are talking about 29 February 2004.

Air Cdre S. Harvey—I do not know whether it can be easily checked because, as I said, it was done by email and it was pretty much the decision of the officer where it went. Sometimes the information changed.

Senator FAULKNER—There are back-up systems on all these emails, aren't there?

Air Cdre S. Harvey—The problem is that they were sent from an American system that was obviously over in Iraq. It was an unreliable system, as I mentioned earlier in my testimony. I am afraid I cannot answer with any more definition than that.

Senator FAULKNER—Are you able to confirm for us that the reports of 15 and 29 February went to the Department of Foreign Affairs and Trade?

Air Cdre S. Harvey—That is my understanding. I might add that, in relation to the latter addressees, it may well have been relayed by a principal addressee. It may not have come directly from the Coalition Provisional Authority's legal officer.

Senator FAULKNER—Can you confirm also that those two went to the Attorney-General's Department?

Air Cdre S. Harvey—It may be best if we take that on notice and see if we can get a more definitive reply, if you prefer.

Senator Hill—It certainly would be better if you are not sure.

Senator CHRIS EVANS—You seemed to be quite authoritative earlier so we are a little confused. The earlier evidence seemed to be that they went to A-G's and DFAT. Do we know that they went to A-G's and DFAT or don't we?

Air Cdre S. Harvey—My recollection is that they did go to A-G's and DFAT. The only thing I am not certain about is whether they went directly or whether they went via some person who relayed them.

Senator FAULKNER—If they did go by relay, who would be the relaying point?

Air Cdre S. Harvey—I imagine it would perhaps be someone in SIP. I am afraid I really do not know.

Mr Smith—That is the international policy division.

Senator FAULKNER—I am sorry; I missed that, Mr Smith.

Mr Smith—The Air Commodore was using an acronym and I was just clarifying. He said 'SIP'. He means the international policy division.

Senator FAULKNER—So you are saying that that is the likely relay point?

Mr Smith—That is what he suggested, yes.

Senator FAULKNER—Not ONA?

Air Cdre S. Harvey—No. I am pretty sure it was not ONA.

Senator FAULKNER—When you said PM&C I just wanted to be clear that you meant the Department of the Prime Minister and Cabinet, not an agency of it. What about ministers?

Air Cdre S. Harvey—No. Definitely not to ministers.

Senator CHRIS EVANS—So these email reports would have come in within a day or so of 15 February and 29 February.

Air Cdre S. Harvey—I imagine they would have.

Senator CHRIS EVANS—Was there a sit rep for 22 February as well? I think we got from the 15th to the 29th on the basis that that was the next major discussion of the issue. I am just double-checking that there was not a sit rep on the 22nd that also dealt with the matter.

Air Cdre S. Harvey—Not that I am aware of, no.

Senator CHRIS EVANS—So for all intents and purposes you think that the two major sit rep reports which dealt with the ICRC allegations and the response were those two?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Can you tell us what happened following receipt of that information from the CPA?

Air Cdre S. Harvey—No, I cannot with any precision. As I said, it went to a number of addressees. How they distributed it and what they did with it I am afraid I am not in a position to say. I am obviously more familiar with the copies that came into my own organisation. They would have been read by the director of operations in international law as a relevant point of contact for viewing those sorts of documents.

Senator FAULKNER—For the sake of the record, Air Commodore—and I know that you dealt with this; I was listening carefully prior to the dinner adjournment—are you able to place into the *Hansard* record for the benefit of the committee as much information as you can in relation to what is contained in the sit rep of 15 February from Lieutenant Colonel

Muggleton and the sit rep of 29 February? All I know about that sit rep is that the rank of the officer is a group captain. We do not know the group captain's name, which is fair enough. Are you able at this point, just for the purposes of the record, to as much as possible indicate the content of those respective emails, please?

Air Cdre S. Harvey—In relation to the sit rep of 22 to 29 February—was that one of the ones you were after?

Senator FAULKNER—Yes. When you say '22 to 29' are these two separate sit reps?

Senator CHRIS EVANS—No, it is the week of.

Senator FAULKNER—The week of the 22nd to the 29th?

Air Cdre S. Harvey—Yes. This was the sit rep from the group captain I think I mentioned before.

Senator FAULKNER—Yes.

Air Cdre S. Harvey—He reported in his weekly situation report that he had facilitated a meeting between the ICRC and senior coalition officials. He reported, as you will recall, as I said before, that the response to the report of the ICRC was one of shock; that they undertook to follow up the allegations. The suggested resolution was to appoint a new commander of US prisons to Iraq, undertake a senior military review of detention centres and improve training. As I pointed out, the ICRC reacted favourably to this response.

Senator FAULKNER—So that was the week of the 22nd to the 29th?

Air Cdre S. Harvey—Yes.

Senator FAULKNER—This was a sit rep, the author of which was of the rank of group captain?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Then we know of the other one, which I assume is the sit rep of 15 to 22 February—or is it the 9th to the 15th?

Air Cdre S. Harvey—The 9th to the 15th.

Senator FAULKNER—So it is the sit rep of the 9th to the 15th, which was in the name of Lieutenant Colonel Muggleton?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Can you again provide what detail you can for the record?

Air Cdre S. Harvey—I do not have great detail, but he reported in his final weekly situation report that the ICRC report had been delivered to Bremer and described the report as being 'quite detailed, comprehensive and highly critical'.

Senator FAULKNER—Is it true also, again for the sake of the record, that there is no sit rep from 15 to 22 February because of the change of personnel?

Air Cdre S. Harvey—Sorry, Senator, what was the date again?

Senator CHRIS EVANS—The intervening week.

Senator FAULKNER—The intervening week, which I believe is the 16th to the 21st or the 15th to the 22nd—however you want to define it. I have jumped to the conclusion—and I want to be sure of my conclusion—that there was not a sit rep in that week. The first question is: was there a sit rep in that week?

Air Cdre S. Harvey—I cannot answer that off the top of my head; I would have to check the reports themselves.

Senator FAULKNER—Would you mind doing so? I thought it was possible there might not be one because of the change of personnel.

Air Cdre S. Harvey—That may well be the case; I just cannot say at the moment.

Senator FAULKNER—You cannot say to the committee at this point what the situation is?

Air Cdre S. Harvey—No, I cannot.

Senator FAULKNER—Let us use Lieutenant Colonel Muggleton as an example: Lieutenant Colonel Muggleton's last situation report is finalised for a period that ends on 29 February, his tour of duty is concluded and he comes back to Australia. Is that the general way this works?

Senator CHRIS EVANS—I do not think that was the evidence. I think his final report was on the 15th and he left on the 17th or 18th.

Senator FAULKNER—Sorry, the 15th to the 29th is the group captain's sit rep. Lieutenant Colonel Muggleton's is for what week?

Senator CHRIS EVANS—The 9th to the 15th.

Senator FAULKNER—The 9th to the 15th.

Senator CHRIS EVANS—The only reason I corrected you is that Air Commodore Harvey made the mistake of agreeing with you when you were wrong and I thought it was best not to lead him into that trap.

Senator FAULKNER—It is usually pretty safe to agree with me. You know that, Senator Evans. But on this occasion it might have been a slash outside the off stump. The dates are not particularly important but when a tour of duty, such as Lieutenant Colonel Muggleton's, concludes and the officer returns to Australia, are there processes in terms of debriefing in Australia and the like? This may not necessarily be your bailiwick, Air Commodore, but if such activity takes place, could one of the witnesses just outline to the committee what the general—

Gen. Cosgrove—It is not usual to formally debrief an officer who is performing a staff or supporting function. From time to time we will debrief people formally for intelligence reasons. From time to time we will debrief them or take a formal report at the end of their time. But it is not normal for officers, say, of Lieutenant Colonel Muggleton's rank or position to seek a formal debrief.

Senator FAULKNER—Can I assume then in the case of Lieutenant Colonel Muggleton that there was not an official debrief?

Gen. Cosgrove—I think you can assume that, Senator. We will certainly correct it if that is not the case.

Senator FAULKNER—Can we also for the record indicate whether it was the same situation with Major O’Kane?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—Does that include not requiring a formal handover report? In terms of the handover, I presume the officers would leave for their succeeding officer some sort of handover document.

Gen. Cosgrove—That would be practice but it is not something that we would require formally of them. They might be not handing over to anybody, or be handing over to another nation. It would be more the office practice of the organisation for which they were working rather than an Australian requirement for officers to prepare something for any successor.

Senator CHRIS EVANS—What about in terms of filing a report on their tour of duty when they come back?

Gen. Cosgrove—You have asked that question. That is by way of the debrief and, no, they do not.

Senator CHRIS EVANS—It was a separate question about whether they file something.

Gen. Cosgrove—Let me sweep it up. There was no formal requirement for them to report or be debriefed.

Senator CHRIS EVANS—Did either Colonel Muggleton or Major O’Kane file a report?

Air Cdre S. Harvey—No, they did not file any report or, as far as I am aware, they did not file a report. I do not remember seeing a report. But if it had come in it may have been marked directly out to one of my staff. I just want to qualify my answer. I may not necessarily have seen it. It may have come in but there was no formal process. It was just a case of whether the officer himself decided to do a report.

Senator CHRIS EVANS—So, for instance, Major O’Kane came back with papers and file notes et cetera relating to his activities but he just hangs onto them himself, does he? He does not hand them to anyone? He does not report to anyone? He just keeps them in his cupboard for a rainy day.

Air Cdre S. Harvey—The answer to the question is that basically there is no requirement for a formal report.

Senator CHRIS EVANS—So what should an officer do with documents that he has acquired as part of his service? You said that Major O’Kane had them in his office so I am just trying to understand what he should have done with them.

Air Cdre S. Harvey—I do not think it is normally the practice that officers would bring back documents, to be perfectly honest. It is hard to answer that question.

Senator Hill—As I understand it, he did not bring back these documents as Australian government documents. They were not brought back for the purpose of the department or of government.

Senator FAULKNER—Whom do they belong to?

Senator Hill—They are his documents and he brought them back as a record—as was said earlier today—of his time in Iraq.

Senator FAULKNER—But they are not his any more, are they?

Senator HILL—No, it seems that on the—

Senator FAULKNER—They are in the custody of Defence.

Senator Hill—I do not know whose property they are but he delivered up these documents, it seems, on 11 May.

Senator FAULKNER—That is what I would expect him to do if he was so asked, but it does not sound as if he has custody of them any longer, that is for sure. So they are not his any more. Are you suggesting that they will be handed back to the rightful owners?

Senator Hill—I think it is debatable as to who the rightful owners are.

Senator FAULKNER—Sure. There is not a suggestion that Major O’Kane is not the rightful owner, is there?

Senator Hill—No. I do not think this is getting us anywhere.

Senator CHRIS EVANS—Can I ask, just to be clear, whether any action was taken by Defence arising from the situation reports filed by Lieutenant Colonel Muggleton and the group captain in February?

Mr Carmody—To my knowledge, the answer is no. I note, however, that Colonel Muggleton described the reports as ‘detailed, comprehensive and highly critical’. He also noted that the US authorities were investigating abuse allegations, including at its detention system in Iraq. So when he reported back he also reported what was occurring within his organisation.

Senator CHRIS EVANS—It seems to me that, between the two reports, you have a fairly good at least thumbnail summary of the seriousness of the allegations and the American response. I have only heard what the air commodore has read to us but it seems to me that most of the key elements are covered by that: the shock that the Americans or Paul Bremer expressed and the follow-up. They were obviously serious if they are going to have a new commissioner of prisons, and review detention centre policy and training. There are obviously serious recommendations flowing from their response. Bremer expressed shock and the original report described the ICRC as providing a detailed, comprehensive and highly critical report. They have basically covered the key elements of this issue, haven’t they?

Mr Carmody—That is correct. It also noted that they were being dealt with.

Senator CHRIS EVANS—Yes. Certainly that was what I thought I described as the American response, which deals with new training, a new commander of prisons et cetera. All I was saying was that they provided, in February, a fairly good summary of the major issues at stake in this matter. What happened after that?

Mr Carmody—They outlined the points that the officers considered were worthy of reporting in their sit rep. I am not in a position to say whether they were a good summary but

I am in a position to say that my organisation did not take any action based on those sit reps because we did not see the need to.

Senator CHRIS EVANS—What normally happens with sit reps? If you are the officer responsible sitting at your desk in Defence and you get a sit rep from Iraq or somewhere, what process do you go through? Do you read it and then ask, ‘Does it have any relevance for me or anything that I might be doing, or my lines of authority?’

Mr Carmody—What I do with them is to read them and see whether there is any action I need to take, whether there is anything relevant—and if there is not, I move on.

Senator CHRIS EVANS—So as far as we know nobody inside Defence thought that there was anything that needed to be done from an Australian perspective?

Mr Carmody—To my knowledge, no—bearing in mind once again that we had no responsibility for prisoners. We had not captured any prisoners and we had no detainee responsibility. The responsibilities rest with the United States. We were getting a situation report back from the integrated officer telling us what he thought was occurring and what was happening in response.

Senator BROWN—In relation to what was happening, what was your response?

Mr Carmody—My response was that in response to these two situation reports there was no need to take any action because the point was made that the officer was reporting a fact and he was also reporting, if I understand it correctly, that the matter was being dealt with. That did not seem, therefore, to require any further action of me.

Senator FAULKNER—I have a question for either you, Mr Carmody, or Air Commodore Harvey. I do not know if you have read it or not but there was an article in the *Sydney Morning Herald* newspaper on 27 May 2004 that quoted Defence spokesman Mr Joshua Hutton. The article said:

... it—

that is Defence—

was ignorant of the abuses until they surfaced in the media in late April.

Has anyone checked whether that statement was made by the Defence spokesman Joshua Hutton? I will read in full two sentences from the article:

It is also understood that Major O’Kane was concerned by understaffing and lack of training at Abu Ghraib and other Iraq jails and was involved in drafting interrogation protocols.

Critically, given the remarks made to the *Herald* three weeks ago by a Defence spokesman, Joshua Hutton, that it was ignorant of the abuses until they surfaced in the media in late April, Major O’Kane filed regular weekly reports to his Australian military superiors.

I am not going to those issues. I am just wondering if there was any—

Senator Hill—On the abuses of the type that we all became aware of in May, the advice we have from, I think, all relevant personnel is that that was the first occasion that they knew of those abuses. The only qualification to some of them is they had heard the allegation that was made in January that appeared on CNN.

Senator CHRIS EVANS—That is not supported by the ICRC report, which details that they made the complaint in October which details the sort of thing that we assume Major O’Kane was responding to.

Senator Hill—That gets to the issue as to whether there is any qualitative distinction, and it seems to me—

Senator CHRIS EVANS—Or whether the only distinction was the question of photographs.

Senator Hill—that anyone that knew the content of the February report must therefore believe that there was a qualitative distinction between that and what became apparent in May.

Senator FAULKNER—Can we just run the rewind button for a moment and let me ask again whether someone can confirm for me that the Defence spokesman Joshua Hutton did make that comment? Was there any checking of that? Does it sound right to witnesses at the table?

Senator Hill—I am not sure that they would know that.

Senator FAULKNER—I do not know who Joshua Hutton is, obviously.

Mr Smith—Joshua Hutton is an officer in the defence media room.

Senator FAULKNER—I assumed that.

Mr Smith—I cannot confirm here whether he said that or not, but I guess if it is reported there is a fair chance that he did.

Senator FAULKNER—Fair enough. Can witnesses at the table say whether they are aware of the article in the *Sydney Morning Herald* of just a couple of days ago, 27 May: ‘Iraq abuses: Army knew months ago’? Has that been drawn to officers’ attention?

Mr Smith—It certainly has been included in the daily media round-up that goes around. I would take it that officers read it.

Senator FAULKNER—The article says:

Major O’Kane knew of the photographs but did not see them, sources said.

Are you able to confirm, Air Commodore, because you have spoken with Major O’Kane, and are you, Mr Carmody, because you have responsibilities for the overarching—

Senator Hill—But the allegations that were made public in January included that there were photographs.

Senator FAULKNER—I had not even finished my sentence. Thank you for that. What I was going to ask the air commodore, because he has spoken directly to Major O’Kane—and we do not have the benefit of Major O’Kane’s attendance, as you are aware—or Mr Carmody, who has responsibility for the investigations that have taken place, is this: can someone confirm for me whether that is an accurate reflection of the situation? I was assured earlier today that witnesses at the table would be able to answer these sorts of questions without Major O’Kane’s presence. So now I want to know whether this is fair: ‘Major O’Kane knew of the photographs but did not see them, sources said.’ I am not interested in the ‘sources

said'. I want to know whether he knew of the photographs but did not see them. Can you confirm that?

Mr Carmody—I cannot confirm it, and I also do not know the date of that item. When did Major O'Kane know of the photographs? Is that April?

Senator FAULKNER—You conducted the inquiry, not me. There is no point asking me questions. I want to ask Major O'Kane questions, but he is not here.

Mr Carmody—The article is not specific enough for me to be able to respond, because I do not know the date that it is referring to.

Senator FAULKNER—I would have thought that in the investigations that have been carried out, if they were remotely thorough in nature, this sort of issue would have been explored. Can you help me, Air Commodore?

Air Cdre S. Harvey—Again, I think it is misleading to refer to it as an investigation. What it was was finding out from a range of people whether they had any knowledge of abuse of the magnitude which appeared in the photographs which were published subsequently. The intent behind that was, as I understand it, to quickly ascertain that no ADF personnel knew about allegations of that magnitude beforehand.

Senator CHRIS EVANS—Why is the magnitude important? I thought abuse or breaching of the Geneva convention would have been enough for you.

Air Cdre S. Harvey—Absolutely; abuse.

Senator FAULKNER—Abuse is abuse is abuse.

Senator CHRIS EVANS—You talk about the magnitude seen in the photos. There seems to be a fixation with the photos. If people were getting abused before someone took a photo, they were still getting abused. That would still be a breach of the Geneva convention, so I thought we would still be interested.

Senator Hill—Yes, but the May reports were that soldiers had been arrested and would be tried for breaches of criminal law. I think that that is a qualitative distinction from some of the previous reports. I have accepted that the previous reports paint a pretty grim picture, but the reports of May talked of rape, torture—and I know Senator Brown is going to want a definition of torture in a minute—beatings and other abuses of that type, so much so that they have led to prosecutions.

Senator FAULKNER—Hang on. This article goes on and says:

He—

that is, Major O'Kane—

had also been aware of the central thrust of General Taguba's report in February outlining "sadistic, blatant and wanton criminal abuses" at Abu Ghraib.

Can someone who conducted these inquiries—I will not use the term 'investigations' because I accept Air Commodore Harvey's contribution that 'investigation' is putting it at too high a level; it certainly is not that—tell me if that is true of Major O'Kane? You are the gentlemen who have had discussions with Major O'Kane; we are the ones who cannot have discussions with him.

Senator Hill—But I am not sure that the general had even reported then. As I understand it, the general was appointed after the January allegations. Somebody can correct me if I am wrong.

Mr Carmody—I do not know, Minister. I believe so.

Senator FAULKNER—Are you saying that the general was not appointed to investigate this in February?

Senator Hill—After January he was appointed to investigate it. I am not sure when he reported, but I would be surprised if it was as early as February.

Senator FAULKNER—Do you know when General Taguba reported?

Senator Hill—No, I would want to check that, because I think the premise to your question might be false.

Senator FAULKNER—The premise to my question is an article that appeared in a major Australian newspaper just a couple of days ago. I am asking for information on these things that are said about Major O’Kane, because I do not have the benefit of having Major O’Kane to ask and I was assured, by you and others, that we would not need Major O’Kane as there would be plenty of other witnesses at the table who could answer.

Senator Hill—That remains the case, and if we do not have the information, we will get the information.

Senator FAULKNER—What about this statement?

Senator Hill—I do not think you have dealt with the last one because we have to find out—

Senator FAULKNER—You said you did not know.

Senator Hill—when the general reported because it may be that the premise to your question is false. The article makes a whole lot of allegations. I wonder if somebody could reread to me the proposition that Senator Faulkner put in relation to Joshua Hutton.

Senator FAULKNER—I am happy, if it is any help, to get you a photocopy of the article.

Senator Hill—I am not sure that the answer that was given to that was correct, either.

Senator FAULKNER—I am not responsible for the answers; I am only responsible for the questions.

Senator Hill—We can all go through newspaper articles one by one.

Senator FAULKNER—But you are right. If you think an inaccurate answer was given, it is appropriate for you to take immediate action to ensure that it is corrected. I accept that.

Senator Hill—Can somebody tell me what the question and answer was?

Senator FAULKNER—Hansard. I could tell you what the question was; I cannot tell you what the answer was.

Senator Hill—You tell me what the question was.

Senator FAULKNER—In relation to Mr Hutton?

Senator Hill—Yes.

Senator FAULKNER—I was asking whether anyone had checked if Mr Hutton had made the comments or statement attributed to him in this article. That is what I asked. I perhaps did not use that language, but that was the thrust of it.

Senator Hill—What was the statement attributed to him?

Senator FAULKNER—I quoted two paragraphs. Do you want me to quote them again?

Senator Hill—Yes.

Senator FAULKNER—The article said:

It is also understood that Major O’Kane was concerned by understaffing and the lack of training at Abu Ghraib and other Iraq jails and was involved in drafting interrogation protocols.

Critically, given the remarks made to the Herald three weeks ago by a Defence spokesman, Joshua Hutton, that it was ignorant of the abuses until they surfaced in the media in late April, Major O’Kane filed regular weekly reports to his Australian military superiors.

My question did not go to other issues; it went in the first instance to whether Joshua Hutton—whose identity I was not even aware of—had made those comments and whether anyone had checked whether those comments had been made.

Senator Hill—My concern is the bit that says he was involved in drafting interrogation protocols because I have not ever heard evidence to that effect today. In fact, I have not heard it before. I have heard that he gave some legal advice on an interrogation issue but not that he was drafting them. I have seen nothing to suggest that that was accurate.

Senator FAULKNER—Thank you for that. What I am trying to establish is whether Air Commodore Harvey or Mr Carmody—and Mr Carmody is responsible for this; he had taken the key role in coordinating these inquiries—can confirm any of this material. Your point is utterly irrelevant.

Senator Hill—No, we have dealt with that issue.

Senator FAULKNER—The issue I was talking about was whether anyone checked Mr Hutton’s statement. That is all I wanted to know.

Senator Hill—We have dealt with that one now. Which issues do you now want to be confirmed?

Senator FAULKNER—I have asked whether either Air Commodore Harvey or Mr Carmody can indicate to the committee whether these issues were canvassed with Major O’Kane in the inquiries that took place.

Senator Hill—What issues?

Senator FAULKNER—Issues such as his knowledge of the photographs, the awareness of—

Senator Hill—Okay, we will do it one by one. Did you raise with him his knowledge of the photographs?

Mr Carmody—We raised the issue of his knowledge of the photographs and he was not aware of the photographs until they were made public.

Senator Hill—What is the second one?

Senator CHRIS EVANS—Was he aware of the existence of the photographs? I was not trying to catch you out; I was just trying to be clear on whether he had an awareness that they may have existed.

Senator Hill—But we all should have had awareness, because apparently it was on the public record in January.

Senator FAULKNER—That is a different answer, then, isn't it?

Senator CHRIS EVANS—Mr Carmody, I was just trying to be clear on what you were saying to me. I was not trying to be tricky; I just wanted to get it clear.

Air Cdre S. Harvey—My recollection is that Major O'Kane advised that he became aware of reports of alleged serious abuses and the existence of photographs in late January as a result of an informal conversation he overheard. This, of course, was at about the time when the same allegations were being published or broadcast on CNN.

Senator CHRIS EVANS—So Major O'Kane did know towards the end of January, while still in the country, of the allegations and of the existence of photographs? As the minister rightly said, that was on CNN—for those who saw it. I was one of those who did not.

Senator Hill—I am not sure many did.

Senator FAULKNER—I am not sure it was on CNN then.

Mr Carmody—It was on CNN on 21 January. CNN reported that photographic evidence of abuses might exist.

Senator FAULKNER—That is different to saying that the existence of the photographs was in the public arena, isn't it?

Senator Hill—No; the allegation of the existence of photographs was in the public arena.

Senator FAULKNER—Anyway, there is no suggestion that he saw them; it was just an awareness of their existence.

Air Cdre S. Harvey—Absolutely.

Senator FAULKNER—And an awareness at the end of January of allegations of serious abuses?

Air Cdre S. Harvey—That is correct.

Senator BROWN—Talking about General Sanchez, the current edition of *Newsweek* says: ... military sources acknowledge that an increasing body of evidence indicates his command has not been forthright about when it learned of the abuses or what it did—and failed to do—about them. The Red Cross first warned Joint Task Force-7 of the kind of abuses seen in the prison photos last November, fully two months before Sanchez launched an investigation. The general says he didn't find out about the abuses until January. But two military sources say his deputy, Maj. Gen. Walter Wodjakowski, was present at a meeting in late November to discuss a response to the Red Cross. Also at the meeting was Col. Mark Warren, Sanchez's top legal adviser—

under whom Major O'Kane worked. It continues:

In mid-May Warren denied in reply to a NEWSWEEK question that his office had drafted the command's response, which brushed off the Red Cross allegations. But Warren later acknowledged under oath to the Senate Armed Services Committee that his JAG team had drafted the command's response.

What is clearly being said here is that the evidence that later showed up in photographic form was before this suite of people, including Major O'Kane, in November.

Senator Hill—I do not think you can leap to that conclusion. It is not a question anyway.

Senator BROWN—I will put it in question form.

Senator Hill—You can quote *Newsweek* and say you have reached certain conclusions.

Senator BROWN—I am quoting *Newsweek*. What I invite you to do—

Senator Hill—That is right. But there seem to be enormous leaps of faith within that quotation.

Senator BROWN—No, there are not.

Senator Hill—There are. The first one is that the ICRC report was not being taken seriously. I have seen nothing to suggest that. Everything I have seen has been to the contrary—that it was taken seriously. You have heard evidence today that it was taken seriously. You have heard evidence of the response of the relevant authorities and you have then heard evidence of the reaction of the ICRC.

Senator BROWN—No, the evidence I have heard today is that the response was that what was happening in Abu Ghraib was within the terms of the Geneva convention, and we know it was not. So it is not as you say at all.

Senator Hill—It must have been at times when you were out of the room.

Senator BROWN—I am just stating what I heard while I was in the room. This article in *Newsweek* says Colonel Warren changed his story when he came under oath before the Senate armed services committee. He had been denying that the Red Cross allegations had effectively canvassed matters that were outside the Geneva convention.

Senator Hill—But you have heard today that Bremer and the state authorities that are the occupying powers were shocked when they received the February report of the ICRC. That would seem to be inconsistent with what you are quoting from *Newsweek*.

Senator BROWN—No, it is not because in the meantime the photographic evidence had appeared. What I hear here is you saying that the verbal evidence which covered a description of what later turned up in photographic form was before the authorities in November and there was a draft response sent back to the Red Cross which effectively brushed off those allegations.

Senator Hill—That is not right at all. The criminal charges were brought as a result of an investigation carried out by the US military, an investigation that it commenced on its own initiative in January. There was a parallel process of the ICRC which was examining the prisons, detention facilities and detention practices in Iraq from between the previous March and November. That process delivered a report in February to the occupying powers and to the CPA. We have heard today the response to that, and the response was quite dramatic. It

was certainly not a response of denial or a response that the authorities were not prepared to do anything about it; they in fact detailed what they were prepared to do.

Senator BROWN—Yes, but I suggest that you are in denial—that this evidence was there long before February. In fact it was there, and mounting, mid-year. It was put in very direct terms by the Red Cross in October-November but was not responded to, and the abuse continued. Surely we as a committee have a right to ask: why was it not responded to immediately it began surfacing?

Senator Hill—It is fair to say—as we all become better informed—that the ICRC appears to have produced a working paper after a visit to Abu Ghraib, a visit that took place around the end of October, it would seem. But it is not fair to say that no action was taken as a result of that working document.

Senator BROWN—The abuses continued in December.

Senator Hill—I know some abuses continued—

Senator BROWN—Criminal abuses continued in December.

Senator Hill—But you are generalising. The abuses that related to the prosecutions were abuses that, as I understand it, occurred late last year. So there were incidents of very serious abuses that occurred in December; that would appear to be so.

Senator BROWN—After the Red Cross report in October and November?

Senator Hill—Yes, but that does not mean that no action was taken on the Red Cross report.

Senator BROWN—I suggest to you that it means, at best, that inadequate action was taken to prevent those abuses continuing.

Senator Hill—I understand that also, but what you will not accept—but which is a possible and, I would suggest, a reasonable explanation, being that of the United States—is that a small element of ill-disciplined individuals acted illegally and their illegal actions were brought to the authorities' attention by one of their number. That could occur with or without any ICRC process. When it was brought to the attention of the American authorities, it was promptly acted upon.

Senator BROWN—That is not so because, for example, Major General Walter Wojdakowski, with the other lawyers present, met in late November to discuss the Red Cross allegations that we are talking about. The abuses continued after that. It was not a matter of a few junior personnel; it involved senior personnel knowing about it and not acting to prevent it.

Senator Hill—I think one of the questions that is still unanswered but is obviously being explored intensively in the United States is whether anyone further up the chain was aware of the abuses. On what we know at the moment, we are told that it was a limited number of junior soldiers, that they acted illegally, they were caught out and they have been prosecuted. That is not to say that everything was rosy in the prison system because obviously on the basis of the ICRC reports it was not. I said earlier today they paint a pretty grim picture.

Senator BROWN—I submit to you that we have not yet heard just how far up the command chain this information went. We do know it was at a level of major general, deputy to General Sanchez, by late November.

Senator Hill—I do not know that. You say that *Newsweek* alleges that.

Senator BROWN—It states that, yes.

Senator Hill—Well, we are not trying him here.

Senator BROWN—The point I am making here is that your assertion that this was a few junior officers, and indeed President Bush's assertion that it was a few junior officers who dishonoured the nation, is increasingly an untenable proposition.

Senator Hill—I do not know that that is so.

Senator BROWN—I also point out that Secretary Rumsfeld told a Senate committee that the Pentagon lawyers had approved methods such as sleep deprivation and dietary changes as well as rules permitting prisoners to be made to assume stress positions. That brings me to the questions that I have put on notice about the rules that are acceptable as far as our government is concerned and where the line that breaches the Geneva convention is reached. First of all, I ask that the letter to Senator Hill be incorporated. I am moving that it be incorporated.

CHAIR—We would have to do that in a private meeting.

Senator FAULKNER—Senator Brown, you are moving a motion in an open committee.

Senator BROWN—I am asking to.

Senator FAULKNER—I do not think you can, Senator Brown. Let's not get bogged down in procedure but I think a motion of that sort is a little difficult.

Senator BROWN—This is the letter to Senator Hill. I will read it; it is not too long.

Senator CHRIS EVANS—What do you want to do after that?

Senator BROWN—We will go through the questions.

Senator CHRIS EVANS—Do you want to incorporate the questions or the answers?

Senator BROWN—The letter.

Senator CHRIS EVANS—I do not think we can do it in open session but I am perfectly willing to indicate that I would support that rather than having it read.

Senator FAULKNER—I think we would have to fall back on the Senate standing orders but if you sought leave to incorporate it and no-one objected I just cannot see a problem.

CHAIR—No-one objected. The letter was tabled.

Senator FAULKNER—It is done. We can move on.

Senator BROWN—Thank you. I will now seek to get the reply to the germane sections. What does the Australian government and the department consider to be torture and inhumane treatment? Specifically, what is Australia's view of hooding of prisoners, shackling of prisoners and deprivation of light or, for that matter, 24 hours a day lights-on, solitary confinement, sleep deprivation, so-called stress positions and other stress and duress

techniques, or torture lite, which has been described as occurring in Iraq, Afghanistan and variously at Guantanamo?

Senator Hill—I have not had this letter for long, as I think Senator Brown will concede, and I am seeking advice on it. When I have got that advice I am prepared to give considered answers. I do not know what ‘torture lite’ is, for example. What is it?

Senator BROWN—It is effectively the things that are talked about here.

Gen. Cosgrove—‘Torture lite’—is it spelled l-i-t-e?

Senator BROWN—That is right.

Senator Hill—What does that mean?

Gen. Cosgrove—Is that a misspelling?

Senator BROWN—No, it is the term that is being—

Gen. Cosgrove—It is not something we are familiar with in the Australian Defence Force. Torture lite—is that a bit like light beer or something?

Senator BROWN—I presume it is a play on that term, but it is a term being used in the US military.

Gen. Cosgrove—It is not familiar to me.

Senator Hill—I would have thought that it also depends a bit on degree. A long period of solitary confinement would seem to me to be inhumane. A long period of sleep deprivation would seem to me to be inhumane. But I know that questioning—forget the military, even by the police—can go for some considerable time.

Senator CHRIS EVANS—Not to mention Senate estimates.

Senator Hill—That is torture heavy, not torture lite!

Senator CHRIS EVANS—A couple of senior military officers could change their position on the definition of appropriate investigation and cross-examination.

Senator Hill—I read things in that February report of the ICRC which, if correct, I would regard as inhumane. But I will get formal legal advice from the department and respond to that in due course.

Senator BROWN—What about the holding of prisoners naked?

Senator Hill—Perhaps I am a bit prudish, but I think that is inhumane.

Senator BROWN—I do too—let alone the parading of them, hooded and naked, in front of people, including people of the opposite sex.

Senator Hill—I think that is inhumane.

Senator BROWN—What about hooding and blindfolding of prisoners for long periods of time?

Senator Hill—I know of circumstances where they are blindfolded because they are transiting between establishments and the like. There may be such circumstances. But if

somebody is hooded for a long period of time—if it is hooding for a long period of time in order to psychologically disorientate them, or worse—then I would think that is inhumane.

Senator BROWN—What about, for example, days or weeks of blindfolding?

Senator Hill—I am saying the same thing.

Senator BROWN—I will come back to that.

Senator Hill—These are my personal views. The ADF has its own protocols. Whilst the general—for good reason I think—is reluctant to detail those protocols, I would be confident that they would fall within a description, in contrast to what we have been talking about, that I would regard as humane. It might be tough, but not unreasonably tough.

Senator BROWN—But the things we have just been talking about you would discount as being acceptable because they are not humane?

Senator Hill—For example, you just mentioned weeks of blindfolding. I think that that is inhumane.

Senator BROWN—What about dietary manipulation—things like withholding of food or withholding of salt in food?

Senator Hill—To starve the prisoner is clearly inhumane, but I do not know about the degrees. I do not see that there is any obligation to overfeed the prisoner either.

Senator BROWN—No, of course not. Senator, what is the government's view of the legal and moral responsibility Australia has for the conditions and treatment of prisoners captured by the ADF in Iraq or Afghanistan—or indeed by our allies or the coalition in those places?

Senator Hill—If they are captured by the ADF then we accept that we are bound by the Geneva convention and we have developed protocols for managing prisoners. Those protocols are, in our view, consistent with those convention obligations—and that would be how the prisoners would be handled. If they were captured by our coalition colleagues we would still wish to see that the Geneva convention was respected or where, in extraordinary circumstances, it might be argued the Geneva convention does not apply, the prisoners were nevertheless treated humanely.

Senator BROWN—What would be those circumstances in which the Geneva convention might not apply?

Senator Hill—I ought to refer that to the lawyers but as I understand it there are particular provisions in the convention that talk about extraordinary circumstances of security or whatever when it might not apply.

Air Cdre S. Harvey—The Geneva conventions are intended to apply to international armed conflict, and in situations where it is not international armed conflict there is a provision in the Geneva convention which also has application but has lesser provisions. The minister mentioned the fact that there are some provisions in the Geneva conventions which allow for operational necessity, whereby some of the protections that are available to personnel may not be available.

Senator BROWN—They are basically conditions in which the personnel may represent some threat to the detaining authority?

Senator Hill—I think that is one but I think they also arise where the circumstances might be such that, let us say, you accept an obligation to properly feed a prisoner but you are in a circumstance where the food is not available—if they are caught in a fire fight or whatever. There has to be exceptional circumstances but they are the exception rather than the rule.

Senator BROWN—Have there been any special protocols or guidelines, as far as the ADF is concerned, in Afghanistan or Iraq, as compared with the protocols which were in place before those deployments took place?

Gen. Cosgrove—No. I am reading your question:

What guidelines, procedures and protocols does (or did) the ADF have for the detention and interrogation of prisoners in general and in Iraq and Afghanistan?

We did not draft any for detention and interrogation. We relied on our doctrine.

Senator BROWN—That is still the case?

Gen. Cosgrove—Yes.

Senator BROWN—Those protocols and guidelines, I should imagine, have had a pretty rigorous legal—

Gen. Cosgrove—Yes, they have.

Senator BROWN—It is interesting that it appears that the Pentagon lawyers have come up with something different. According to Secretary Rumsfeld they approve methods such as sleep deprivation, dietary changes and rules permitting prisoners to be made to assume stress positions.

Gen. Cosgrove—Are you saying they are different from ours?

Senator BROWN—Yes.

Gen. Cosgrove—You do not know what ours are, Senator.

Senator BROWN—No. I am asking whether ours would allow for—

Gen. Cosgrove—I do not propose to go into detail, for reasons I outlined to the committee earlier. Just as with our rules of engagement, it is important that we do not spell out in finite detail the inclusions, prohibitions and limits of what we do in interrogation except to utter in a public forum—and this is a public forum—an assurance that it will be in accordance with the Geneva convention.

Senator BROWN—But I am asking specifically, that being so—

Gen. Cosgrove—But if you ask enough specifics we end up writing it all down and then we say, ‘There you go; why did you bother?’

Senator BROWN—Secretary Rumsfeld has said to a public committee in the United States that those three things that I mentioned are acceptable.

Gen. Cosgrove—This is to go into a Q&A on what is acceptable. If I start to answer those sorts of questions it is starting to form a list of what might be within an Australian interrogation policy. I am comfortable with all the answers the minister gave you on the sorts of excesses that you quoted. I am comfortable with the minister’s answer that he would have found that inhumane, but I do not want to get into—

Senator BROWN—That is very helpful. My question further down the line was asking for Defence Force publication 37.

Gen. Cosgrove—That is our internal document. It is restricted. It is not meant to be publicly available. In the same way that you do not issue blueprints of the exact way you operate, I would prefer not to table it if you do not mind, Senator. I do not mind if you privately read it but I would prefer it if you did not copy it and hand it around, if I could put it that way.

Senator BROWN—I am happy with that if other senators are. In the same vein, I ask you to explain what the ADF procedures for detention and interrogation are. I guess we are confined by your previous answer.

Gen. Cosgrove—You would be, yes. If you were prepared to accept a classified briefing, that might be different.

Senator BROWN—Maybe Senator Hill, if not you, General, can answer this question: are you in agreement with the guidelines of the United States, including the rules that I tabled earlier in the day?

Gen. Cosgrove—It is a hypothetical question for me to be either in agreement or in disagreement. I do not know the provenance of that. It is fairly cryptic. I do not know the circumstances in which it was meant to be applied. It looks like a PowerPoint slide to me. I would prefer to have a lot more detail before I would be prepared to agree, disagree or comment further. There was a comment about guard dogs and we left it at that.

Senator BROWN—There is a problem though, isn't there, where a commanding general issues a cryptic document.

Gen. Cosgrove—There may have been amplification available but I am not aware of it, Senator.

Senator BROWN—Can you find out?

Gen. Cosgrove—No, that is their document. That is a 'no foreign' document. I would not embarrass myself by asking the US to release to me what they plainly intend to keep as national information. It is like AUSTEO, in their terms.

Senator BROWN—Where we have Australian Defence Force personnel working with another country, be it the United States or any other country, how do you draw the line as far as the Australian personnel are concerned? Clearly, cases are going to arise where the defence force with which they are working is going to allow practices which would not be allowed by the Australian Defence Force.

Gen. Cosgrove—There may be cases. Each person is aware of the rules of engagement. They are also aware of their own legal requirements. Fundamentally, the Geneva convention and the other laws of armed conflict guide all of us when we are involved in operations whether we are operating solely within an Australian context or in a coalition context.

Senator BROWN—Is there concern within the Defence Force or do you have concerns about what has happened at Abu Ghraib?

Gen. Cosgrove—Absolutely. I think some of the reports from Abu Ghraib are horrendous.

Senator BROWN—Do you not have a concern that some of those things may have occurred because they were sanctioned or at least they were not militated against by very clear authority coming down the line and saying, ‘You must not allow this to happen’?

Gen. Cosgrove—I just refer you back to the minister. You have had that discussion with the minister. I would not seek to comment further on the exchange that you had with Minister Hill on that very same point.

Senator FERGUSON—There may be one way around this charade. The safeguards in these interrogation rules say that approaches must always be humane and lawful.

Senator Hill—That is right.

Senator FERGUSON—They further say that detainees will never be touched in a malicious or unwanted manner. These are the guidelines; these are the rules of engagement. Any breach of those is a crime, and the people who committed those crimes are being tried for their crimes.

Gen. Cosgrove—I take your point.

Senator FERGUSON—Senator Brown seems to ignore those two important facts that approaches must always be in a humane and lawful manner. And that is in their rules of engagement.

Senator BROWN—I am not ignoring that at all.

Senator FERGUSON—You are. You have not mentioned it once.

Senator BROWN—I tabled the document.

Senator FERGUSON—But you choose to read the ones that seek publicity; you do not choose to quote the ones which are the safeguards.

Senator BROWN—I am not here to debate that with you.

Senator FERGUSON—You have been debating all night with General Cosgrove and Senator Hill.

Senator CHRIS EVANS—I want to go back a couple of steps to a question I did not get to follow up before in terms of Major O’Kane’s role and his exposure to the October working paper. Have you been able to identify whether any other Australian officer had access to that working paper?

Air Cdre S. Harvey—No, I have not. Are you talking about legal officers or generally?

Senator CHRIS EVANS—Legal officers or officers in the chain of command over Major O’Kane.

Air Cdre S. Harvey—I understand that Lieutenant Colonel Muggleton may have seen a copy of the report, but certainly no other legal officers.

Senator CHRIS EVANS—Is your evidence that Lieutenant Colonel Muggleton saw the October report? He arrived in the country in November, I think. Are you saying that he saw it while in Iraq?

Air Cdre S. Harvey—That is my understanding.

Senator CHRIS EVANS—In what capacity did he get a copy of the report?

Air Cdre S. Harvey—I think he received a copy via Major O’Kane.

Senator CHRIS EVANS—So Major O’Kane provided Lieutenant Colonel Muggleton with a copy of this report. Are you aware of when he provided him with that copy of that report?

Air Cdre S. Harvey—No, I am afraid I do not have the details of the date.

Senator CHRIS EVANS—Clearly it would have been in the November-December period—is that right?

Air Cdre S. Harvey—I imagine that would have been the case.

Senator CHRIS EVANS—Did anybody else receive a copy of that report?

Air Cdre S. Harvey—No, not that I am aware of—certainly no legal officers.

Senator CHRIS EVANS—What was the Defence relationship between Major O’Kane and Lieutenant Colonel Muggleton?

Air Cdre S. Harvey—What do you mean by ‘Defence relationship’?

Senator CHRIS EVANS—Their formal chain of command relationship. I am not asking whether they were mates; that is why I said ‘Defence relationship’. I am asking what is their formal—

Gen. Cosgrove—No relationship—certainly none from the Australian point of view. They would have been colleagues.

Senator CHRIS EVANS—There is no reporting or joint working relationship necessarily?

Gen. Cosgrove—No.

Senator CHRIS EVANS—Other than that they were both Australian legal officers serving in Iraq.

Air Cdre S. Harvey—Other than what I mentioned before—that I think on a couple of occasions they attended meetings in relation to ICRC—

Senator CHRIS EVANS—We have had evidence before that they were both dealing with the International Red Cross in separate capacities—

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Dealing with issues to do with treatment of prisoners in Iraq.

Air Cdre S. Harvey—Yes. I think I may have mentioned before that Lieutenant Colonel Muggleton hosted a meeting with the ICRC and I think Major O’Kane attended that. I think that was the connection.

Senator CHRIS EVANS—Did the senior Australian officer who was the Australian line of authority for Major O’Kane receive a copy of the report?

Air Cdre S. Harvey—No, he would not have.

Senator CHRIS EVANS—Was he made aware of the contents of the report?

Air Cdre S. Harvey—No, he was not.

Senator CHRIS EVANS—So there was no reporting about these issues by Major O’Kane to anyone other than Lieutenant Colonel Muggleton, who was not in his chain of command?

Air Cdre S. Harvey—I would not say it was reporting. You must remember that the report, as I understand it, went to the Coalition Provisional Authority and the joint task force. There may have been some reason that I am not aware of in the capacity that they were working on it. It was not reflected in his sit rep, so it is a bit hard to comment.

Senator CHRIS EVANS—So your understanding is that Major O’Kane never reported on his work—or this report—to the commanding Australian officer?

Air Cdre S. Harvey—The Australian within the joint task force?

Senator CHRIS EVANS—Yes.

Air Cdre S. Harvey—That is my understanding, absolutely. That relates to the weekly reports that he did. We went through those earlier today. He indicated that he had a tasking and he was working on it. But certainly there were no details of what the nature of that tasking was.

Senator CHRIS EVANS—So nobody else in the Australian chain of command had any detailed knowledge of his work or what he was involved with until he was interviewed on 11 May.

Air Cdre S. Harvey—Not that I am aware of. At this point, because we are talking about Major O’Kane, could I just correct the record? Earlier I was asked a question about whether Major O’Kane had prepared a report on his trip. I have been advised that he in fact did do a report. You may recall that I did not, to the best of my recollection. He did prepare a report on 8 February, which I have a copy of here. I have not had a chance to go through it. I think it may contain some classified material. But if it would aid you, I could read out the relevant passages, as we did with his weekly reports that relate to his dealings with the report.

Senator CHRIS EVANS—I presume you have the minister’s permission to do that. He was looking a bit puzzled; I do not know whether he is just tired.

Senator Hill—I do not think anybody has brought this to my attention.

Gen. Cosgrove—Nor mine.

Senator Hill—Nor the general’s. We might like to look at it first.

Senator CHRIS EVANS—I thought you might. I thought that was the look you were expressing—that look of bewilderment. I always like estimates, because I learn a lot but you learn a lot too. It is a joint, sharing sort of experience. Air Commodore Harvey, I would say to you that I would rather a copy of the report be tabled with the classified bits removed, if that could be arranged.

Air Cdre S. Harvey—I will take my lead from the minister in relation to that.

Senator CHRIS EVANS—I think that is probably right. When we said that Major O’Kane did not provide a report or was not debriefed, can we now check whether Lieutenant Colonel Muggleton provided a report as well?

Air Cdre S. Harvey—I am not aware that he did. He did his sit reps. We can check the files. I am not aware that he did.

Senator CHRIS EVANS—Major O’Kane did set reps as well, so that clearly does not rule out providing a report.

Air Cdre S. Harvey—It is a bit different given the detail of the reports that came back. The sit reps that were provided out of the Coalition Provisional Authority were far more detailed than the dot points that came out of Major O’Kane.

Senator Hill—We will have a look at that report overnight and determine whether there is anything that should be deleted.

Senator CHRIS EVANS—Could you describe the report for me, Air Commodore, given the minister’s advice? This is a report provided by Major O’Kane to whom?

Air Cdre S. Harvey—The addressees of the report are Commander, Combined Joint Task Force 633; the SJA at 5 Corps Heidelberg, Germany; Director Army Legal Services; and Director Operations and International Law. It basically was a report done by the legal officer to the legal officer chain.

Senator CHRIS EVANS—And this was dated 8 February?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—This was on his return to Australia, was it?

Air Cdre S. Harvey—Yes, it would have been. I will just check that. It appears that it was written before he left.

Gen. Cosgrove—It is an in country report that he has written to some United States military lawyer superiors in his chain of command, one copy to the task force commander—our man over there—and one to the DGTDLs.

Senator CHRIS EVANS—So you have seen the report before, have you?

Gen. Cosgrove—No, I just glanced at it then.

Senator CHRIS EVANS—So you did not know about it until now?

Gen. Cosgrove—Absolutely not. It is not a requirement that we placed upon him.

Senator CHRIS EVANS—I did not know it was there either, but I thought it would be requirement, so that was my thinking on it.

Gen. Cosgrove—I could put that in context. We have hundreds of people coming and going and if they are reporting every week and reporting special events on their own recognisance, so to speak, then there is no requirement for them to make an elaborate report when they come home.

Senator CHRIS EVANS—As the air commodore just pointed out, the sort of detail you were getting out of someone inside coalition headquarters was much less than you were getting out of the other authorities. How would you describe this report, Air Commodore? Is it a summary of his experiences or role?

Air Cdre S. Harvey—Essentially, it gives an indication of the background of what happened during his time over there in terms of the events and also the details of the sorts of issues that came up during his tenure that he worked on, again to capture lessons learned or to pass on information for the person who follows him.

Senator CHRIS EVANS—Can you tell us whether it deals with the ICRC reports and his involvement with the Red Cross and the allegations of abuse?

Air Cdre S. Harvey—I would rather defer that until we have had a chance to consider the classified nature of the material that can be released. I can tell you that it does not contain any details of allegations of abuse.

Senator CHRIS EVANS—I was really asking whether it covered that aspect of his work. I was not fishing for detail.

Air Cdre S. Harvey—Yes, it does.

Senator CHRIS EVANS—So it is relevant to our line of questioning and the minister will take it on advisement as to whether that can be released to the committee. Can you indicate to me who that was provided to inside Australia? You say yourself?

Air Cdre S. Harvey—It was provided in Australia to me, the Director Army Legal Services and the Director Operations and International Law. Within Australia, it was pretty much a report to the Australian legal chain.

Senator BROWN—Do you know whether Major O’Kane mentioned the meeting at the end of November with Major General Wojdakowski, the deputy to General Sanchez, and Colonel Marc Warren?

Air Cdre S. Harvey—It certainly does not make mention of that detail or those names or anything. I am pretty sure the answer is no.

Senator BROWN—Could you find out if Major O’Kane was at that meeting?

Air Cdre S. Harvey—That will be tied to the question about the release of the document obviously.

Senator Hill—Sorry, which meeting? The one that you referred to earlier?

Senator BROWN—Yes.

Gen. Cosgrove—That is a separate question.

Senator BROWN—It is a separate question, yes.

Gen. Cosgrove—The document stands by itself.

Senator Hill—You have asked the question. This is the *Newsweek* meeting that you are referring to?

Senator BROWN—Yes, I want to know whether Major O’Kane was at that meeting.

Senator Hill—We should be able to find the answer to that.

Senator CHRIS EVANS—Could you take on notice for me, Air Commodore, whether or not a similar type of report was provided by Lieutenant Colonel Muggleton.

Air Cdre S. Harvey—Certainly.

Senator CHRIS EVANS—I know you have said that you thought it unlikely, but I think we thought that about O’Kane as well, so while we are fishing let’s keep fishing. Now, just to be absolutely clear, knowledge of and copies of the October working paper of the ICRC, as far as you are aware, were only given to Major O’Kane and Lieutenant Colonel Muggleton. No other Australian officer had access to those reports.

Air Cdre S. Harvey—That is all that I am aware of who had access in theatre to it from an Australian’s perspective.

Senator FAULKNER—Isn’t that slightly in conflict with evidence we heard earlier today? Obviously, I do not have the *Hansard* record, but when I asked you about that part of CDF’s and the secretary’s statement of Friday last week—ADF officers, including Major O’Kane, working in the coalition headquarters and the CPA were aware of the October 2003 ICRC report on detainee treatment—wasn’t I told it might be one or two others, unidentified at that point? I thought I was, but my recollection may not be—

Air Cdre S. Harvey—I am not sure that I answered that question. I must admit that I answered the last question in terms of legal officers, primarily. I think it was someone else.

Gen. Cosgrove—If you want to get the plural, isn’t the Australian colonel in the JTF headquarters aware through the emailed weekly report that Major O’Kane was dealing with an ICRC report?

Senator FAULKNER—I am not sure; I am merely making the point—

Gen. Cosgrove—I think we have read that into the record, haven’t we?

Senator FAULKNER—It is Major O’Kane plus what appears to be a small number of others.

Gen. Cosgrove—O’Kane reports, ‘I’m dealing with this ICRC matter,’ and mentions the word ‘report’. I think Mr Carmody put that on the record. So, to be strictly accurate, if you said to that colonel, ‘Have you ever heard of an ICRC report?’ he would say, ‘Yes, that was in the weekly sit rep.’ So there is one, and we understand now that Colonel Muggleton is likely to have seen a copy of the report. There’s two.

Senator CHRIS EVANS—Who has interviewed the colonel, the commanding officer—if he was a colonel—at this relevant time in relation to these matters? I get caught up a bit with whether or not I am supposed to know who the colonel was—whether it was on the public record—at the relevant time.

Mr Carmody—I am not sure about where he fits into the survey context but, if my understanding is correct—and we can verify that—he was contacted by telephone by Strategic Operations Division. The officer is back in Australia.

Senator CHRIS EVANS—So he was contacted by your officers?

Mr Carmody—No, he was contacted by Strategic Operations Division.

Senator Hill—Who was this?

Mr Carmody—This is the officer to whom Major O’Kane reported in the Australian chain. He was contacted in the initial stages by Strategic Operations Division when we were following up the people who were linked in the chain very early on.

Senator CHRIS EVANS—But this was as part of their survey work—is that fair? Or is this post apocalypse, 10 May?

Mr Carmody—No, it was around 10 or 11 May when we were first trying to ascertain who might or might not have had an awareness of allegations of abuse which had been published. As I indicated previously, my staff checked with Major O’Kane and a range of others. They did not check, however, with the officer to whom Major O’Kane reported. That was undertaken by Strategic Operations Division, which also ran the entire survey process. I know he was spoken to but I do not know where he fitted into the survey process itself, whether he was disregarded early.

Senator CHRIS EVANS—Sure, but putting the survey process to one side, though, are you telling me no-one at the table had a direct knowledge of his evidence about what he knew?

Senator Hill—I have been advised that he said he did not know of any of these abuses. If he did know of abuses, he would have taken action. If you interpret the October working paper in such terms, then he was not informed of that detail by O’Kane.

Senator CHRIS EVANS—You say you were advised of it. You have not spoken to him yourself, Minister?

Senator Hill—No. That is the written advice I have been given by my department.

Senator CHRIS EVANS—I accept that. We have had the disadvantage of not being able to speak to the people affected directly but we have had the advantage of having officers who have been involved in the interview of them on a few occasions or officers who are in charge of people who interviewed them, so we are only two steps removed. I suspect that advice to you, Minister, might be four or five steps removed. I was just trying to be clear. Maybe Admiral Shalders, as he is in charge of this, is the man—and he is coming forward looking learned. Admiral Shalders, are you able to help us with who interviewed the colonel in charge of Major O’Kane and the nature of that interview?

Vice Adm. Shalders—Yes, it was my staff in the course of refining that list of 302. So it was staff from Strategic Operations Division.

Senator CHRIS EVANS—Was that interview purely for the purpose of that survey or was it a wider interview?

Vice Adm. Shalders—It was part of that survey, part of that refinement process I spoke about earlier in the day.

Senator CHRIS EVANS—I am not trying to put words in your mouth but did it go to a detailed examination of what he was told by Major O’Kane?

Vice Adm. Shalders—Yes, it was attempting to ascertain what the colonel knew as a result of the weekly reports that were passed to him by Major O’Kane.

Senator CHRIS EVANS—I do not think you were trying to define it narrowly, but I want to make clear that I am interested in not just what he learnt from the weekly reports but what he knew. One of your officers interviewed him. What did they learn about what he knew about the October reports and Major O’Kane’s role?

Vice Adm. Shalders—It was ascertained that the colonel knew nothing of the abuses which we were investigating through that survey, which was the purpose of the survey.

Senator CHRIS EVANS—That is right—the survey went to satisfy yourself about whether Australians had knowledge of the abuses. But this is a slightly separate question. He was the officer to whom Major O’Kane reported. Major O’Kane, we know, was reporting or preparing a response to a Red Cross report which was concerned about treatment of prisoners, the seriousness of which is a bit in dispute but the subject matter was the treatment of prisoners ICRC report. He was drafting a response to their report. I assume the colonel knew that is what he was doing. I think we have had evidence that four of his sit reps contained reference to it. So it is not right to say the colonel did not know anything. He knew that Major O’Kane was involved in responding to an ICRC report, didn’t he?

Vice Adm. Shalders—That is correct.

Senator CHRIS EVANS—So he did know something.

Vice Adm. Shalders—Yes, and additionally he was asked the same questions on the survey as were the other people.

Senator CHRIS EVANS—I accept that. I am not suggesting that he had any first-hand knowledge. If you tell me he didn’t, he didn’t. That is fine. What I am trying to understand is what he understood about Major O’Kane’s role and what Major O’Kane had told him about his role, not whether he had any independent knowledge of abuses of Iraqi prisoners. Do you get the distinction?

Gen. Cosgrove—Question 2.6 on the survey is pretty clear: did you hear about or observe any mistreatment of Iraqi PWs or civilian detainees whilst you were in the Middle East area of operations? You cannot get much more specific than that, I suppose.

Senator CHRIS EVANS—What I am saying to you is that if he answered that no he is wrong, because clearly the answer is yes. Clearly, on your evidence, he had been reported to by Major O’Kane that he was involved in responding to those concerns.

Gen. Cosgrove—If he answered yes then the yes would have been tested.

Senator CHRIS EVANS—Did he answer yes or did he answer no?

Gen. Cosgrove—You do not get yes and then sort of say, ‘That’s good, carry on.’ Yes provokes the next step.

Senator CHRIS EVANS—Quite frankly, General Cosgrove, that has not been our experience tonight.

Gen. Cosgrove—But he has said—

Senator CHRIS EVANS—The sit rep reports went unlooked at, unresponded to, so that is not right.

Gen. Cosgrove—Senator, he has said he did not know of any abuse, so plainly that also extends to his discussions or dialogue of any nature with Major O’Kane.

Senator CHRIS EVANS—So he did not read Major O’Kane’s sit rep reports then? How could he read his sit rep reports which dealt with him responding to ICRC—

Gen. Cosgrove—We read them out to you, Senator. It was very clear in those sit reps that there was no mention of abuse.

Senator CHRIS EVANS—What were the ICRC reports about then? The treatment of prisoners, wasn't it?

Gen. Cosgrove—It could have been about the access of families. I would like to know whether you acknowledge that as being potentially the subject of an ICRC observation.

Senator CHRIS EVANS—It is potentially. I find it a little troubling. I have difficulty believing that Major O'Kane did not tell anybody about his work and that the people he was reporting to did not know anything about what he did. I have difficulty with that, I must admit.

Senator Hill—Yes, but O'Kane himself does not characterise what he saw as abuses. You go back to the report of the secretary and the CDF.

Senator CHRIS EVANS—Sorry, but we have not been able to test those assertions yet. I am just trying to understand what the senior Australian officer in country knew.

Gen. Cosgrove—I think we have to be careful not to verbal him.

Senator CHRIS EVANS—I am very keen not to verbal him; I would rather interview him myself, I must admit. I am just trying to ascertain whether Admiral Shalders's group merely spoke to him in the context of the survey, which is really about what he knew, or whether there has been a detailed interview with him about what Major O'Kane did and relayed to him. I guess that is my key question.

Vice Adm. Shalders—I am not quite sure what the question is.

Senator CHRIS EVANS—I really want to know whether or not your people had a detailed discussion with the colonel about his knowledge of Major O'Kane's activities, the work he was involved with and the reporting of that work. I want to know whether you think the interview went to those questions or whether it was more the completion of a survey questionnaire.

Vice Adm. Shalders—It was part of the survey administration, as I have said. It really went to what was in the sit reps provided to the colonel and whether those sit reps raised any alarm bells in the colonel's mind with regard to abuse. That was what the survey was administered for.

Senator CHRIS EVANS—I suppose the second question is: did he have a good understanding of what Major O'Kane was doing? I accept that that goes a bit further than the questions in the survey. I am just trying to understand whether he has been interviewed about those matters—knowing what you now know about what Major O'Kane's work involved.

Gen. Cosgrove—Are you suggesting that we ought to rate his understanding of what Major O'Kane was doing?

Senator CHRIS EVANS—It seems to me that part of what you have told me today is that you really did not know a lot about Major O'Kane and the documents et cetera till 11 May and it seems till Friday—

Gen. Cosgrove—The same might apply to the day-to-day work of a number of other officers in much less controversial areas. You are saying that the senior officer, for some reason, should have focused on Major O’Kane and made himself, for some other reason, expert in what he was doing—

Senator CHRIS EVANS—Let me assure you I am not suggesting that. That is not what I am suggesting.

Gen. Cosgrove—I would say it is unlikely that he would know the detail of some of the more legal pursuits of Major O’Kane’s work. Similarly, Major O’Kane may not understand too much of what that officer was dealing with. The intent of the report was not to provide technical oversight of what Major O’Kane or any other officer was doing but to gain an impression as to whether their work was gainful—any information is better than no information in terms of the brief reports—and to see if they were safe, and that gave them an opportunity to reflect on their administration. I am not sure how relevant the safety and administration parts of that requirement were, if you like, because these people were in a big headquarters in a relatively safe area. Still, the opportunity was there for that to be reflected upon.

Air Cdre S. Harvey—I might be able to help with this discussion. I want to record the fact that the director of operations in international law in my organisation had a telephone conversation with the colonel in which the colonel confirmed that Major O’Kane had not passed on any reporting of abuse or any other allegations of mistreatment of detainees or the like.

Senator CHRIS EVANS—What was the date of that conversation? That is that point I was trying to get to. Admiral Shalders’s people were after one thing. Since that we have had more information. I think you and I were at cross-purposes a while ago. What I am trying to understand is whether someone had actually spoken to them in the light of more recent information.

Air Cdre S. Harvey—It was 26 May.

Senator CHRIS EVANS—Very recently, a few days ago, one of your officers had a conversation. Is he back in Australia?

Air Cdre S. Harvey—Who is this?

Senator CHRIS EVANS—The colonel.

Air Cdre S. Harvey—Yes.

Senator CHRIS EVANS—Was that a face to face or telephone interview?

Air Cdre S. Harvey—I believe it was a telephone interview.

Senator CHRIS EVANS—That was with much greater information about the circumstances. He was interviewed about that and he said he had no real knowledge of the issues that had been addressed by Major O’Kane?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Can I ask for one clarification? I will direct this question to you, General Cosgrove, because it goes to your and Mr Smith's statement. Paragraph 7 of your statement says:

Defence investigations to date show there is no record of the existence of the October 2003 report being communicated back to Defence officials in Australia.

I am not certain how that fits with the sit reps of Lieutenant Colonel Muggleton and his successor of the rank of group captain, given the information that Air Commodore Harvey has indicated to the committee about, first of all, the broad-brush of what is contained in those sit reps and, secondly, the fact that they are going to, amongst other places, International Policy Division in Defence, Strategic Operations Division in Defence and the Defence Legal Service. There is probably a technical point here, but it is slightly lost on me, I have to say.

Gen. Cosgrove—Were not the Muggleton references to the February report?

Air Cdre S. Harvey—That is right. The Muggleton references were to the February ICRC report, not the October working papers.

Senator FAULKNER—Is that right?

Gen. Cosgrove—Yes, when Muggleton refers to the report, he has to be referring, given the date of the reporting, to the February report.

Senator FAULKNER—It is quite clear that the Muggleton report is the February ICRC report only, is it?

Gen. Cosgrove—That was my strong perception of it.

Senator FAULKNER—That is fine, if that is the case. I did not think that was clear, but you can clarify it anyway, if that is the case.

Gen. Cosgrove—You see this is, in capital letters, 'the report' that Muggleton talks about which, as we read the ICRC media statement, calls upon a whole group of working papers.

Mr Smith—And Muggleton records in his sit rep that the February report had been conveyed to Ambassador Bremer.

Senator FAULKNER—And the sit rep of Major O'Kane that you read into the record earlier, as far as we are aware, does not go beyond a senior officer in CJTF7?

Gen. Cosgrove—That is right.

Senator FAULKNER—I hope I have the right acronym after all these hours.

Proceedings suspended from 9.34 p.m. to 9.49 p.m.

CHAIR—We are continuing with the portfolio overview and major corporate issues.

Senator Hill—Can we provide some more answers first?

CHAIR—Certainly.

Air Cdre. S. Harvey—I was asked a question earlier about whether Major O'Kane attended a meeting between Warren and Wojdakowski. The answer is no, he did not. I just want to confirm that Lieutenant Colonel Muggleton did not file an after-action report.

Gen. Cosgrove—Whilst replying to at least one question from Senator Brown—I am checking something—I said there was no detention interrogation policy issued by Australia. It may be that the commander of 633—that is, the Australian headquarters in Baghdad—had a detention and arrest policy for SECDET if they encountered any adversaries. We are checking that. I should point out though that we have not arrested anybody. If there is such a policy it has not been put into practice. We will check to see if there is such a policy.

Senator BROWN—You do not have—

Gen. Cosgrove—I am told that if there is a policy it has nothing to do with interrogation.

Senator FAULKNER—I just want to check one thing in relation to Major O’Kane’s end of tour report, if that is the correct terminology to use. I think we understand what that means anyway. I know that is being looked at over the break this evening. This is directed to you, Air Commodore. Obviously you have had an opportunity to read it. Without going to the substance of the content of it, my question just goes to whether that report canvasses or deals with the issue of the October, which is now defined as October/November, ICRC working papers.

Air Cdre. S. Harvey—From recollection—I do not have it immediately here—it does refer to Major O’Kane being involved in the issue but it does not contain any detail of the substance of the working papers.

Senator FAULKNER—And that report was lodged with the legal services branch in Defence?

Air Cdre. S. Harvey—The addressees were as I listed before.

Senator FAULKNER—Could you go through those again?

Air Cdre. S. Harvey—I am just trying to find the document. It was me; the Director, Operations and International Law; and the Director, Army Legal Services.

Gen. Cosgrove—The four addressees were also our national commander in Baghdad, the Senior Judge Advocate in Germany—I am not sure why—the Staff judge advocate in Germany and the Staff judge advocate in the CJTF headquarters.

Senator FAULKNER—I have a question similar to one I asked before the break about paragraph 7 of your and Mr Smith’s statement of Friday of last week, which says:

Defence investigations to date—

and I stress ‘to date’, because I think this is perhaps an explanation of it—

show there is no record of the existence of the October 2003 report being communicated back to Defence officials in Australia.

I understand myself the issue of timing. That is clear in that sentence. But, depending on the further detail—which I do not intend to ask Air Commodore Harvey about tonight—in relation to this end of tour report, it might bring a somewhat different light to bear.

Gen. Cosgrove—It may do. We have not yet examined it in relation to, for example, that sentence, but it may do. I had a quick glance and saw that it referred to the officer’s involvement in the ICRC matters. I cannot recall from the quick glance whether it referred to a report.

Senator FAULKNER—You will let us know if it does?

Gen. Cosgrove—Yes.

Senator BROWN—On the matter of no prisoners being taken, the *Australian* on the 11th of this month published Warrant Officer Joe Day's account of his experience with the US Marine Corps in the siege of Fallujah. Warrant Officer Day was commanding a 26-man platoon as part of the Marines 1st Light Armoured Reconnaissance Battalion. He says:

We remained in the town for the next few days, continuing our searches and detaining suspects as we went.

On another occasion he mentions a specific person who was arrested by his platoon. How does that sit with the assertion that the Australians have taken no prisoners?

Gen. Cosgrove—He was working in a job for the Americans. The force that took those people was American. So I dare say they are prisoners of the Americans.

Senator BROWN—But they are earlier prisoners of the platoon commander, at least at the outset, who is an Australian.

Gen. Cosgrove—Are you asserting that one man can take prisoners with the other 26 or 30 not being part of that?

Senator BROWN—He says:

We remained in the town for the next few days, continuing our searches and detaining suspects as we went.

Gen. Cosgrove—It is virtually a debating point. I accept that you could argue, 'There was an Australian present and accordingly they must be his prisoners,' but it does not hold water to me.

Senator BROWN—A report in the *Australian* following the description by Warrant Officer Day of his part in that fight at Fallujah says:

In between capturing a key Lebanese arms dealer, dodging a night rocket attack and defusing dozens of roadside bombs, the Victorian father-of-two celebrated Anzac Day ...

That specifically indicates a capture of a person by Warrant Officer Day. I ask you to comment on that.

Gen. Cosgrove—If you want that taken on notice to see whether we can establish the legal position—people brought into detention by Warrant Officer Day's unit vis-a-vis him as a person—we could do that. It would take some time, but for completeness it might be something you would want us to do rather than just leave the assertion that they are his prisoners.

Senator BROWN—The difficulty I have here is that we are a small component of the occupying forces in Iraq but either we have our own set of rules—and you have indicated that when it comes to the arrest and detention of prisoners there may be a specific rule that the Australian commander in Baghdad had—or we come under American direction. As with Major O'Kane's role in investigating what happened in Abu Ghraib earlier, we have got this difficulty that either the Australians become subservient to American directions in these various matters or we have long-held Australian rules, maybe with some specific ones for the

particular conflict, which it is incumbent upon our Defence Force personnel to observe. This is a critical question. How does an officer or a junior ranking member of the defence forces determine the difference and make sure that the Australian standard is the one that prevails?

Gen. Cosgrove—In the case of Warrant Officer Day, that to me would be a simple proposition for him—simple to say but arduous to enforce—and that is, according to his own grasp of right and wrong, his own knowledge of the laws of war and his own behaviour within the Geneva convention, all the things he did and those under his command did at his order should have been according to those standards.

Senator BROWN—And all members of the forces are trained in the Geneva convention?

Gen. Cosgrove—Yes, simplified. They are not expected to be able to sit here and recite it to you but they do understand the issues of humane and safe treatment of detainees, to not expose them further to danger from enemy action et cetera. So there are those issues. I am sure if we had Warrant Officer Day here he would not be able to recite the Geneva convention but he would be able to satisfy all senators with his grasp of the safe and humane way to treat detainees.

Senator BROWN—My reading of the Geneva convention says that if a prisoner is detained then he or she becomes the responsibility of the detaining authority.

Gen. Cosgrove—Yes.

Senator BROWN—That is even when passed across to another entity or another force, so you see the—

Gen. Cosgrove—It is who becomes the detaining power. It is automatic if one person meets another person and decides to detain them but if two people meet the other person and the two people decide to detain that person, if one was from country A and the other from country B, operating in coalition, country A and country B could say, ‘You are the detaining power,’ one to the other. That is a perfectly sensible and legal arrangement.

Senator BROWN—The difficulty in a conflict like this, where there are a number of countries involved—and many conflicts are like that these days—is how do you ensure that the Australian Defence Force personnel do abide by what is expected by Australia rather than the other forces with whom our Defence Force personnel may be working?

Gen. Cosgrove—Simply through their training, the nature of their orders and the way we monitor their involvement. This is especially difficult, as you would understand, with third country deployments where people are deeply embedded and far away from other Australians. They then need to rely inherently on their training and their grasp of what is right and lawful. We expect them to represent themselves immediately and strongly to their superiors if they see anything happening which is improper from their point of view.

Senator BROWN—The agreement that was made with the United States and Britain, called ‘An Arrangement for the Transfer of Prisoners of War, Civilian Internees, and Civilian Detainees between the Forces of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and Australia’, signed by Brigadier McNarn, makes it very clear that the detaining power is responsible, even when prisoners are handed across to an

accepting power. Of course, Australia has no prisoners, as such, in Iraq, but the United States does.

Gen. Cosgrove—We were in the circumstances where, on those few occasions when people needed to be detained, the detaining power could be the officer of, in this case, the United States. So if there had not been present at that time an officer of either, say, the United States or the UK, and the decision had been made to detain people, then we would have had some responsibility for them.

Senator BROWN—But there is nothing in this document that says that the defence force personnel present will be the detaining authority. It is very equal. It says that whoever detains the person is the detaining authority.

Gen. Cosgrove—Exactly, and in the case of the people taken into detention in the circumstances that have been described, relevant to Australia, there were US personnel present at the time, on the spot, who took on the role of the detaining authority.

Senator CHRIS EVANS—I understand what you are aiming at, because I have been through this before with you. But what I do not understand—forgive me for intervening, Senator Brown—is that, if 20 SAS blokes come over the hill commanded by an Australia SAS commanding officer and capture five Iraqis in the western deserts of Iraq, and they have an American speaker with them who is, I understand, generally there for calling in air support—I do not know what rank they generally are but I presume they are not all that senior—

Gen. Cosgrove—It would be immaterial, though.

Senator CHRIS EVANS—No, but, in the specifics of the Iraq case, I would have thought they were not very senior—

Gen. Cosgrove—Probably not.

Senator CHRIS EVANS—NCOs or warrant officers maybe.

Gen. Cosgrove—They may have been junior NCOs; they could have been senior NCOs.

Senator CHRIS EVANS—Of that order. So there is a captain or a major leading the SAS contingent—20 or so of them and one American NCO is with them. But you tell me that the legal device you have agreed with the Americans has that one American NCO legally capturing those Iraqis, and that the SAS soldiers commanded by an Australian officer have no responsibility in that regard.

Gen. Cosgrove—The rank is immaterial.

Senator CHRIS EVANS—I do not know.

Gen. Cosgrove—The rank has nothing to do with it.

Senator CHRIS EVANS—If you have a joint operation, someone is command. That has something to do with it, on occasion, I would have thought. But, as I understand it, that is what you are saying to me.

Gen. Cosgrove—Exactly, and we did it knowing that, in certain circumstances, there would be a larger number of Australians and a relatively small number of US or UK personnel present. Had there not been US, UK, et cetera personnel present, and had there been a need to

detain the people in question, then the agreement that Senator Brown refers to would have been activated.

Senator CHRIS EVANS—And your evidence is that, on all occasions when Australians led contingents that captured Iraqis, there was at that time an American or UK person with them who took responsibility immediately for those prisoners?

Gen. Cosgrove—That is correct—I think, in each case, US servicemen.

Senator BROWN—How was that agreement arrived at?

Gen. Cosgrove—You mean the one I have just referred to?

Senator BROWN—Yes.

Gen. Cosgrove—By practice to ensure that countries like Australia, which, by their very organisation, were not set up for the holding or processing of detainees, would not have a chain of custody when we had to send them into another person's system.

Senator BROWN—Here is the problem though. That says that, despite the fact that on numbers it is obvious that—

Gen. Cosgrove—But you cannot have it both ways. You said that about Warrant Officer Day—that Warrant Officer Day, one Australian, had managed to capture a bunch of Iraqis when his platoon was plainly the reason why they accepted that they were captured.

Senator BROWN—I am not having it two ways at all. That is my very point.

Gen. Cosgrove—It seems to me you are.

Senator BROWN—That an Australian is the principal or Australians are the principals in capturing somebody—

Gen. Cosgrove—I mentioned that rank is immaterial in this regard. If an individual is a soldier or a service person of country B, and if country A, by the arrangement they reach, is the detaining power, country B acknowledges that.

Senator BROWN—But even where Australians alone capture somebody in Iraq, isn't it true that, under this arrangement, they hand them across to the UK or the US and abrogate responsibility as the—

Gen. Cosgrove—No, they carry the responsibility. If you read the instruction, they are supposed to monitor the further treatment, processing, care et cetera of the detainee.

Senator BROWN—On what occasions has that provision come into play?

Gen. Cosgrove—It did not come in at all. I will go back to the explanation I have been making over the last seven or eight minutes: under the arrangements that we had entered into, and by the circumstances of the event, there were US personnel available and present to become the detaining power.

Senator CHRIS EVANS—Is that based on legal advice?

Gen. Cosgrove—Yes.

Senator BROWN—I put it to you that that effectively means that, when it comes to the detention of prisoners, the US rules in this conflict.

Gen. Cosgrove—In another circumstance, where we were the major coalition presence and there was a minor US presence, it might be us operating detention, interrogation et cetera and it might be the US that would look to us to either, in the first place, become the detaining power or transfer the detainees to us.

Senator BROWN—But isn't there a big problem that, in this circumstance—and today we have been listening to the unravelling of the Geneva conventions in Abu Ghraib and potentially in other places where detainees were held—there is a system whereby detainees held by Australians or detained by Australians automatically go across to US custody even though we have people working in the legal component of the prison system? Australia is effectively losing its authority to ensure that its standards—as against those of the United States—are implemented at all times where its service personnel are involved.

Gen. Cosgrove—The issue is of course—and I pick you up on the point you mention—that we detained them. It is my point that we did not detain them. The detaining power was the service man or woman—servicemen—of another country.

Senator BROWN—But that is an artifice. In reality, there have been people detained by Australian Defence Force personnel. They have been in the thick of this conflict in Iraq. There is an artifice here that says in effect, 'We won't accept that. We will hand that detention authority across to the United States in all cases.'

Gen. Cosgrove—But you wanted to turn the artifice round a few minutes ago by saying that a warrant officer who happens to be an Australian working with the Americans was going to accept the surrender on behalf of Australia.

Senator BROWN—That is the point I make exactly.

Gen. Cosgrove—It is a strange point.

Senator BROWN—No, it is not. It is very consistent. What I am arguing is that when Australians detain prisoners, then Australian rules should prevail. That is the very central point—

CHAIR—I do not think it is a case of arguing, Senator Brown. You ask the questions and the general will answer them.

Senator BROWN—The central point of this document—

Senator Hill—We will not convince Senator Brown of that point but I do not know that simply going over and over it will get either side any further.

Senator BROWN—I accept that we are not going to proceed here but I am very concerned, Senator Hill, by the reality here. Despite an agreement which gives all three components of the occupying forces, including Australia, the responsibility as detaining forces—when they do detain people—to see that those prisoners are treated all the way down the line according to the Geneva conventions, and that is what this document says effectively, instead what happened is that Australia, of the three, said, 'In all cases, we will relinquish that detaining authority across to one of the other countries.' It has led to us being vulnerable to a breakdown of the Geneva conventions as practised in this theatre of war.

CHAIR—Do you have any more questions, Senator Brown?

Senator BROWN—Yes, I follow that up by asking the minister or the general: is that policy going to be reviewed in light of the circumstances that have arisen in Iraq?

Senator Hill—We are not planning any other conflict.

Senator BROWN—This is an ongoing conflict.

Senator Hill—In relation to Iraq, it is not being reviewed. If it were to be reviewed, then we would need to send military police and set up a whole apparatus of our own for detention of prisoners. We do not think that is a very sensible thing to do. We rely upon our coalition colleagues to treat these prisoners humanely. Overwhelming, I think, that is the case. There has been evidence of a small number of abuses where the abusers are being prosecuted. Where we part company is that, notwithstanding that, we still have greater faith in our coalition colleagues than Senator Brown does.

Senator BROWN—I just have greater faith in the Australian Defence Force personnel.

Senator Hill—I have probably got even greater faith in the Australian Defence Force.

Senator BROWN—At top level, wouldn't it be an easier course of action for the Australian government to make it clear to the United States government where we stand in defence of the Geneva conventions and that we insist in all cases that the Geneva convention, as you have upheld it tonight, be upheld by the US and the UK when prisoners are exchanged out of Australian hands into the care of those other forces.

Senator Hill—But that is the problem. Both the US and the UK would claim to adhere to the Geneva obligations.

Senator BROWN—But they have not.

Senator Hill—There have been some cases of abuses. I do not know that that should make the rule. The abusers should be properly dealt with; that is the important thing in this instance.

Senator BROWN—I would suggest to you that you ought to reconsider that, in the light of the information that has come to hand in recent months, because the engagement here by the government goes through to at least June next year.

Senator Hill—We note Senator Brown's view on the matter.

Senator HOGG—Can we have an update on what is happening with the Iraq survey group? Is that possible?

Senator Hill—It is due to put in its next report in late August or early September.

Senator HOGG—Will there be a representative here in the morning?

Senator Hill—What is wrong with me?

CHAIR—Ministers can only give opinions.

Senator HOGG—I want to go a bit further than its next report.

Senator CHRIS EVANS—We just did not want all those qualifications—'I'm informed that' and 'The advice I have received is'—

Senator HOGG—Everyone was looking around you, Minister.

Senator Hill—I know. I was a bit disappointed in that, actually. At least I am still here—most of them have flaked.

Senator HOGG—Perhaps this is a question for tomorrow.

Senator Hill—In this instance it might be that I have met with the Iraqi survey group more recently than the officials.

Senator HOGG—If that is the case—

Senator Hill—If you do not have confidence in me then we will leave it until tomorrow. That might mean we can have an early minute.

Senator HOGG—It is not that, Minister. It is that all your officials looked around behind you. What has happened with the Iraqi survey group since we last met? Is it possible to tell us that? Have their duties changed in that period of time? Has the size of the group changed? We were told that it is 12 today.

Senator Hill—Our contribution has changed little. There may be a couple less than there was. Basically they take tasks that fit their particular specialties. The Iraqi survey group continues its work. As I was saying, they plan to put down another report in late August-September which I am told will be more comprehensive than the last one.

Senator HOGG—When will that be available publicly?

Senator Hill—Late August-September. I do not think it has been decided how it will be presented but I am confident there will be some form of public statement associated with it.

Senator HOGG—Has the nature of the work being done changed significantly by our contribution, given the speciality of the people involved?

Senator Hill—No, not by our contribution.

Senator HOGG—What about the rotation? When were they last rotated and when are they next due to be rotated?

Senator Hill—They were rotated a month ago.

Senator HOGG—For what period of time?

Senator Hill—They are normally sent for three to four months. We have eight military and two civilians at the moment. It is our third team. This brief says that this more substantive report will be in the July time frame. My recollection is that it was a little later than that. It is not being talked of in terms of the final report. There is still debate about how the work will continue and that will in part flow from this report. It also depends to some extent on the attitude of the new interim Iraqi government.

Senator HOGG—Is there a long-term commitment for a contribution by Australia to the Iraqi survey group, given the answer you have just given?

Senator Hill—Our view at the moment is that it is still doing important work and there is still more important work to be done. We have not specifically addressed the next rotation. We will have to do that soon but consistent with what I have just said I think the chances are that we will rotate again.

Senator HOGG—When you say there is important work, are you able to say in what area? Is it in WMD or is there some other area of focus?

Senator Hill—It is still principally in WMD and it is focusing more on clarifying Saddam Hussein's capability intentions rather than the approach that was being taken earlier.

Senator HOGG—So it is not necessarily still looking for the actual weapons.

Senator Hill—No, it is not just looking for that.

Senator HOGG—Has the search for weapons basically come to a halt?

Senator Hill—No, it has not. They are still doing it. We were involved recently in a very unfortunate incident where, on the basis of intelligence on a chemical capability, the Iraq survey group sent a team out to search premises and there was an explosion. I think two of the group were killed and two or three very seriously injured.

Senator HOGG—None of those were Australian.

Senator Hill—No, but we were very lucky, because we had an Australian in the building when the explosion went off. That Australian civilian—and I do not say this because it was a civilian—showed great courage and, despite the trauma of the occasion, assisted in the rescue of the injured.

Senator HOGG—You say they are now trying to clarify Saddam Hussein's capability intention. Is that more a theoretical task than a practical task such as finding the weapons?

Senator Hill—More of the information is being sought from—and I hate to use this word—interrogation of scientific types. This interrogation is voluntary statements—

Mr Smith—Debriefing.

Mr Carmody—Debriefing of sources.

Senator Hill—Debriefing those who may be wanting to help.

Senator CHRIS EVANS—Only senior officers, I hope!

Senator HOGG—So they rely fairly heavily on information from debriefs—

Senator Hill—Yes, to piece together the picture.

Senator HOGG—to know where to go.

Senator Hill—They knew the weapons existed. They are still trying to ascertain what occurred with those weapons and what Saddam's plans were in relation to WMD capability. You might remember that the previous head had produced a certain amount of evidence on Saddam's missile program. There was significant evidence that he was developing longer range missiles. The issue then was how he was going to affix WMD warheads to those missiles, were they to be reconstructed. I think in the early days the thought was more that these warheads were available. In more recent times the emphasis has been more on a capability to produce the warheads if and when he so determined.

Senator HOGG—Do they have a restricted area of operation within the country or are they able to go anywhere and everywhere?

Senator Hill—I think they are still operating all over the country. They still go out. When they get useful intelligence they go out to the west or wherever to carry out their searches.

CHAIR—There being no further questions and it being 10.30 p.m., we will adjourn and look forward to seeing you again at nine in the morning. Thank you very much.

Committee adjourned at 10.30 p.m.