



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

TUESDAY, 1 JUNE 2004

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Tuesday, 1 June 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, Faulkner, Ferguson, Ferris, Hogg and Payne

Committee met at 9.06 a.m.

DEFENCE PORTFOLIO

Consideration resumed from 31 May 2004

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 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. When the committee adjourned last night, it had concluded with the portfolio overview and major corporate issues. I understand witnesses have further answers to questions that they wish to bring to the committee's attention. To give witnesses an order of battle, this morning, unless there are further responses to yesterday's discussion, we will go to the budget summary. Before we do that, there is a matter that Senator Faulkner wants to investigate in outcome 1. Firstly, we will have the further responses from yesterday's discussion, a response from the committee to those and then, before we move to the budget summary, we will have Senator Faulkner's matter discussed.

Gen. Cosgrove—Thank you, Mr Chairman. I think Air Commodore Harvey has one or two amplifications from yesterday.

Air Cdre S. Harvey—I was asked a question yesterday about the number of legal officers that had been to Iraq and been involved in detention related matters and about their involvement with the International Committee of the Red Cross. I want to go through the list. Obviously, I will delete names in accordance with our practice to date. Firstly, there is a lieutenant colonel who was the joint task force 663 legal officer between December 2003 and May 2003. He visited Abu Ghraib prison once and had no recorded interaction with ICRC. The second one is a major. Her role was in joint task force 7 legal aid between June and July—just that one-month period. Her involvement was visits to No. 2 Brigade combat team holding facility in Camp Cropper. That legal officer had no interactions with the ICRC. The third person, whose position we have mentioned before, is a group captain. His role was in the Coalition Provisional Authority, where he was a legal officer from February 2004. He remains

there at the present time. He has been to Abu Ghraib once, purely on ICRC liaison functions, his only contact with the ICRC.

Senator FAULKNER—Do you have a date for that visit to Abu Ghraib?

Air Cdre S. Harvey—No, I do not have that detail, I am afraid. There is a colonel. His role was as the CPA legal officer between May 2003 and November 2004 and from March 2004 to the present time. He visited Abu Ghraib prison on numerous occasions. He performed liaison functions with the ICRC.

Senator FAULKNER—For that colonel were you just saying ‘numerous times’?

Air Cdre S. Harvey—Yes. He had numerous visits to Abu Ghraib prison.

Senator FAULKNER—That is helpful, but are you able to be more specific than ‘numerous’?

Air Cdre S. Harvey—Not at this stage, but this legal officer was included in the legal officers that were surveyed and did certify that he had no observations of any abuse or whatever of detainees.

Senator CHRIS EVANS—This is not Muggleton?

Air Cdre S. Harvey—No, this is not Muggleton; this is a full colonel.

Senator CHRIS EVANS—He was there from May—

Air Cdre S. Harvey—May 2003 to November 2004 and March 2004 to the present day.

Gen. Cosgrove—To November 2003, surely.

Air Cdre S. Harvey—Sorry, yes, November 2003; that is a typo.

Senator CHRIS EVANS—So he was at the CPA?

Air Cdre S. Harvey—That is right, the Coalition Provisional Authority.

Senator CHRIS EVANS—So Muggleton replaced him for that—

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—So he is the Muggleton replacement, but he has now gone back?

Air Cdre S. Harvey—That is correct, to the same position within the CPA.

Senator FAULKNER—I want to come back to the number of visits. Can we not do any better than ‘numerous’ visits? I am a bit surprised.

Air Cdre S. Harvey—That is all the information I have. We can check that to see if we have more information.

Senator CHRIS EVANS—Your evidence yesterday was that the legal office at the CPA would not have much to do with the prisoners because that was largely a military headquarters function. I guess we are a bit surprised that now it appears that the senior legal officer we had at the CPA not only had contact with Abu Ghraib et cetera but had numerous visits. It seems a bit contrary to what we have been told earlier.

Air Cdre S. Harvey—I think the point that was made yesterday was that, at the CPA level, he was involved more in strategic issues. I do not think that I indicated that he had never been to Abu Ghraib prison.

Senator CHRIS EVANS—I am not saying you did, but it is almost counterintuitive to what was said yesterday in the sense that you said he was more likely to be dealing with things in relation to families and those sorts of things—more general government policy than prison administration. Now we find out that he has been there numerous times. Senator Faulkner is interested in what ‘numerous’ means—and over what period, and what was his role in visiting the prisons?

Air Cdre S. Harvey—I do not have that information at hand, I am afraid.

Senator CHRIS EVANS—Has he been interviewed?

Air Cdre S. Harvey—He has been surveyed as a result of the quick investigations to try to ascertain whether anyone had any knowledge of abuse. That survey was directed at that question in light of the photographs—rather than how many times he has been to a prison.

Senator FAULKNER—A preliminary survey, not the follow-through?

Air Cdre S. Harvey—That is correct. Are you talking about the subsequent interviews?

Senator FAULKNER—Yes.

Air Cdre S. Harvey—I would have to check whether he was one of the 15. I do not remember off the top of my head.

Senator FAULKNER—These issues need to be established for us. What is emerging is a different pattern or a different understanding from that which I had yesterday in relation to this, particularly in relation to this legal officer attached to the CPA.

Air Cdre S. Harvey—I will see what else we can find and get back on that question. The time of this legal officer’s period in Iraq was, as I mentioned, May 2003 to November 2003. It was before detailed knowledge of the allegations.

Senator CHRIS EVANS—But during the period when the abuses occurred.

Air Cdre S. Harvey—I do not know whether that has been ascertained—as to the time.

Senator CHRIS EVANS—According to the ICRC report, their concern was about abuses in Iraq between May and November 2003—exactly the period we are talking about. I am not making any point other than that he was an officer in the relevant period visiting Abu Ghraib prison. Yesterday we got the impression he had nothing to do with it. We are now interested in what he had to do with it. And there is another Australian officer who seems to have had more contact with the legal system and the prisons.

Air Cdre S. Harvey—I understand your question and I will see if we can get you more information. I just want to reiterate that the answer that I gave yesterday was related to his role being at the strategic level rather than being hands on, which was the joint task force’s role in relation to the detention facility.

Senator CHRIS EVANS—I think we also understood from what you said that that officer seemed to have responsibilities for coordinating relations with the ICRC.

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—For the CPA.

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—And we know that his successors organised meetings with the ICRC and Mr Bremer.

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—So they had a central role in terms of the ICRC relationship.

Air Cdre S. Harvey—Yes.

Senator CHRIS EVANS—Right.

Air Cdre S. Harvey—If I could continue, a lieutenant colonel was the CPA legal officer between November 2003 and February 2004—this is Muggleton, whom we have mentioned before. He visited Abu Ghraib twice and Camp Cropper once. As we mentioned yesterday, he performed an International Committee of the Red Cross liaison role at the CPA level.

Senator CHRIS EVANS—Do you have the dates when he went to Abu Ghraib?

Air Cdre S. Harvey—No, I do not have that detail.

Senator CHRIS EVANS—Can you take that on notice for us?

Air Cdre S. Harvey—Certainly. I will continue. The squadron leader's role was the CJTF legal officer from February 2004 to the present time. He was the legal officer that replaced O'Kane. He visited Abu Ghraib twice and Camp Cropper once. His role was liaison to coordinate visits of the ICRC. That was his only involvement with the ICRC, in a similar vein to Major O'Kane. Finally, a major was on third country deployment for the UK army. I do not have any details as yet on his precise role.

Senator FAULKNER—When you use the terminology 'ICRC liaison', would you be able to define what that means for the committee please?

Air Cdre S. Harvey—I do not know that it is capable of precise definition but as I understand it—

Senator FAULKNER—But you use the term—

Air Cdre S. Harvey—I can tell you what I understand when I mention the term. My understanding is that it was part of the legal officer's duties within the Coalition Provisional Authority. He was tasked to act as a point of contact for the ICRC. As we mentioned yesterday in evidence, it appears that he held regular meetings at which issues relating to conditions in the facility were discussed.

Senator CHRIS EVANS—So the major point of contact was the ICRC?

Air Cdre S. Harvey—I cannot verify that he was the major point of contact. I do not have that information.

Senator FAULKNER—This is a really crucial point, Air Commodore. I think the committee needs as clear an answer as we are able to receive on it. Are we now saying that an

Australian officer, an officer of the Australian Defence Force, was the key point of contact between the ICRC and effectively the coalition forces?

Air Cdre S. Harvey—I cannot say that from my knowledge. All I can say is that the legal officers that were involved in the Coalition Provisional Authority indicated that they had some duties which included liaison with the ICRC. Whether other people within the headquarters had that function I am not able to testify.

Senator CHRIS EVANS—But you gave evidence yesterday based on the sit reps that, for instance, the meeting between the ICRC and Mr Bremer, the head of the CPA, was facilitated by our legal officer at the CPA.

Air Cdre S. Harvey—I do not know whether I actually used the word ‘facilitated’.

Senator CHRIS EVANS—You did, because I made a point of recording it. I am not trying to catch you out but—

Senator Hill—But that is a different issue to what Senator Faulkner just said, because he asked about the key person liaising with the military forces. The CPA, as we were saying yesterday, is in effect the de facto government, so it is not military at all.

Senator FAULKNER—What we have here established, it appears, is a clear pattern of a very significant role, if not the key role, for Australian officers in terms of the interface or interrelationship between the international Red Cross and the coalition forces pertaining to matters relating to POWs in Abu Ghraib jail. That is the evidence that has been presented.

Senator Hill—You are much overstating it. The evidence yesterday—in that instance we are talking about O’Kane, because he was the one who was working for the joint military headquarters—as I recall it, was about five contacts with the prison. Of those, it seemed the last concerned facilitating a visit. You could almost say it is a desk job, making arrangements and seeing everything is in place for a visit for the ICRC. There may be one other. In terms of his deployment—he was there for almost six months, wasn’t he?—I cannot see how you can leap from that workload to suddenly say, ‘Here’s the key man re the military forces and Abu Ghraib.’ That is putting a spin on it that I would have thought was even beyond your imagination, Senator Faulkner.

Senator FAULKNER—Senator Hill, for you to describe a legal officer who visits Abu Ghraib jail on numerous occasions as having a desk job—

Senator Hill—We were told yesterday it was five times over six months, weren’t we?

Senator FAULKNER—I am sorry; you are not listening.

Senator CHRIS EVANS—In addition this morning you reveal again that the other officer, who we were told yesterday had virtually nothing to do with the prison system, visited Abu Ghraib on numerous occasions and seems to have been the liaison point between the ICRC and the provisional authority—that is, the government of Iraq.

Senator FAULKNER—Minister, just so you are clear, with regard to the five visits in evidence yesterday, they were not five contacts; they were five visits, one of which went for four days.

Senator Hill—I am quite clear. You are deliberately melding the two. You can go to the role of ADF lawyers who were also assisting the CPA. In the end, the ICRC reported to the occupying powers and to the CPA. When we get up to February, certainly an Australian lawyer helped facilitate the transmission of the report to the CPA but that does not strike me as a position of great authority, if I might say so, with respect.

Senator CHRIS EVANS—No, but we are now told in answer to a question on notice—this is evidence not led yesterday—that the person who preceded him in that job at the CPA visited Abu Ghraib on numerous occasions. The role was described to us yesterday as being largely a role inside the provisional government that had very little to do with the administration of the prison.

Gen. Cosgrove—What point are you trying to draw, please? I know the officer has reported that he visited on numerous occasions but he also reported unequivocally that he had no knowledge of abuses or mistreatment.

Senator Hill—They all did that. They did not see any abuses and had no knowledge of abuses.

Gen. Cosgrove—You keep dwelling on the number of visits as if there is some kind of evil connotation to that.

Senator CHRIS EVANS—You can draw whatever conclusions you like.

Senator Hill—They saw no abuses, had no knowledge of abuses and reported no abuses.

Senator CHRIS EVANS—My job is to ask the questions. I am not drawing any connotations.

Senator Hill—You have been drawing conclusions.

Senator CHRIS EVANS—There is new evidence today that contradicts what was given to us yesterday. I am exploring that. That is my right and I will continue to do so.

Senator Hill—You have been doing more than that. You have been making findings.

Senator CHRIS EVANS—I have not been making findings.

Senator Hill—You have.

Senator CHRIS EVANS—I am somewhat surprised by the evidence this morning.

Senator Hill—You have melded the roles of the military forces and the CPA together. You have grossly exaggerated the role of the ADF lawyers.

Senator FAULKNER—These are questions you should have asked as Australia's defence minister. It is mind-boggling, frankly, that these questions are having to be asked at this time in this forum because you did not fulfil your proper responsibilities and ask these questions when you should have.

Senator Hill—That is the way you want to put it.

Senator FAULKNER—Time and time again we have heard evidence from witnesses at the table in relation to the matters pertaining to the ICRC and Abu Ghraib jail that, frankly, you should have established long before it had to be wheedled out at a hearing like this. That is the truth.

Senator Hill—Okay, so what did we establish? There was some incidental contact between Australian lawyers. They were assisting both the military command and the CPA—different lawyers.

Senator CHRIS EVANS—Incidental?

Senator Hill—Yes, they facilitated visits by the International Committee of the Red Cross.

Senator CHRIS EVANS—He drafted a response to the ICRC's concerns about abuse.

Senator FAULKNER—As well as having liaison meetings with the ICRC. You have to keep up with the game, Senator Hill. You do not seem to know what has happened.

Senator Hill—And what did they report? They reported no abuses and no evidence of abuses. They did not see abuses and they therefore did not report back any abuses. We have Commodore Darby here, who was the head of the Australian forces. If you are interested, you can ask him whether he got reports of any abuses—but I do not think you will because I do not think that is what you are really interested in.

Senator CHRIS EVANS—What we are trying to do is piece together what happened, Senator Hill. You clearly, as of yesterday, did not know or claim not to have known.

Senator Hill—That is correct. That is what I advised.

Senator CHRIS EVANS—What we have this morning is further evidence that details Australian lawyers' involvement with the ICRC and Abu Ghraib prison. That is what we are trying to explore. That was not led yesterday. We were assured that this officer was not actually involved—that he did not have much to do with that side of things. Today's evidence is quite the opposite: he visited the prison on numerous occasions, apparently.

Senator FAULKNER—As well as liaising with ICRC.

Senator Hill—For the CPA. That was his job.

Senator FAULKNER—My question to you, Senator Hill, is: why didn't you establish what was happening with these Australian Defence Force personnel months ago?

Senator Hill—We did.

Senator CHRIS EVANS—Then why did you go on TV and say that you did not know anything about it until May?

Senator Hill—I did not know anything about the abuses until May; nobody did. The Labor Party was not claiming it knew about these abuses. The Labor Party was not asking any questions.

Senator FAULKNER—This has nothing to do with the Labor Party. All the Labor Party is doing is holding you accountable.

Senator Hill—I was in Baghdad in April and nobody raised these issues. Everybody became aware when they saw it on the television at the beginning of May.

Senator CHRIS EVANS—The photos, yes. What we now know is that the ICRC made a report in October that an Australian officer was handling. We are trying to get to the bottom of that.

Senator Hill—You have got to the bottom of that. The bottom of that, which is no secret, is that, during the period we have been in Iraq—

Senator CHRIS EVANS—It was a secret; you said that you did not know.

Senator Hill—Why don't you listen for a change? In the period we have been in Iraq we have had an Australian lawyer working with the military headquarters, and on at least one occasion he facilitated a visit of the ICRC. He also, it would seem, drafted a response to a working paper of the ICRC.

Senator CHRIS EVANS—And contributed to interrogation policy.

Senator Hill—I have not heard evidence that he contributed to interrogation policy; I have heard that he gave some advice as to whether a particular document was in accord with the Geneva conventions and the US manual.

Senator CHRIS EVANS—I do not want to verbal him, but that is how I would describe it.

Senator Hill—That is the role of an Australian lawyer working with the military command. On the other hand we also had an Australian lawyer—and on at least one occasion two lawyers—working with the Coalition Provisional Authority, the de facto government. At least in part they seem to have also facilitated the work of the ICRC, which is a good thing—something that I would have thought most people would applaud.

Senator FAULKNER—Yes, and even this morning you cannot tell the committee how often that lawyer went to Abu Ghraib jail. Even this morning we do not know.

Senator Hill—If you want to get to the bottom line of all that, the bottom line was that the ICRC was facilitated in its visits—putting a working paper to the military command. That paper seems to have been incorporated in its report. Its report was delivered to the CPA in February and the CPA acted positively upon it. The evidence we had yesterday was that the ICRC was pleased with the response that it received. If the Australian lawyers contributed to getting to that point then that is a good thing.

Senator FAULKNER—I have no doubt that those Australian lawyers were doing their level best to get cleared up and cleaned up an appalling situation in that jail in Iraq. I have absolutely no doubt that that is what their motivation was and what they were doing. So I do not think we need to be lectured about that. The question for you is why you have not been able to establish, until now, what happened, when it happened and what the role of these lawyers was. Why have you been so hands-off in relation to your ministerial responsibilities that it takes a committee like this to go through these matters in fine detail?

This is happening even today, when we heard about a colonel—a legal officer—at the CPA, who we now know from new evidence this morning, has visited—this is only visits to Abu Ghraib jail—on numerous occasions. It does not go to issues about other contact and liaison with the ICRC, which is another matter. Even this morning we cannot be told how often that occurred. When are you going to step up, Senator Hill, and take some responsibility?

Senator Hill—I am not going to ask lawyers what they do every day of their professional lives. That is not my job. What is my job is to be satisfied that they are doing a professional job that is worthwhile. As I said yesterday, not only during my visit to Baghdad in April was there no issue raised of abuses in the prisons but also in my visit there in November, which

seems to have been a key month in these events, there was no mention made. I spoke to a number of these lawyers, I talked to them about their work in the CPA and there was no issue raised of any abuses. Why is that? Perhaps because it is consistent with the evidence that has been given that the Australian lawyers did not see abuses, did not report on abuses. If you are suggesting to me that I need to know where each of those lawyers is every day, what meetings they are having and exactly what they are doing hour by hour, then, no, I do not think that is my responsibility.

Senator FAULKNER—What I am suggesting to you is that, if Australian lawyers were working with the ICRC, visiting—

Senator Hill—Working for the CPA.

Senator FAULKNER—Yes, but liaising with the ICRC, visiting Abu Ghraib jail, trying to sort out the mess we all know it was, then you should have known about it. That is what I am suggesting and I think any reasonable person would come to the same conclusion. And you did not.

Senator Hill—You are refusing to listen to the fact—

Senator FAULKNER—Not only did you not know; you have tried to cover up from that time to this what did occur.

Senator Hill—At every estimates committee you say that.

Senator FAULKNER—Even now, today, you are refusing to answer simple questions about the number of occasions on which a CPA legal officer visited Abu Ghraib jail. You cannot tell us.

Senator Hill—You are refusing to accept the evidence that has been put before the committee that the Australian lawyers saw no abuses, reported no abuses. If you listened to that you cannot therefore logically come to the conclusions that you are coming to.

Senator CHRIS EVANS—That is just not right.

Senator Hill—That explains everything.

Senator CHRIS EVANS—No-one said they saw abuses.

Senator Hill—Well, February.

Senator CHRIS EVANS—But you say that when they visit with the international Red Cross, do we expect them to see abuses? No, there is an inspection of the prison going on.

Senator Hill—The lawyers with the CPA reported back twice in February and they mentioned that the ICRC report had been presented—or there was a draft first and then the final report was presented.

Senator CHRIS EVANS—Yes, they described it as shocking, in fact.

Senator Hill—That occurred.

Senator CHRIS EVANS—And you did not know about it. No-one in Defence knew about it.

Senator Hill—What do you mean, they did not know about it?

Senator CHRIS EVANS—Your claim is that despite those detailed reports—that detailed ICRC report in February, the sit reps and the reaction of the Americans to it—no-one in Defence knew about it. It was not passed up the chain, no-one acted on it, no-one was concerned about it.

Senator Hill—There were two sit reps—

Senator CHRIS EVANS—You and the Prime Minister did not know anything until the photos came out.

Senator Hill—Neither did you. The two sit reps—

Senator CHRIS EVANS—I do not have the base of advice—

Senator FAULKNER—He is not Australia's defence minister; you are!

Senator Hill—Nobody did. Two sit reps in February reported that an ICRC report had been delivered to the CPA. We received advice that it had been received positively and acted upon and that the ICRC was pleased with the response. The report itself was not delivered to Australia. The report itself was not returned to Australia. It was not delivered to Australia because it was not directed to Australia. We were not an occupying power and we were not the CPA. The positive thing was that it was received in a spirit where the occupying powers and the CPA promised to do better, to change the commandant, to ensure—

Senator CHRIS EVANS—Your evidence is that no-one told you, anyway.

Senator Hill—better training, and that is the way the system is supposed to work. To the extent that Australian lawyers have contributed to delivering better outcomes in the prison system in Iraq, that is a good thing and I am pleased that it has happened.

Senator CHRIS EVANS—But you do not care whether you knew or not?

Senator Hill—That is not what I have said, at all.

Senator CHRIS EVANS—Hear no evil, see no evil.

Senator Hill—That is not what I have said, at all.

Senator CHRIS EVANS—It is.

Senator Hill—I know the Australian lawyers have been working there—

Senator CHRIS EVANS—Did anyone tell you in February when you got the information?

Senator Hill—I know the jobs that they have had there. I know that they have been worthwhile jobs and that now it would seem that they have also contributed to better outcomes in the Iraqi prison system, and that is a good thing.

Senator CHRIS EVANS—And that is all you need to know?

Senator Hill—It is not my task to monitor their day-by-day work—of course, it is not.

Senator CHRIS EVANS—You are not concerned at all if there is abuse going on in the prisons—

Senator Hill—Of course I am concerned if there is abuse going on in the prisons.

Senator CHRIS EVANS—Don't you think that should have been brought to your attention?

Senator Hill—We have debated this before—whether the October working paper should have been brought to our attention. It is a debatable point.

Senator CHRIS EVANS—What about the sit rep in February?

Senator Hill—Let us talk about October. The lawyer working within the military command did not even report abuses to his Australian senior within that military command. I think that when you call Commodore Darby he will say that abuses were not brought to his attention.

Senator CHRIS EVANS—But we do know he shared the report with Colonel Muggleton.

Senator Hill—The lawyer himself does not refer, from his experience, to abuses actually existing. Nevertheless, the report has clearly contributed to development of the final February report and that has been acted upon in a constructive and positive way, so that is a good thing. In relation to February, yes, there were two lawyers who facilitated both the draft report and the final report going to the CPA. That, to me, seems very much an incidental task but, nevertheless, I am pleased that they are doing that. I am pleased that Australian lawyers are working—even if it is on behalf of the CPA—with the ICRC because that delivers better outcomes in the prison system. That is a good thing. So it seems that they were doing their job properly and, to some extent—maybe minor—they have contributed to a better outcome. If you want to, and if Senator Faulkner wants to, we can go into their business on a day-by-day basis as to whether it was on a Wednesday or a Thursday that they attended a visit with the ICRC. If this committee thinks that sort of detail is important, then no doubt we will do it. We might end up doing it for weeks.

Senator CHRIS EVANS—But, until a couple of days ago, you and the Prime Minister maintained that the Australian government had no knowledge of these matters. Now we have established that we had two lawyers inside Iraq who had seen the October report, and one of them was actually preparing the response to it, which was the ICRC's concern about it. We know that situation reports and an end of tour report came back to the government in February that dealt with all the major issues involved and yet you still maintain the fiction that we did not know anything about it until the photos came out.

Senator Hill—I have not done that at all.

Senator CHRIS EVANS—You have started to backtrack on that, I admit, but, until recently, that has been the position.

Senator Hill—The only thing I have said that has changed is that when I said it I did not have knowledge of an October report. Now I have knowledge of a working paper which was delivered at about the end of October, beginning of November, by the ICRC that certainly expresses concerns about aspects of the way in which the prison was being run.

Senator CHRIS EVANS—Do you accept now that it did express concerns about aspects of the way the prison was run? There has been an attempt to downplay the seriousness of the October report in your and the Prime Minister's public comments.

Senator Hill—I think yesterday I described it as a grim report. The operation of that prison—

Senator CHRIS EVANS—The October report or the February report?

Senator Hill—I think the February one painted an even worse picture—

Senator CHRIS EVANS—But you accept that the October report presented a grim and serious picture.

Senator Hill—but I am certainly uncomfortable with some of the matters that are alleged within the October report and, certainly, if that was being brought to the attention of the military leadership, which is the job of ICRC, then I would expect them to promptly act upon it.

Senator FAULKNER—You said that you accepted the responsibilities that flowed from that February report. That is what you said in the Senate chamber, wasn't it?

Senator Hill—What do you mean?

Senator FAULKNER—Didn't you say on 11 May in the Senate chamber—I think, in answer to a question from me—that the government became aware of the report and you accepted the responsibilities that flowed from it? I thought they were your words; I do not have it in front of me.

Senator Hill—That related to the sit reps that had come back to Australia mentioning the fact that an ICRC report had been prepared. As we all now know, that sit rep—not the report because that never came back—was not passed up the chain. I was not seeking to blame anybody for that. Presumably the assessment was made that because it was primarily for the CPA and the occupying powers, that they were acting upon it and that the report had not even been furnished to the Australian government, then it was not necessary for the content of that particular sit rep to be passed up the chain.

Senator FAULKNER—I am asking: what are the responsibilities that flow from that?

Senator HILL—The responsibilities that flow from the report, in my view, is for those to whom it is directed, the occupying powers, and the CPA—

Senator CHRIS EVANS—It was addressed to the coalition forces.

Senator Hill—We had that debate yesterday.

Senator CHRIS EVANS—Do not mislead; it is addressed to the coalition forces.

Senator Hill—It was not delivered to the 30 countries that were in the coalition.

Senator CHRIS EVANS—Just be clear about who it was addressed to.

Senator Hill—It was delivered to the two who were the occupying powers. Senator Faulkner asked the question: what responsibilities flow from it? In my view the responsibility is to act upon it—and obviously, if necessary, to conduct further investigations, but to respond positively. The advice that we have received is that the CPA and the occupying powers did so act. They expressed shock and they immediately announced changes that they were going to implement. As we have been told, the ICRC was pleased with the response.

Senator FAULKNER—I would like to ask this of Air Commodore Harvey: in relation to the material you have provided to us, do you have any idea or knowledge at this stage of the pattern of contact—this is obviously separate to visits to Abu Ghraib jail and Camp Cropper—between our various lawyers and these numerous liaison contacts, meetings or discussions with the ICRC? I think you understand that this is separate to the visits to the jails. Do we have any idea of that?

Air Cdre S. Harvey—I think I mentioned in evidence yesterday that at the Coalition Provisional Authority level these liaison meetings which the legal officer was involved in were held on a monthly basis. That was my understanding. That is the extent of the detail that I have.

Senator FAULKNER—What about contact with the ICRC?

Air Cdre S. Harvey—I do not have any detailed knowledge about the level of contact if that is the question you are asking.

Senator FAULKNER—It is fair to say that we know—apart from the other evidence that you provided to us—that legal officers have had contact. ‘Liaison’ is the word that has been used at this committee—which is fair enough. At times there have been meetings with the ICRC. We know that during some of that time the ICRC were producing working papers, and subsequently a report, that described quite horrific conditions in Abu Ghraib jail and also at Camp Cropper. I wonder if you would be able to provide for the committee an overview of that sort of contact. If it is not able to be done today, I think it is something that should at least be taken on notice so the committee can understand how this work was undertaken. In other words, what was the work of liaison with the ICRC, separate to what occurred on site at the jails?

Senator Hill—This is by lawyers that we had either in the CPA or with the joint command?

Senator FAULKNER—Indeed. Are you able to give us a picture of that activity?

Air Cdre S. Harvey—I am not able to at the moment, so I will need to take that on notice.

Senator CHRIS EVANS—You say that the colonel who was at the CPA from May 2003 to November 2003 and is now back there made numerous visits to Abu Ghraib prison. Do you have any idea of the period of time—whether it was throughout his stay—and the number of visits?

Air Cdre S. Harvey—No, I do not. That legal officer was there for a lot longer than any other legal officer, by virtue of going there for two rotations, so you would expect him to have made more visits than other legal officers. But as to the number and the sequence, again, I am afraid I do not know.

Senator CHRIS EVANS—That is right. The lieutenant colonel who replaced him went out there twice and once to Cropper in a three-month period, so I accept that. What I found staggering about the evidence this morning is that the tenor of the evidence yesterday was that it was unlikely that they had much to do with the prisons because of the nature of the division of responsibilities between the CPA and the military headquarters—the military headquarters was running the prisons, so the officers there would have had more contact with prisoners and

prison issues. Do you have an idea of what the colonel from the CPA was doing in visiting the prison, given those broader responsibilities?

Gen. Cosgrove—I remind the committee that I believe there is a general prisoner population at the prison. It is not simply used for military detainees. I do not know whether that is of relevance here but I remind senators of it.

Senator FAULKNER—You do not know whether it is of relevance?

Gen. Cosgrove—No, I do not.

Senator FAULKNER—You are making the point that there are civilian and military prisoners in Abu Ghraib jail?

Gen. Cosgrove—Yes.

Senator BROWN—One of the questions I asked last night must be followed up following the revelation about the colonel visiting the jail on numerous occasions. In the light of the claims by the Red Cross that there had been abuses—breaches of the Geneva convention—in October, what effort did the colonel or Major O’Kane make to get an independent assessment of these claims? What effort was made to speak to the prisoners in Abu Ghraib about the grave claims of abuse that the Red Cross had brought forward?

Senator Hill—I am getting a bit confused about my colonels. A minute ago we were talking about the role of the Australian military lawyers who were assisting the Coalition Provisional Authority. Is that what you are talking about, Senator Brown, or are you talking—as we were last night—about the lawyer who was working with the military command?

Senator BROWN—I am talking about Major O’Kane and the colonel who made numerous visits to Abu Ghraib as described this morning.

Senator Hill—I am happy to go through the role Major O’Kane played again but I thought we did that last night. In relation to the colonel who is being referred to this morning we are talking about an earlier period. That therefore does not seem to relate to the October working paper.

Senator CHRIS EVANS—I am not sure that is right.

Senator BROWN—I am not sure it is right either.

Senator CHRIS EVANS—Your evidence today was that this chap was there from May 2003 to November 2003, which is the period that the Red Cross covers.

Gen. Cosgrove—Yes, but was he aware of the—

Senator CHRIS EVANS—October report?

Gen. Cosgrove—You see, we think the October report comes to hand in November, so—

Senator CHRIS EVANS—We know his successor was aware of it. Whether he was aware of it I do not know.

Gen. Cosgrove—I am just trying to get the correlation of times right.

Senator CHRIS EVANS—Maybe we should ask Air Commodore Harvey that.

Gen. Cosgrove—I was just wondering aloud to the minister whether the colonel was available and in Iraq at that time or whether that was part of his time out of the country.

Senator BROWN—To determine that we need to know from the colonel when he made the visits to Abu Ghraib and when he became aware—

Gen. Cosgrove—You are putting him in the context of the October reports, aren't you?

Senator BROWN—I am putting him in the context of the October report and, indeed, the July report from Amnesty International which had been released in Baghdad, which predates him making any of these visits to Abu Ghraib.

Gen. Cosgrove—I understand; you made that point yesterday, Senator.

Senator BROWN—I wonder if you can get that information for the committee.

Gen. Cosgrove—A note of whether he made his visits in the context of any of those reports?

Senator BROWN—If he knew about the Amnesty report released at a press conference in Baghdad in July and when he first knew about the Red Cross report, and then if he made inquiries—

Gen. Cosgrove—These are the October working papers or the February report? Can we be more specific?

Senator BROWN—I am talking about the October working paper.

Senator Hill—In relation to that particular colonel we would have to seek further information. He is still in Iraq—and doing a very good job, I might say. We will seek that further information for you.

Senator BROWN—Could you just reiterate why it is best that his name not be used?

Gen. Cosgrove—There are some names on the public record that, through this issue of public interest, we deal with. We, with the cooperation of the committee, have refrained from using names generally about people deployed to Iraq.

Senator BROWN—Senator Hill, you were in Iraq in November.

Senator Hill—Yes.

Senator BROWN—Did you ask about prisoners taken by Australians or, indeed, by the coalition forces at that time?

Senator Hill—No.

Senator BROWN—Why not?

Senator Hill—It was not an issue.

Senator BROWN—It is always an issue what happens to prisoners taken in a theatre of war. It did not cross your mind to ask what was happening with the Iraqis being taken into custody by Australians or by—

Senator Hill—They were not taken into custody by Australians.

Senator BROWN—How did you know that if you did not ask?

Senator Hill—Because that occurred well before November. You are asking me what I raised in Iraq in November.

Senator BROWN—That is right, and I am asking: how did you know there weren't prisoners being taken by Australians if you had not asked about prisoners?

Senator Hill—Because I knew of the instances where Australians had participated in certain captures and I knew that, in each instance, custody was taken by a coalition colleague.

Senator BROWN—The custody was handed across to a coalition colleague.

Senator Hill—That is what you say.

Senator BROWN—What role did you have in drawing up or approving that arrangement whereby people detained by Australian forces were always put into the custody of the US or UK forces in Iraq?

Senator Hill—I certainly contributed to development of a position that if we were to participate in the capture of Iraqis we would prefer them to be held by a coalition colleague. Why was that? Because each of the members of the coalition were to assume certain responsibilities and apply certain assets to meet those tasks. We could have sent the whole apparatus that amounts to a detention facility, with military police and the like, but because we were likely to capture fewer than others it was more appropriate that the others set up the detention facilities. That just seemed to be a logical and sensible division of tasks.

Senator BROWN—That may well be—and I can follow that logic and sense—but this arrangement for the transfer of prisoners, which had been signed earlier by Australia, the UK and the US, was not about the infrastructure that was set up—

Senator Hill—I will explain that too if you like.

Senator BROWN—Just let me finish. It was an arrangement which said that the responsibility for detainees—that is, people taken into custody—remains with the power involved. So, if Australians take prisoners into custody, even though they are instantly transferred across to one of the other countries, the responsibility remains with the detaining power. That is what this document says. Secondly, the prisoners should be protected according to the Geneva convention. We know that whatever arrangement Australia made outside this document—and I have seen no written arrangement other than the one you are describing, which I presume was verbal, in the absence of a written directive—fell down. What I am trying to establish here is: why did Australia not insist on keeping with the Geneva convention and in particular on keeping this arrangement made between the three forces that the detainees, people detained by Australians taking part in the action, should have the Geneva convention follow them all the way down the line? It seems to me that there was an absence of overview. It was just: 'Hand them across to the US forces and from there we absolve ourselves of responsibility.' What I am asking is: why didn't you inquire about this in November and what role did you have in allowing that set-up to evolve?

Senator Hill—I have said to you that for practical reasons it was better for prisoners to be taken by coalition colleagues that had the facilities and staff to manage those prisoners. As it occurred, where Australians were involved in the capture of individuals, it was possible for coalition colleagues to take possession of those individuals, and we expected them to be

treated in accordance with the Geneva convention. We had no reason to believe that they would not be, and we actually have got no reason to believe that they were not. Having said that, we knew that there was also the possibility that we might be involved in the capture of individuals where there was not a coalition party present. Of course, the agreement does not only apply to us; it applies to the other signatories as well, because they could fall into that situation. But, as it applies to us, we knew the circumstance could occur and we believed it was important to set out what the legal arrangements and obligations were if that did occur. As Senator Brown has said, in those circumstances there would be additional obligations upon us. As it happened in practice, that did not occur.

Senator BROWN—But here we have the situation where you arrive in Baghdad in November and there is an agreement signed, which you would be aware of, by the commander of the Australian national headquarters, Brigadier McNarn—

Senator Hill—I think that was in March, wasn't it?

Senator BROWN—Yes, right at the outset—

Senator Hill—It was not quite at the outset.

Senator BROWN—It was very early on. It was for the handling of prisoners taken by Australians or taken in actions in which Australians were involved. It gives the responsibility to the detaining force and therefore the detaining country—that is, where Australia is involved, to Australia. An arrangement for practical reasons is made that these prisoners will always go to the US or the UK, as the case may be, but the responsibility remains very clearly with Australia for the wellbeing of those prisoners.

Senator Hill—That is correct if they were taken in the circumstances as set out in that agreement. But what I am saying to you is that in the circumstances where we were associated with the capture of prisoners it was otherwise than in that agreement.

Senator BROWN—You arrive in Baghdad in November, Minister, and by that time we know that Major O'Kane and perhaps the colonel both knew about the Red Cross report which described criminal abuses at Abu Ghraib. But that was not reported to you, and I submit to you—

Senator Hill—We have not ever said that the Red Cross report described criminal abuses.

Senator BROWN—I am saying that.

Senator Hill—I do not think you have even seen it.

Senator BROWN—I have seen the descriptions of it, and the descriptions—

Senator Hill—Have you seen the working paper?

Senator BROWN—The descriptions are—

Senator Hill—Have you seen the working paper?

Senator BROWN—I am putting that to you. If you want to make a categorical statement to the committee that that report did not involve criminal abuse, then I will take that as read. But if you are not prepared to do that, Senator Hill, I say that the news that has come out from the public information about that Red Cross report is about very serious criminal abuse of

prisoners in Abu Ghraib. You are in Baghdad in November, a month after this report and indeed five months after the Amnesty International report, which was not as specific but raised very serious matters, and you did not ask about the treatment of prisoners.

Senator Hill—The ICRC working paper was clearly just that: it was a private paper delivered by the ICRC to the coalition military headquarters. None of us was aware of it at that time. It was the ICRC working in the way that it does. It conducted inspections and it met with people and interviewed them during the course of last year. It met with prisoners and took down their allegations, it made observations, and in relation to various detention practices or facilities it clearly produced working papers which it took to the military authorities and, where it was unhappy with what it was seeing, it basically said, ‘Lift your game.’ That was internal business that was taking place. It was not business that was brought to my attention.

Senator BROWN—First of all, it was not ‘lift your game’; it was ‘stop the abuse’—a very serious matter—and an Australian major had been tasked to draft a response on that and he made subsequent visits to Abu Ghraib to look at conditions there. We now know that earlier on a colonel had made frequent or numerous visits.

Senator Hill—We know he made one visit subsequently to Abu Ghraib, again to facilitate the Red Cross.

Senator BROWN—Right, and in Baghdad you are not asking questions about the welfare of prisoners taken by Australian or indeed by the combined forces.

Senator Hill—The prisoners were not taken by Australians and I had no reason to believe that they were being treated otherwise than humanely. That is what we expected of our coalition colleagues and we had every reason to expect it.

Senator BROWN—You did not ask about prisoners being taken.

Senator Hill—The prisoners that we were associated with were not taken as you have alleged, and I was aware of the circumstances in which they were taken. That was months before.

Senator BROWN—Let me put the question to you again. When you were in Baghdad in November did you ask about prisoners being taken by Australians and about their welfare?

Senator Hill—No.

Senator BROWN—You should have.

Senator Hill—Because prisoners were not taken by the Australians. If we were running the prison system then the chances are I would have, because I was asking about the roles that we were playing in Iraq. I was meeting with our forces out at Baghdad international airport, those offering traffic control facilities. I was meeting with our security detachment that is protecting our diplomats. I was meeting with those in the headquarters. I was meeting with the Air Force crews that are flying humanitarian missions every week into Iraq. I was meeting with the Air Force Orion crews that were doing maritime surveillance and trying to protect Iraq and other interests.

Senator BROWN—Here we have this situation, though, where you are meeting in the vicinity of this prison at the airport. There are officers in the Australian forces who know about allegations of serious abuse of prisoners at that prison. Australia is involved in these hostilities and you are trying, I put it to you, by artifice, to say that Australians do not take prisoners.

Senator Hill—You cannot just make those assertions. The only officer that we now know had knowledge of the working paper, the only lawyer, has advised us that he did not see abuses.

Senator CHRIS EVANS—With respect, Minister, that is not true. We know of evidence that two Australian lawyers knew—

Senator Hill—I said at that time—October.

Senator CHRIS EVANS—I am talking about October, the evidence from Air Commodore Harvey was that Muggleton was—

Senator Hill—We learnt last night that he brought the report to the attention of another lawyer who was working for the CPA. The only one that we know of that was actually working on that issue—

Senator CHRIS EVANS—Not working on it—I was just saying had knowledge of.

Senator Hill—Okay—was the lawyer working with the military headquarters.

Senator FAULKNER—I ask you this in relation to those issues that Senator Brown is pursuing and no doubt will come back to in a moment. I cannot recall all the details but I remember that the Australian Navy took some Iraqi prisoners, from memory they were an Iraqi mine patrol or something like that. You would recall the incident.

Senator Hill—I think there were two instances when we were associated with the taking or transportation of prisoners—the Navy was.

Senator FAULKNER—Is the situation in that circumstance, the handling of those prisoners, consistent with the process you outlined to Senator Brown in that particular circumstance?

Senator Hill—I am advised in both of those instances that the prisoners were actually held by coalition colleagues, not by the Australians. We can go through the circumstances.

Senator FAULKNER—No, I am just interested in—

Senator Hill—My recollection is that I was advised that there were four separate occasions when Australian forces were involved in the capture of individuals. On each of those occasions possession of the individuals was taken by a coalition colleague.

Senator FAULKNER—But in this particular instance in relation at least to an Iraqi mine patrol—and there may have been another similar instance; I certainly recall one—weren't those prisoners fed and looked after, but detained on board an Australian naval vessel?

Senator HILL—They were certainly fed and looked after, but in a technical sense they were being looked after for the detaining authority, which was a coalition colleague.

Senator CHRIS EVANS—And who was that? Did you find some American midshipman passing?

Senator Hill—It was the United States.

Senator FAULKNER—But who was on board that naval vessel?

Gen. Cosgrove—They would be US personnel. I do not have the details of who they were. I could find that out if you would like.

Senator FAULKNER—I am wondering, this is why I was asking—

Gen. Cosgrove—Would you like to know the identity of—

Senator FAULKNER—I certainly do not want to know their names but what you are suggesting, General Cosgrove—

Gen. Cosgrove—I am sorry, would you like to know their rank and the reason why they were there?

Senator FAULKNER—No. What I think you are saying to me and I want to be clear on this is that there were US personnel aboard—I just cannot remember which vessel it was now—

Gen. Cosgrove—*Kanimbla*.

Senator FAULKNER—aboard *Kanimbla*—

Gen. Cosgrove—In the act of detention and with the detainees.

Senator FAULKNER—I see. Thank you.

Gen. Cosgrove—They were US Coastguard personnel.

Senator CHRIS EVANS—They were a long way from home.

Senator BARTLETT—I understand that the issue of whether or not people have been captured by Australians has been covered in previous estimates and in question time. I was not able to be here for all of yesterday, for various reasons, so I do not want to double up on things that have already been covered previously—either yesterday or in previous estimates.

Senator FAULKNER—I do not think we are going to get a left hook from you today.

Senator BARTLETT—Indeed. I know the minister is saying that it is not our responsibility in a technical sense to ensure the welfare of people that we have captured, because we have not captured anybody, but obviously it is in our interests strategically—leaving aside legality—to ensure that prisoners in Iraq are treated properly. Obviously, we have questions about the Red Cross report. Do we have other mechanisms for following up reports of mistreatment with our coalition partners to make sure that things are being done properly? There certainly have been other allegations apart from the Red Cross reports—some of them flowing on from them. How far do we follow those up?

Senator Hill—There was some discussion on the basis of an Amnesty report, although by the end of yesterday there seemed to be some element of doubt about that Amnesty report. Senator Brown has also been talking about a human rights international group report. Our interest is really simply the interest of a party that believes in the Geneva convention and

humanitarian treatment of individuals, not only according to the law but in the spirit of those documents. We talk at a political level—not in many instances and not particularly defence—to other parties that may have authority or influence in these issues and we participate in the various international fora that try to deliver better treatment of prisoners and respect for the laws of armed conflict. We run humanitarian law training courses; we do that for the assistance of others in our region as well as for our own people.

Senator BARTLETT—For example, there has obviously been a lot of focus on the specifics of what happened in Abu Ghraib in a particular period of time, which has clearly demonstrated that all is not as we would like it to be or perhaps as we expected it to be. Have we therefore followed up to make fuller investigations about what happens in other areas? It is not the only area where prisoners are detained, I presume. Have we been rechecking to make sure that things are at a proper standard elsewhere? There were reports a week or so ago about the small number of female detainees in Abu Ghraib and fairly compelling evidence of assaults and rapes occurring there. When those reports appear, do we follow those up or do we just say, ‘Well, that is in the media. We won’t worry about it unless we get it through formal channels’?

Senator Hill—As I said, the October working document seems to have been treated that way—as part of the ICRC’s work on the ground to improve outcomes and detention practices. The February report, which was a formal report to the occupying powers and to the Coalition Provisional Authority, was received and acted upon. Australia played, I think it is fair to say, a minor role in that we facilitated meetings between the ICRC and the CPA. And then, of course, in May we all became aware, in very dramatic terms, of abuses that had occurred in Abu Ghraib. But by that time the United States, which had responsibility for those abuses, was already taking action.

Senator BARTLETT—Are you saying that because they are already taking action we are leaving it to them?

Senator Hill—My understanding is that action was being taken on the ICRC report. That is an international process that is designed to lead to acceptable standards within prisons and of detention practices. That was being positively responded to by the parties to whom it was directed. On the other hand, when the Americans learned of specific abuses, they immediately instituted an investigation and that has led to prosecution of those who have breached criminal law.

Senator BARTLETT—I know we have been making our own efforts in relation to details of the Red Cross report. The photographs have obviously had a lot of global notoriety. Have we asked to see those? Has anyone in the government or in Defence seen some or all of those photographs?

Senator Hill—The American photographs would not be in our possession. We would not have seen anything more than what has appeared publicly. The important thing is that if abuses have occurred action is taken. It would be better if the abuses had not occurred but, it having happened, the important thing is that, consistent with maintaining the values that we say are important, proper process follows. As I said before, those abuses were discovered by the United States. They were discovered within the military police contingent where one

policeman in effect came forward and said there were abuses and illegal activities occurring here. They were immediately investigated. In January the US military put out a statement saying that they were investigated. Reports have followed from that, prosecutions have followed and action has been taken, which we hope will act to not only punish those who have breached the law but will be a deterrent against others breaching the law.

In relation to the overall picture of detention practices, maintenance of prisons, interrogation protocols and so forth, as I said, that was pursued by the International Committee of the Red Cross and our advice is that the parties that have the capacity to improve those outcomes were acting in accordance with the advice that the International Committee of the Red Cross had given.

Senator BARTLETT—I understand in this context that you might be concerned about me trying to embarrass the government. My concern is that we have an obligation, whether you as the government or us as a Senate committee, to try and establish the full details of what has been happening and by that process also ruling out things that have not happened, because obviously there are now a lot of reports about all sorts of allegations of what has happened. This is in my view detrimental to Australia and detrimental to our Defence personnel who are part of the coalition authority, whether or not you might agree that we are occupying forces. So when there are specific reports, and I mentioned before the report some of the photographs showing serious abuse—

Senator Hill—We are not part of the coalition authority, but we have assisted the coalition authority where we can. One area has been to provide them with at least one and on some occasions two military lawyers.

Senator BARTLETT—I am not accusing anyone in any way or suggesting we are involved in these abuses. Regardless of technicalities, I think it is pretty widely assumed and perceived by the whole world, let alone our own country, that we are part of what is going on in Iraq and if there is mistreatment happening that we are damaged by association.

There are reports of some of these photographs being beyond what has been shown publicly and including serious abuse of female prisoners—sexual abuse and assault. Have we followed up those reports to see if they are accurate or are we just leaving it all up to the US and their own processes? We do not seek to establish what is accurate and what is not ourselves?

Senator Hill—We have not intervened in the US investigation.

Senator BARTLETT—It is not intervening in their investigation; it is seeking to find out what the facts are.

Senator Hill—We have not tried to go behind the US investigation of abuses that was announced in January.

Senator BARTLETT—So we have not asked to see what the photographs are or what the extent of the evidence is?

Senator Hill—What the US has said is that a small number of individuals were responsible for gross abuses which were illegal behaviour and that they would be prosecuted. We, and the world, in fact, are seeing that occurring. In parallel, as I was saying, there are more global

humanitarian mechanisms at work—and that is through the ICRC. It is a good thing that the ICRC was able to do this work in Iraq during the course of last year. What was disturbing were some of its findings but the evidence would suggest that, when those findings were presented to the occupying powers and the CPA, the de facto government, action was immediately taken. You can argue that we should go beyond that, but it seems to me that if appropriate action was being taken then I do not really see what we should have been doing beyond that.

Senator BARTLETT—What I am asking—and I guess I can put forward my view, but I do not particularly see the need to get into a speech here about what my view is—is what the government or the Department of Defence has done. Is it the case that we have not asked to see the full extent of these photographs—I think there are 1,800 photographs—that have received a fair bit of global publicity?

Senator Hill—Defence has not, to my knowledge, intervened in the US investigation.

Senator BARTLETT—It is not intervening or seeking to influence their investigations.

Senator Hill—Well, it is if you go to them and say, ‘We want to see the evidence. We want to double-check your investigation. We want to ensure that, in our view, you’re prosecuting the right people.’ Surely that is intervening.

Senator BARTLETT—My question does not go to reassuring ourselves the prosecution is being done properly; my question goes to us informing ourselves of the full extent of the abuse that has occurred, which is different from ensuring that the legal processes are followed properly. We are not seeking to fully inform ourselves about what the full extent or the full nature of the abuses that have occurred is.

Senator Hill—We are confident that the US will properly prosecute those issues.

Senator BARTLETT—I am not arguing that point one way or the other.

Senator Hill—If we are confident of that then we do not seek to go behind the US processes to examine whether they are doing so.

Senator BARTLETT—That is not what my question goes to; my question goes to us informing ourselves as to the full extent of what has happened, not whether or not the guilty people are going to be punished—that may well happen regardless. Surely it is in our interests to know the full extent of the abuses that have occurred, particularly if public allegations are being made that it involves not just what we have seen but extra things such as the serious sexual assault of female Iraqi prisoners. Surely you would seek to establish whether or not that is true.

Senator Hill—I think the ICRC clearly has done a good job in Iraq in the last year. I think access generally has been quite good, from what I have read. There have been some problems from time to time. It has not been published because it does not publish, but it certainly delivered a comprehensive and critical report to the occupying powers and the CPA in February of this year.

Senator FAULKNER—It is not true that access has been good, is it? What does the ICRC say about access?

Senator HILL—I said generally. They expressed some concern back in October but the evidence is that that was being responded to positively as well.

Senator FAULKNER—The truth is that access was only granted for predetermined visitors.

Senator Hill—The ICRC was carrying out inspections and investigations across Iraq from March of last year through to November of last year. As I read the documentation, basically it was given good access. There are some circumstances, some occasions, where it was not. It would seem that when that was occurring it was also responded to positively.

Senator BROWN—No, what happened is that when the ICRC brought forward its complaints of abuse in October the spot visits were suddenly halted and changed to an arrangement whereby an appointment had to be made. We know from the evidence yesterday that Major O’Kane was part of the determination process and that reaction. Indeed in January when the Red Cross came back for another visit he visited the prison on 2 January to give a presentation to the prison officers, some of whom we must assume were part of the abusive system at that prison, leading up to the Red Cross visit two days later. The response of the coalition to the Red Cross uncovering abuse was to suddenly stop the unannounced visits which had uncovered that abuse.

One of the things I would like to know is what role the major took in making this new determination. I have a feeling, unlike Senator Faulkner, that in fact he was left subject to the US determinants that changed this system, remembering that General Karpinski had said that the Red Cross claims of abuse were treated light heartedly by senior officers involved in the prison. One of the responses was more determined than that. It was that they would not have the Red Cross come into the prison unannounced again. I asked about that last night and it seems that there was no Australian response to this change of circumstance. So far from having ready access, Senator Hill, there was a change to close down the access which had led to the discovery of the abuse. If you ask me, that was a wrong response to the abuse. In effect, the response, at least during that period of November-December, was to say that we will deal with the abuse by preventing it being surveilled in the way that the Red Cross had done in the past.

Senator Hill—I do not think you are being fair. If you go to the February report, which is now public in that confidence was breached and it was put on the Internet, the ICRC simply would not have been able to reveal that mass of material if it had not been given reasonable access.

Senator BROWN—That mass of material came from those spot visits by the ICRC who saw with their own eyes the abuse of prisoners. And they followed through in January and that led to the February report. But I am saying that the initial response—

Senator Hill—It was from March of last year to November of last year. I am not saying that access worked well in all instances. We know of one in October when it did not.

CHAIR—Can I just correct the record from yesterday? I said that the department’s answers to questions on notice at the last estimates were not received until 14 May. They were actually received by the committee by 16 April. I apologise for that error and ask that the record be corrected.

Proceedings suspended from 10.30 a.m. to 10.50 a.m.

Senator BROWN—Senator Hill, in April of this year you visited Baghdad again. On 1 April this year, the report by General Taguba into the criminal abuses at Abu Ghraib and elsewhere had been completed. Did you know about that report when you were in Baghdad?

Senator Hill—No. The first I knew of the detail of those abuses was when it was made public. It was either right at the end of April or the beginning of May.

Senator BROWN—When was the first you knew about claims of abuses or allegations of abuses?

Senator Hill—The first I knew was when it was made public. I say it was the beginning of May; it was about the beginning of May. However, I have conceded that the US had put out a press release in January saying it was investigating these abuses and that there was a CNN report of that.

Senator BROWN—How did the government become acquainted with that press release and that CNN report?

Senator Hill—Speaking for myself, I think it was when it all became public in early May. It was said at that time that it followed an investigation that had commenced in January, which had been revealed at that time; that there were allegations of abuse by certain individuals, that there were allegedly photographs of those abuses and that they were being investigated.

Senator BROWN—When you were in Baghdad in November, the reports from the Red Cross had already been handed to the coalition. By the time you went back to Baghdad in April the CNN report and a press release from the US had come out and a thorough-going report had taken place in the US defence forces with General Taguba, which was extraordinarily deep in its investigation of what had happened at Abu Ghraib. It had, by then, already marked down General Karpinski for relief of her duties and it had detailed in the months leading up to April the whole catalogue of criminal abuses going on in Abu Ghraib and elsewhere. How can it be that you, as Minister for Defence, in a coalition in Iraq, did not know about any of this?

Senator Hill—The criminal abuses came to light by a US military police officer providing information to US authorities in January this year.

Senator BROWN—No, it—

Senator Hill—I will answer the question; you have asked it. The US announced—

Senator BROWN—Where you have got your facts wrong, it needs to be responded to.

Senator Hill—Let me finish answering the question. The US announced—although nobody seems to have noted it—in January that it was investigating these alleged wrongdoings. Then, by early May, we had found out the result of those investigations and a process of prosecution was ensuing. In parallel there had, during the course of last year, been an ICRC process taking place, which looked at a range of different issues—detention practices, how people are detained, how they are transported, the prison conditions in which they are kept, interrogation practices and the like. What we have learnt is that during the course of the year the ICRC produced working papers, and certainly we now know that at the

end of October it produced a working paper in relation to Abu Ghraib which it delivered to the coalition military authority that was responsible for the prison.

We now know that at least part of that was incorporated overall within their nationwide report which they delivered to the Coalition Provisional Authority and the occupying powers, the United States and the United Kingdom, in February of this year. We have been advised that that was received with expressions of shock and an undertaking was given by those authorities that they would immediately respond. We were told that there would be a change in leadership at the prison, that there would be new training processes put in place and, as we heard yesterday, we were told that the ICRC responded positively to the initiatives that had been put to them. What I know about the February paper—because that has been published on the Internet—is that it outlined serious abuses that obviously would require an immediate response. What I now know of the working paper that had been delivered in October is that it certainly—I used the expression yesterday—outlined a grim picture in relation to the prison that I believe would have required a response by the military authorities who were responsible for the prison when it was received by them as well.

Senator BROWN—So we have got an Amnesty report flagging abuses in July, we have got a Red Cross report which paints a grim picture in October, we have got the US establishing, at the highest level, an investigation which can only be described as a criminal investigation in January, we have got that very detailed and lengthy report—in fact, some thousands of pages all up—from General Taguba in April, and you arrive in Baghdad in April and know none of this?

Senator Hill—I knew that the International Committee of the Red Cross had been doing its work during the course of last year. I had not seen the reports of the ICRC.

Senator BROWN—When you say you knew it was doing its work, what does that mean?

Senator Hill—Australia does not manage the prisons, and Australia is not involved in the interrogation of prisoners. The only contact with these issues has been the support role given by one Australian legal officer in the military command and the support role in terms of facilitating liaison with the ICRC by a legal officer in the Coalition Provisional Authority. The working paper was not sent to other higher authorities within Australia, presumably because it was being responded to by the parties responsible for the prison. The February report was not sent to higher authorities either, because it was not a report that was directed or delivered to Australia. But, as it turns out, it would seem that the parties to whom it was directed, as I said, responded positively and undertook to make the necessary improvements.

Senator BROWN—The picture that is painted here is one of a passive role by you as minister, rather than an active role in which you have responsibility for this nation in making sure that you are acquainted with grave issues like these which involve our defence forces, because we are in a coalition, and that you can act in this nation's interest when they occur and when they arise because you are informed. Instead, we get a picture which, after a good start with the signing of an agreement—for example, that prisoners will be the responsibility of those who detain them—quickly shows a derogation of that responsibility by saying that all prisoners who are taken where there are US or UK entities will be claimed to be the responsibility of them, not us. Red Cross reports arise and rather than you keeping an active

role in insisting that such information be brought to your attention, it is left with the US authorities, even though we have Defence Force personnel involved, right at the core of it, in dealing with those claims and then responding to them. Then, when the US sets up a major military commission of inquiry at the highest level—and this is coming from no less than the White House—over two months of this year to look into these abuses, you did not know about it. And when you got to Baghdad in April, you did not know that that inquiry had been under way and you did not know that the result of that inquiry was already extant and available to our allies in the White House.

Why should this committee not form the view that your passivity and your acquiescence in being a minister who received information when it got to you but not having looked for it has left our defence forces and, indeed, this country in a second-rate position? Rather than actively defending the principles—for example, the Geneva convention, which we are signed up to and which Australians, I would submit, want us to actively ascribe to—you are doing nothing. You do not even know what is going on.

Senator Hill—Australia has, as you say, signed up to the Geneva convention, and we believe in it as well. Even when the Geneva convention might not apply we still believe prisoners should be treated humanely, and when prisoners are in the possession of the ADF that is the way that they are treated. The ADF's values also are consistent with both the detail and the spirit of the Geneva conventions. When we were associated with the taking of prisoners, although they were detained by the United States, we believed those prisoners would be treated humanely. We have no reason to believe that they have not been.

What we now know is that there were criminal abuses by some individuals in Abu Ghraib jail that came to light in January of this year, and that, when they came to light, an investigation commenced and it has led to prosecutions. We also know, through the process of the International Committee of the Red Cross—which is a process that we support—that there were practices within the detention system within Iraq last year that are unacceptable. We know that when the ICRC put its report to the relevant authorities, the occupying powers and the Coalition Provisional Authority, they responded positively to that report and undertook to make changes to those practices. Basically, when you say 'with passivity', I am saying that there are certain specific responsibilities placed on particular persons and parties, and we had no reason to believe that they were otherwise than meeting their obligations.

Senator BROWN—I do not hear anything in your answer which talks about your responsibility. You have to remember that the government signed treaties like the Geneva convention, and it is governments who are responsible. You cannot delegate that to somebody else. It goes down the line. What I am saying here is that the picture that has been painted in the last 24 hours or so is one of you being hands off and you being uninformed. Are you leaving it to somebody else rather than actively finding out on the ground what the limited but very important Australian Defence Force personnel are doing in Iraq? And even when the news of the abuse surfaced—back in October, and I submit that it was back as far as July—it did not come onto your radar screen: it was missing because you did not ask about it, you did not specifically make sure that the Australian government's responsibilities were being followed up right throughout this business. Even when you got to Baghdad on the second

occasion, in April, you have made it clear that you did not know about the US investigations, which had by then been completed.

Senator Hill—It was not an issue at that time. It became an issue when—

Senator BROWN—It was not an issue because you did not find out about it.

Senator Hill—It became an issue when it became public at the beginning of May. It is true that I have not sought to go behind the processes of the International Committee of the Red Cross. I have confidence in their processes—as, I have said, I have had confidence in the investigative and criminal prosecution processes of the United States. I think Senator Brown is arguing that the Australian government should not have had confidence in its coalition colleagues. I do not accept that. The fact that, when abuses came to the knowledge of the US authorities, they acted upon those abuses is an indication that they share the values that we hold. And, when there are breaches, breaches will be addressed.

Senator BROWN—I am not saying that we should not have confidence in our coalition partners; I am saying that we should have confidence in our minister.

Senator Hill—I am not expecting you to have confidence in your minister.

Senator BROWN—I have no assurance with the evidence that we have before us.

Senator Hill—But Australians were not running the prison system. Australians were not guarding prisoners. Australians were not interrogating prisoners.

Senator BROWN—I want to go back to the matter of the prisons and the visits by the major, the colonel and a number of other lawyers to Abu Ghraib. I want to finally get from you whether or not prisoners were spoken to and, if not, why not. On the face of it, in investigating a report from the Red Cross that serious criminal abuse had taken place within the prison, it is not reasonable to simply go to the prison keepers and ask them what their opinion is. If you are going to give a reasoned response to that, surely you have to go to the prisoners and find out their side of the story—if you are going to establish what the situation is. Wouldn't you agree?

Senator Hill—Australia was wanting to assist in the process of stabilisation, reconstruction and transfer of power in Iraq. We have sought to do that in a number of ways. In a modest but nevertheless important way, we have sought to do it by providing some Australian officials and some Australian military officers to various agencies, either the agencies in transition or, as they have developed, the new Iraqi agencies. We have provided them in the area of agriculture, in the area of finance and in the area of defence. We have assisted them in setting up their new department of defence. What we did that is relevant to this inquiry is that we provided a lawyer to assist the joint military command in its tasks and we provided a lawyer—on occasions, two lawyers—to the Coalition Provisional Authority, the de facto government, to assist in its tasks.

I did not get into the day-to-day work that they were doing. If there are problems that need to be brought to my attention, I expect that they will, but they were not seen to be problems as such. It now seems that in part of their work they assisted in the liaison between those authorities, the military authority and the de facto government, and the International Committee of the Red Cross. I think that that is a good thing. Although it may have been a

modest contribution, in terms of the response of those authorities in February to the ICRC report it would seem to have been a positive contribution. I do not see that it is my task to be knocking on the doors of each of the officials and military officers that we have put into Iraq to help with these processes and to be saying basically: 'What is your business for the day? Show me your program.' I just do not think that that is my role.

Senator BROWN—I think it is your role to be acquainted with matters like the international Red Cross delivering reports which go into the hands of Australian officers talking about the criminal abuse of detainees.

Senator Hill—But this is an Australian officer who was working for the joint military command, and the role that he could play was in facilitating the response to the ICRC. That is a good thing, because it logically leads to better practices.

Senator BROWN—No, it does not, because on this occasion it led, for example, to the spot checks by the ICRC being stopped. That process did; I am not saying that Major O'Kane did, because we do not know that. It led to a work practice, in effect.

Senator Hill—It did not, and I think the evidence is such that at least in a small way it has been a step towards better practices within the prisons.

Senator BROWN—I just reiterate here, Minister, that I think it is your role to know what is happening on the ground and, when Australians are seconded to other forces, to ensure that they are well briefed in what the Australian standards are and, in this case, what the Geneva convention says and exactly how it is interpreted by Australia. By default, you become complicit if you do not.

Senator Hill—But this is a military lawyer. This is a specialist.

Senator BROWN—I might be overly defensive of this military lawyer. I do not know how old he is, but I know that you get influenced greatly by the peers with whom you are working. When you are in a subordinate position, if you do not have very strong backup coming from your own country, right from ministerial level down, then you become subordinated to the thinking of those that you are working with. It is my view from the evidence that is available here that the reaction that came from those who were dealing with the initial complaints from the Red Cross was wholly inadequate and the abuse continued afterwards. I am not about—

Senator Hill—As you are making assertions, I will answer that. As we have also established, there was a more senior ADF officer within the joint military command. If you are saying that a more junior lawyer needed somebody for counsel if necessary, such a person was there. Apart from that, there is an Australian military command there with very senior officers. Apart from that, there is the Australian Representative Office and a certain collegiate and supportive atmosphere within that. They all support each other because they live and work in a very dangerous environment.

Senator BROWN—Indeed they do, but—

Senator Hill—If the argument now is that this young lawyer had been cast into an environment that was beyond his capacity to handle, I do not think that that stands up either.

Senator BROWN—I think he has been left in a very invidious position. The responsibility for that starts and ends with you, Minister, because you ought to have known the position he

was in. You ought to have known the work he was doing and you certainly ought to have known about the Red Cross reports and what was going to flow from that. We are going to have a difference of opinion here, but that is how it appears from where I sit. I do not know if this was asked last night but I remember our talking about it. Can the photo of Major O’Kane and the information about Operation Catalyst which was on the web site that was taken down be made available to the committee?

Gen. Cosgrove—That was asked last night. I believe that we have undertaken to do so.

Senator BROWN—Thank you.

Air Cdre S. Harvey—From recollection, I think I was simply asked yesterday what the nature of the article was.

Senator FAULKNER—No; I asked you if the text of the accompanying article could be provided, and that was taken on notice. What I certainly did not do, however—Senator Brown may want to—was ask for the photograph to be provided.

Senator Hill—I think the photograph could be provided to the committee but I do not see why a photograph of junior officers should be put on the public record.

Senator FAULKNER—I did not ask for that.

Senator Hill—Senator Brown is asking for it.

Senator FAULKNER—I know that, but it was indicated that the text was not asked for either. I asked for the text and that was taken on notice. The photograph is a different issue.

Gen. Cosgrove—Would it satisfy you if you saw the photograph but did not use it? We would not want you to use it publicly, Senator Brown.

Senator BROWN—Is that because you think this is going to—

Senator Hill—Senator Brown might not understand it, but we feel some sense of responsibility to our officials. He is an official doing a hard job and, I think, in a modest way contributing to better outcomes within Iraq. This has become a debate about his assessment of the ICRC report and so forth. That is okay, but I do not see that that should necessarily lead to his photograph being all over the media.

Senator BROWN—As you know, my concern is for him; so I will accept that.

Senator Hill—I do not think you are acting that way.

Senator BROWN—I am talking about the matter and I am accepting that. I asked yesterday about the *Interrogation Rules of Engagement*—whether the work of Major O’Kane went into this document which was drawn up in September of last year and when it first became available to the Australians working in this field. Have we got an answer to that?

Senator Hill—The advice we were given yesterday was that that was an American document not for Australian eyes.

Senator FERGUSON—I think General Cosgrove first became aware of it last night when Senator Brown showed it here at the committee—is that correct?

Gen. Cosgrove—That was the first time I had seen it.

Senator FERGUSON—That is what I thought.

Senator BROWN—The question I am asking is: when was the first time that an officer of your forces saw it and became acquainted with it, General?

Senator FERGUSON—We did not even know it existed. How would we know that?

Senator Hill—The advice we had yesterday was that it was not for Australian eyes. Even if it were, Senator Brown's practice is to refer to parts that suit the outcome that he has predetermined. If you look at that document as a whole you see it makes clear that there is an overriding obligation to comply with the Geneva convention.

Senator BROWN—I will put the question again. Can you establish whether Major O'Kane or the colonel were aware of this document and, if so, when, or if any other members of the defence forces were aware of this document, which is the *Interrogation Rules of Engagement*. I think it came out of the policy for interrogation rules, which was drawn up with the input of Major O'Kane as far back as August.

Air Cdre. S. Harvey—In relation to Major O'Kane, I can confirm that he has not seen that document. The *Interrogation Rules of Engagement* were a 'no foreign' document. He had not seen before the document you have in front of you.

Senator BROWN—Just let me ask the minister about this again. To what degree does Australia become subservient to the United States in important matters like this when we are jointly sharing the responsibility in Iraq so that documents as critical as this, among other things, allow for the presence of military working dogs under the CG's approval for interrogation of prisoners? To what degree do we allow ourselves to be put in the invidious position where documents like this are available to the US forces but not to senior levels of the Australian forces? Surely, Minister, you can see that many Australians would be concerned about that.

Senator Hill—I do not put it in terms of being subservient. There are quite difficult issues when there is a coalition that includes states that are under different legal obligations. I had more experience in relation to the differences in the rules of engagement that existed at the time of the combat phase where Australia had a different set of rules because we have accepted international obligations beyond that of the United States. I found that in each instance, despite the difficulties, the United States was prepared to accept our limitations and to accommodate them. So, far from putting ourselves in a position of being subservient to the US, it was pleasing to me, particularly as we were only comparatively a very small part of the total force, that our obligations were respected in the letter and also in the spirit. Senator Brown might then argue: how did the United States allow itself to become subservient to Australia in that regard? The answer is that it is not but in a coalition, if a coalition is to work and the states are under different legal obligations, those obligations have to be accommodated with some sensitivity.

Senator BROWN—I thought that both the US and Australia were signatories to the Geneva conventions and in fact were under the same obligations. What are the different obligations you are talking about?

Senator Hill—Do you want to go through the protocol and the obligations?

Senator FERGUSON—We have already done it once.

Air Cdre. S. Harvey—I do not want to get bogged down in detail but, essentially, as I said yesterday, the Geneva conventions apply and have been subscribed to by Australia and the United States in total. The difference arises in relation to the additional protocols to the Geneva convention which the United States has not signed or ratified but Australia has signed or ratified.

Senator Hill—We have targeting limitations, for example, that the US might accept but nevertheless is not legally obliged to accept.

Senator BROWN—As far as this document is concerned about interrogation of prisoners I submit to you that the Geneva convention binds both countries in the same way.

Senator Hill—Obviously I have not seen that document and I am still not absolutely sure what the document is, but the document itself purports to be subject to the Geneva convention. It states that as a safeguard in the document as presented by you last night, Senator Brown.

Senator BROWN—Yes, but on your own evidence last night some of the matters that are made possible in this interrogation format would amount to torture.

Senator Hill—The detail is not set out in that document. Last night we were talking about blindfolding a prisoner. I said to you that if a prisoner is blindfolded during transit I do not think that amounts to torture. I think you said, ‘What if he is blindfolded for some weeks?’ To me, that is inhumane.

Senator FERGUSON—And their document prevents it.

Senator BROWN—I do not want to delay the committee but, Minister, I find you remiss in not being actively involved in what is going on here, in taking a policy of: ‘Don’t ask, don’t be told.’

Senator FERGUSON—Mr Chairman, I raise a point of order. Senator Brown is not here to make findings. Senator Brown is here to ask questions. He has already asked those questions, and he has asked them time and time again—the same questions over and over again. I do not think the committee is interested in Senator Brown’s findings. He can debate those in the chamber. He is here to ask questions, not to say, ‘My finding is’ or ‘I find things’ and I think he should be brought to order

CHAIR—Yes.

Senator BROWN—So what have you got to say to that, Minister?

Senator Hill—What have I got to say to what?

CHAIR—Senator Brown! I was asked to adjudicate on a point of order. Please ask questions. I think you have had a fair go and a fair amount of time.

Senator BROWN—I have just one other question to ask.

CHAIR—Good. I am glad you are concluding your questions.

Senator BROWN—I am sure you are, Chair. On 20 May this year, Amnesty International, under its Secretary-General, Irene Khan, wrote to the Prime Minister requesting information,

including information about the rules of engagement and the use of force by Australia and how it related to the international conventions and to the other governments involved. Has the Prime Minister responded to the Secretary-General of Amnesty International and, if so, could we see a copy of the response? Chair, I would like to table this letter from Amnesty to the Prime Minister.

Senator Hill—I do not know.

Senator BROWN—Will you find out?

Senator Hill—We have had the PM&C estimates, so I do not know whether he has yet responded.

Senator BROWN—Will you find out for the committee?

Senator Hill—For this committee?

Senator BROWN—Yes. It is very germane to what we are talking about and have been talking about during the last 24 hours.

Senator Hill—You should have turned up last week and asked that question. I can ask about a response. I doubt if a response has yet been forthcoming. It was only just received, wasn't it?

Senator BROWN—On 20 May.

Senator Hill—And the letter went to a number of us. It will be responded to properly in due course. Due course might have already passed.

Senator BROWN—I ask you to find out what the Prime Minister's response has been or will be. I now table the letter.

CHAIR—Okay. Thank you, Senator Brown.

Senator CHRIS EVANS—We seem to have got off track a little bit, but the minister took on notice yesterday the issue of making available to the committee Major O'Kane's end of duty report, which he provided to Defence and other sources on completion of his tour of duty. Air Commodore Harvey, in answering questions on notice this morning, did not address that. To be fair to him, I think we went off immediately on questions—I am not even sure he had finished his set of answers. I am particularly interested to know whether or not the government is going to make available a copy of Major O'Kane's end of tour report.

Senator Hill—I actually thought it had been tabled this morning. We will table it. It has some deletions. Air Commodore Harvey can explain the deletions. I was not a party to the deletions.

Air Cdre S. Harvey—The document that is being handed up has been reviewed.

Senator CHRIS EVANS—Could you just hang on for a moment until we have the document. I suspect it might save us time in the end if we have it in front of us.

Air Cdre S. Harvey—The document that has been handed up essentially just had deletions in relation to material which we understand to be classified material which may relate to operations, primarily.

Senator CHRIS EVANS—I see. For those without the document, it has a total of about 2½ paragraphs of deletions which refer to what you say are operational matters—is that fair?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—This is entitled, ‘Post Deployment Report—Major G.X. O’Kane—Operation Iraqi Freedom (OIF)/Operation Catalyst’, with the date 8 February crossed out and 9 February inserted. I assume that was done by him.

Air Cdre S. Harvey—I imagine it would have been. Seeing it is his signature at the bottom of the document, I imagine he did it. I might also point out that yesterday I indicated that this was addressed to the director of operations and international law. I notice, looking at the copy now, that he is not a distributee but I recall that this document was passed to him.

Senator FAULKNER—The distribution list appended to the fourth page is the relevant distribution list?

Air Cdre S. Harvey—That is correct. As I said a second ago, you may recall that yesterday I indicated that it had also been sent to the director of operations and international law within my organisation. It was passed to him within my organisation rather than him being an actual distributee.

Senator CHRIS EVANS—The commander TF633, Camp Victory, Baghdad, is the Australian commander, Australian headquarters.

Air Cdre S. Harvey—Yes.

Senator CHRIS EVANS—In terms of his final report, he reported that to him but he was the line authority for his sit reps as well, wasn’t he?

Air Cdre S. Harvey—That is correct.

Senator Hill—The line authority—no.

Air Cdre S. Harvey—Sorry, the Australian authority. Can I have the question again, please.

Senator CHRIS EVANS—He was the person through whom he reported back to Australia? Is that a better way of putting it?

Senator Hill—No, he did not. He reported to the senior Australian officer in the joint command and the senior Australian officer in the joint command then reported to the commander of the Australian forces, who then reported back to Canberra.

Senator CHRIS EVANS—How is it explained that the senior officer of joint command was not on his distribution list?

Senator Hill—I do not know the answer to that. It was possibly because he had left or was leaving.

Senator FAULKNER—If we go to part 5, legal issues, it says:

An extensive number of legal issues were addressed during the deployment. A selection of these are summarised in the top five points under the following four headings.

Can we deal with 5(a), detention operations. I think you can explain to us, Air Commodore, how this fits—I think some of it clearly does fit—into some of the evidence that you have

previously provided to the committee. Can we just deal with those in order. Part 5(a)i deals with the drafting of FRAGO. Is that the correct pronunciation of the acronym?

General Cosgrove—It is FRAGO.

Senator FAULKNER—I knew I would get it wrong.

General Cosgrove—It is a fragmentary order.

Senator FAULKNER—Is that what it stands for?

General Cosgrove—Yes.

Senator FAULKNER—Are you able to tell me a little bit more about fragmentary order 749?

Air Cdre S. Harvey—The descriptor which you have in front of you related to intelligence in evidence-led detention operations relating to detainees.

Senator FAULKNER—Are you able to provide the committee with any more detail as to what that actually means?

Air Cdre S. Harvey—I think this document relates to one that lays down procedures in relation to processing of the detainees.

Senator FAULKNER—When you say ‘procedures for detainees’, where are the detainees when these procedures are applied? Are they in custody in a facility such as Abu Ghraib?

Air Cdre S. Harvey—I am not quite sure about that.

Senator FAULKNER—I suppose what I am asking is: does it go to procedures in a facility such as Abu Ghraib or Camp Cropper, or does it relate to what occurred before then?

Air Cdre S. Harvey—If it is the document that I am thinking of, it relates to procedures regarding the handling initially rather than to actually getting into the facility.

Senator FAULKNER—It also says ‘attending numerous detention and intelligence related planning groups’. Do we know what those detention and intelligence related planning groups would be—where they would be held, for example, and who would be involved in them?

Air Cdre S. Harvey—I am afraid I do not have that information.

Senator FAULKNER—You do not know?

Air Cdre S. Harvey—No, I do not.

Senator FAULKNER—Perhaps you could check that with Major O’Kane. Would that be possible? In 5(a)ii it says ‘presentations on detention procedures to CJTF7 detention summits’. One of those presentations I think you actually have reported on previously. Would that be correct?

Air Cdre S. Harvey—My understanding—obviously I do not know for sure—would be that that would be the presentation we have referred to before.

Senator FAULKNER—Yes, but this is not a presentation; it is presentations in the plural.

Air Cdre S. Harvey—I think he also at the same time gave a short presentation when the ICRC did their visit. He gave a short PowerPoint presentation, I think, when they did their visit.

Senator FAULKNER—As I read the document it is two presentations. One is SJA sponsored. Can we just be clear on that acronym, please?

Air Cdre S. Harvey—A staff judge advocate.

Senator FAULKNER—Which is, I think, the one that you might have referred to—would that be correct?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Where does the provost martial officer fit into all this?

Air Cdre S. Harvey—I understand that these people are located within Abu Ghraib. I think what it may be referring to is that there were two presentations given, of the same presentation, to two groups.

Senator FAULKNER—I see. Both at Abu Ghraib jail?

Air Cdre S. Harvey—That is my understanding.

Senator CHRIS EVANS—Can you tell us what a provost marshal is?

Air Cdre S. Harvey—Basically military police.

Senator FAULKNER—In 5(a)iii it talks about drafting of the fragmented order on detainee ‘escapee escape prevention during transit’. That is fairly clear. That is obviously a different fragmentary order of the one listed earlier—would that be a fair assumption?

Air Cdre S. Harvey—It definitely would be a separate FRAGO.

Senator FAULKNER—‘During transit’ is pretty clear. I suppose it is the first one; we need to understand how it applies. Then we go to 5(a)iv, ‘attendance at ICRC meetings at CPA’. At this stage we do not know how many of them there are, do we?

Air Cdre S. Harvey—No.

Senator FAULKNER—It goes on to say ‘drafting of commander 800th MP brigade response to ICRC October 03 inspection reports of US detention facilities’. That correlates directly to the evidence we had yesterday in relation to that matter having been reported back.

Air Cdre S. Harvey—That would relate to the matters we discussed yesterday, yes.

Senator FAULKNER—I do want to be clear on this. I am assuming—but correct me if I am wrong—that that is the drafting exercise, a draft letter of which is now in the possession of Defence, along with the two ICRC working papers.

Air Cdre S. Harvey—That is my understanding.

Senator FAULKNER—If your understanding is any different to that, you let could us know, please.

Senator CHRIS EVANS—Just so I am clear, when it refers to the ‘commander 800th MP brigade’, the 800th brigade was the one responsible for supervision of Abu Ghraib prison—is that right?

Air Cdre S. Harvey—That is my understanding, yes. I think the commander is General Karpinski, yes.

Senator BROWN—Was.

Senator CHRIS EVANS—That is the reservist unit, is it?

Air Cdre S. Harvey—I am not quite sure whether it is the reservist or not.

Senator FAULKNER—The point is—let us cut to the chase: is that the brigade about which these serious allegations have been made in relation to prisoner abuse?

Air Cdre S. Harvey—I cannot answer that.

Senator FAULKNER—But I think that is a reasonable question. I appreciate you might not be able to, Air Commodore, but it is a pretty reasonable question for a Defence—

Gen. Cosgrove—Yes, that is the brigade.

Senator FAULKNER—Thank you, General Cosgrove. We now know, which we did not know before, that the draft response was in the name of the commander of the 800th brigade. That is not something that we knew previously.

Senator Hill—I think we did. Didn't we hear yesterday that he was drafting a response?

Air Cdre S. Harvey—That was my recollection. We had mentioned that he was preparing a response for the commander of the 800th military police brigade.

Senator FAULKNER—I thought the actual signatory of the draft response was not able to be provided.

Air Cdre S. Harvey—I do not think it was asked for.

Senator FAULKNER—There was a lack of clarity, I thought, as to whether this was being done for members of the brigade who were responsible for those abuses at Abu Ghraib prison. Anyway, I will check the *Hansard* record. I refer to 5a:

v. Preparation of and facilitating ICRC visits to the Baghdad Central Confinement Facility (Abu Ghurayb) and High Value Detainee Facility (BIAP)—

Is that Camp Cropper or is that a different one?

Mr Smith—I believe it is.

Air Cdre S. Harvey—That is my understanding.

Senator CHRIS EVANS—It is not the one within Abu Ghraib? This is the separate camp operated at the airport, is it?

Air Cdre S. Harvey—It is the one at the airport. I think BIAP is mentioned—

Mr Smith—It is Baghdad international airport.

Senator CHRIS EVANS—You are good on the acronyms, Mr Smith. Someone has to be.

Mr Smith—You have got to be right on some things.

Senator CHRIS EVANS—So we think that is Camp Cropper at the airport?

Mr Smith—Yes.

Senator FAULKNER—Are you aware of the dates of all those ICRC visits to both those facilities?

Air Cdre S. Harvey—No. We certainly mentioned yesterday the dates of the visit to Abu Ghraib.

Senator FAULKNER—I think it was one for one visit.

Air Cdre S. Harvey—I can give you the details of the dates of the visits.

Senator FAULKNER—If you could give me the details of the dates of those visits that would be appreciated.

Air Cdre S. Harvey—The visits were on 27 August 2003, 4 December 2003, 17 December 2003, 2 January 2004 and 4 January 2004.

Senator FAULKNER—So those dates correlate with the visits to Abu Ghraib prison—would that be right?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Are you now saying that, amongst the other functions that you detailed yesterday for Major O’Kane’s visits to Abu Ghraib prison—and I do not want to go back on that evidence but for each of those visits on those particular dates you indicated, if you like, a role and function; that is in the *Hansard* record, and obviously we appreciated you providing it—included was preparation for ICRC visits?

Gen. Cosgrove—I am sorry, Senator, I think we are slightly at cross-purposes. I think the Air Commodore just gave you the dates of Major O’Kane’s visit to Abu Ghraib.

Senator FAULKNER—I think he did, yes.

Gen. Cosgrove—As I read 5a v, he prepares for and facilitates visits and those visits are during January 2004.

Senator CHRIS EVANS—Yes, because I think we heard yesterday that it was actually a four-day visit, wasn’t it?

Air Cdre S. Harvey—Yes, he was there for four days.

Senator CHRIS EVANS—From 4 January to 8 January he was involved with:

... ICRC visits to the Baghdad Central Confinement Facility (Abu Ghurayb) and High Value Detainee Facility (BIAP)—

which is Camp Cropper.

Gen. Cosgrove—I think that is what he is saying there, but I think the Air Commodore just gave you the dates for all of his visits to the jail.

Air Cdre S. Harvey—I understood that was the question. That is what I was answering.

Gen. Cosgrove—So we look at the January dates as a correlation to previous evidence.

Senator Hill—What is the problem with 5a v?

Gen. Cosgrove—I do not think there is problem.

Senator FAULKNER—I do not think there is a problem. Could we have provided to us the dates of the ICRC visits that Major O’Kane was involved in preparing and facilitating to both Abu Ghraib prison and Camp Cropper? So I am asking a different question.

Senator CHRIS EVANS—I think the answer is that it was this 4 to 8 January period, where it sounds like the ICRC visited both facilities. Is that right, Air Commodore?

Air Cdre S. Harvey—Yes. The information is that it was certainly a four-day visit. I do not have details of whether he actually visited the other facility during those days. I imagine that probably was the case, because he was acting as the escort for the ICRC at that stage.

Senator FAULKNER—Let me put the question another way: were there any other occasions for ICRC visits that Major O’Kane was involved in either preparing for or facilitating that you are aware of?

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

Senator FAULKNER—Can you just check that that is the case, Air Commodore? We do not know whether the four days from 4 to 8 January 2004 included the International Red Cross going to Camp Cropper—would that be right? At this stage we do not know?

Air Cdre S. Harvey—I imagine it was, but I cannot testify that that is in fact the case.

Senator FAULKNER—We do not expect you to testify if you do not know, so you might establish that. Clearly, given this document, we now know that there was preparation facilitating ICRC visits to Camp Cropper by Major O’Kane as well. That is what this document says. Would you mind establishing when that occurred? In other words, either identify it is the same occasion—4 to 8 January 2004—or, if it is a different occasion or occasions, providing that for the benefit of the committee?

Air Cdre S. Harvey—I understand the question.

Senator CHRIS EVANS—Air Commodore, could you explain 5b v, which reads:

Staff visit to Headquarters Multi-National (South-East), Basra including Basra court and prison, as well as the Navstar at Um Qasar and Camp Bucca (EPW/Internee facility in Southern Iraq);

Can you decode that for me?

Air Cdre S. Harvey—I am not sure if I can do much better than you. It just highlights the fact that he did do a visit to a facility in the Basra area.

Senator Hill—What is wrong with that? It looks pretty clear.

Senator CHRIS EVANS—What is ‘the Navstar at Um Qasar’?

Gen. Cosgrove—It is nothing sinister.

Senator CHRIS EVANS—I did not suggest it was

Gen. Cosgrove—There is a naval facility there. In fact, that is where our sailors are helping train the new Iraqi coast guard.

Senator CHRIS EVANS—I got Um Qasar but I did not know what ‘the Navstar’ was.

Gen. Cosgrove—I think that is just the naval station.

Senator CHRIS EVANS—And Camp Bucca?

Gen. Cosgrove—I have never heard of it.

Senator CHRIS EVANS—This is obviously an internee facility in southern Iraq, judging by the brackets. So it seems like it was a tour of some other prisons and facilities in the Basra and Um Qasar region. Is that reasonable?

Gen. Cosgrove—That is the sense I get from that.

Air Cdre S. Harvey—I understand that the visit referred to in v was implying a familiarisation visit.

Senator CHRIS EVANS—In terms of c i:

Meetings with 205th Military Intelligence Brigade at BCCF (abu Ghurayb) and advice on legality of interrogation procedures—

this is the involvement with the interrogation policy that you talked about yesterday, is it?

Air Cdre S. Harvey—I understand that the meeting was on 27 August.

Senator CHRIS EVANS—What is BCCF?

Air Cdre S. Harvey—Baghdad central correctional facility.

Senator CHRIS EVANS—And the 205th military intelligence is the American unit responsible for interrogation at Abu Ghraib, is it?

Air Cdre S. Harvey—I am not sure of that.

Gen. Cosgrove—At that time. I am not sure whether it was throughout, but it was at that time.

Senator CHRIS EVANS—And point 2 says:

Contributor to CJTF-7 ROE & Rules on Use of Force (U.S.) Training package.

Gen. Cosgrove—That does not appear to relate in any way to detention or interrogation.

Senator CHRIS EVANS—What does it relate to?

Gen. Cosgrove—The same sorts of rules of engagement and rules for the use of force that we might have for combat forces.

Senator CHRIS EVANS—Why would he be contributing to American—

Gen. Cosgrove—As a member of the SJA staff, that would be a typical duty for lawyers: to give views and guidance on ordinary day-to-day rules of engagement to operate on tactical operations.

Senator CHRIS EVANS—Let us be clear. You are sure this is about tactical operations and not—

Gen. Cosgrove—Because he has put it under ‘Operations, general’ that would be my assessment, but we could check that.

Senator CHRIS EVANS—I want to make sure. I know that you are trying to be helpful but I wanted to make sure we knew or whether it was a deduction.

Gen. Cosgrove—My reading of that would be that it is the broader rules of engagement because it is under the overall CJTF7, as distinct from any subset which had a role in interrogation or detention.

Senator CHRIS EVANS—And this looks like it is providing some sort of legal aspects to a training package they were developing, does it?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—Do you have any understanding of that, Air Commodore?

Air Cdre S. Harvey—I am sorry, I was not following.

Senator CHRIS EVANS—Major O’Kane’s role in these rules on the use of force—the US training package—do you have any further understanding of what was involved in that?

Air Cdre S. Harvey—No, I am afraid I do not.

Senator BROWN—Is Camp Bucca not the camp in central Iraq where a number of US Defense Force personnel were charged with abuse of prisoners as far back as May 2003?

Gen. Cosgrove—Southern Iraq.

Senator BROWN—Yes.

Gen. Cosgrove—You said central Iraq. This is—

Senator BROWN—Outside Baghdad.

Gen. Cosgrove—I do not believe that this is in the American area of operations. But what was your reference to?

Senator BROWN—In his report General Taguba refers to the commander of the 800th military unit, General Karpinski, saying:

BG Karpinski also implied during her testimony that the criminal abuses that occurred at Abu Ghraib (BCCF) might have been caused by the ultimate disposition of the detainee abuse cases that originally occurred at Camp Bucca in May 2003. She stated that “about the same time those incidents were taking place out of Baghdad Central, the decisions were made to give the guilty people at Bucca plea bargains. So, the system communicated to the soldiers, the worst that’s gonna happen is, you’re gonna go home.”

Gen. Cosgrove—Excuse me, Senator, how do you spell ‘Bucca’?

Senator BROWN—B-u-c-a.

Gen. Cosgrove—That is the same one.

Senator BROWN—In other words, she is claiming that because the US personnel were given the indication that the worst that would happen would be that they would go home, and this gave an inherent licence for the abuses that occurred later on at Abu Ghraib.

Senator Hill—If that is what she said, that was her argument. I do not know that it logically follows.

Senator BROWN—Were you aware of the publicity about the US personnel being charged over abuse of prisoners in May 2003?

Senator Hill—I cannot remember that instance.

Senator BROWN—It did receive international publicity.

Senator Hill—There were some abuses during the conflict phase that I can remember were addressed. May was not far past that. But I do not recall the detail of that. If you want us to look at that, we will look at it.

Senator BROWN—If you would. And I will just finish on General Karpinski. The findings of General Taguba—recommendations as to part three of the investigation—were:

1. That BG Janis L. Karpinski, Commander, 800th MP Brigade be Relieved from Command and given a General Officer Memorandum of Reprimand for the following acts which have been previously referred to in the aforementioned findings:
 - (i) Failing to ensure that MP Soldiers at theater-level detention facilities throughout Iraq had appropriate SOPs for dealing with detainees and that Commanders and Soldiers had read, understood, and would adhere to these SOPs.

It would be best if this whole report of General Taguba were tabled. It is on page 44. What follows is a litany of failures of General Karpinski. Yet under 'Legal issues', which we have been referring to, we are told that Major O'Kane was left in the position of drawing up the response on behalf of General Karpinski to the International Red Cross claims of prisoner abuse. Minister, aren't you concerned that an Australian major was left in this invidious position of drafting a response to the International Red Cross in the name of this failed commander?

Senator Hill—I am sorry, I am doing several things at once. Was that a question for me? It seemed to be quite a long speech.

Senator BROWN—No, it was a question.

Senator Hill—What was the final question?

Senator BROWN—I will give it to you again.

Senator Hill—It got to a question, did it?

Senator BROWN—And it is a serious one.

Senator Hill—I am treating them all seriously.

Senator BROWN—It is: don't you think it put Major O'Kane in an invidious position that he was left drafting a response to the International Red Cross on charges of criminal abuse at Abu Ghraib on behalf of a commander who has now been found to be unfit for duty and derelict in her duty—and reprimanded by the US Army for her failure to uphold her responsibilities?

Senator Hill—No, I do not. You keep using this expression 'criminal abuses'.

Senator BROWN—That is General Taguba's description.

Senator Hill—No. The abuses that have led to criminal prosecutions were those that were investigated in January that came forth as a result of evidence provided by a military policeman. As I understand it—but I have not been following the US prosecutions as carefully as you have, because I think that is US business—

Senator BROWN—I suggest that you should have been.

Senator Hill—As I understand it, she was relieved of her command because of matters associated with the abuses that were investigated in January and that have been subsequently

prosecuted. The other point, of course, is that this advice on an appropriate response is not being given at a time when the Australian lawyer would have knowledge of her failures. That came much later. And, lastly, her standing does not really relate to the quality of the legal advice that he would be giving in any regard.

Senator BROWN—Major O’Kane nevertheless is left to draft a response to the Red Cross at the behest of and under the authority of this commanding officer who has since been reprimanded and relieved of her duties because she was derelict in those duties.

Gen. Cosgrove—I heard you say that he was ‘under the authority’ of General Karpinski. That is not true.

Senator BROWN—No, the report he was writing was under the authority of General Karpinski.

Gen. Cosgrove—It was going to be signed by somebody, not him. We understand it was signed by her, yes. But he was not under her authority. You used the words ‘under the authority’ and I just want to correct the record in that he was in no way under the authority of General Karpinski.

Senator BROWN—But he was drafting a report in her name.

Gen. Cosgrove—But he was in no way under the authority of General Karpinski. He was working for the staff judge advocate, so whatever he produced was ultimately a product of the staff judge advocate. He was not freelancing; he was working for the staff judge advocate.

Senator BROWN—General, it says here in his own report at 5(a)(iv):

- iv. Attendance at ICRC meetings at CPA and drafting of Commander 800th MP Brigade response to ICRC October 03 inspection reports of U.S. detention facilities ...

He is drafting General Karpinski’s response to the Red Cross.

Gen. Cosgrove—He is drafting work which he identifies by its purpose or title but he is working for the staff judge advocate.

Senator BROWN—I am just reading what he has got here, General.

Gen. Cosgrove—Do you find some incongruity in what I have just said, Senator?

Senator BROWN—I find incongruity in that you say that while he is drafting the response of General Karpinski he is not working for her.

Gen. Cosgrove—He is not a contract lawyer; he is not waiting there for somebody to walk in and say, ‘Draft me a response.’ He works in a staff section. I pointed out to the committee yesterday that he was one of 12 or 15 lawyers—something of that order—and he was in the middle range of the ranks there.

Senator FAULKNER—That is true and I accept that completely, General Cosgrove. It is helpful information for the committee. But it is also true to say, which you have stressed, that this Australian officer is involved at the most central level in drafting the response to the International Committee of the Red Cross about matters which have received the most extraordinary international notoriety. It is apparently—and no-one has suggested otherwise—a central and seminal role in this.

Gen. Cosgrove—I have one correction to what you are putting to me there, Senator. You made the transfer that these issues upon which he was preparing a response were those which have reached international notoriety.

Senator FAULKNER—I did say that.

Gen. Cosgrove—I think we need to separate the perceptions of what was seen in the October working group papers from the issues that were reported on and have become most notorious.

Senator CHRIS EVANS—I do not accept that. The photos do not change the abuse.

Gen. Cosgrove—What we are saying here is that he was drafting a reply on what was seen in the October working papers.

Senator CHRIS EVANS—I do not have the benefit of that October working paper, but the February working paper makes it clear that the ICRC identified in October the abuse of Iraqi prisoners, including nudity and deprivation conditions. All I am saying is that the photos did not change the nature of the abuse; all they did is provide graphic illustration of the abuse.

Gen. Cosgrove—By characterising what he did as (a) being central it sounds as if there was no other authority—

Senator FAULKNER—You have accepted the way I have painted the picture except on one key point where you say there is an issue in relation to the content of the October reports. We know now that there are two reports; not just the October ICRC report but two working papers—one in late October 2003 and one in early November 2003. I think this committee can respond, respectfully, and say, ‘Well, yes, we don’t have before us those reports.’ I think Senator Hill can consider whether he thinks it is appropriate to provide them to the committee. I understand the background to how they now find themselves in the hands of the government.

Whether we should know or not is another matter, but, properly or improperly, the February ICRC report has become public. We know that. We have copies of that, and of course you have had the advantage of reading that too. We can read what occurs, for example, in paragraph 27 of that report and we know the tie-in in relation to that paragraph and the one I referred to yesterday in relation to Camp Cropper. We know the significance of the working party reports in relation to those abuses. So I think it is reasonable for a member of this committee to draw the conclusion that we have. Regardless of that, we still have an Australian officer central to organising, facilitating and in this case drafting the response of the coalition to the International Committee of the Red Cross at a time when these appalling and serious abuses are matters of great concern—massive concern—to the ICRC. That is the situation and nothing can change it.

Gen. Cosgrove—I am not attempting to make a speech to the committee on this issue but simply point out that, firstly, he was one of a group of lawyers and in this respect he did not have a lone-hand relationship regarding the report or the drafting of the reply and that, secondly, the issues he was preparing responses on were, as far as we can see, the working papers in October.

Senator FAULKNER—We have not had evidence to that effect before, General. If you are now saying that Major O’Kane did not have a lone-hand relationship in terms of drafting that reply, that is new information we have not received before. In fact, to my mind it is different to evidence that the committee has heard before. I would accept it if you said that you were not entirely sure. Have we checked that with Major O’Kane? All the information we have had, and the evidence that has been made available to this committee so far, in a day and a half of hearings on these issues, is that Major O’Kane did have the central role in drafting the response. In fact the draft response that was worked up by Major O’Kane has been provided in hard copy to Defence—or it was on file in Defence even though Defence was not aware of it. I am not sure, General, that you can make that—

Senator Hill—We know that he prepared a draft and that the draft went into the system to be looked at by more senior people.

Gen. Cosgrove—That is my point. I am not saying that another person subsequently made another draft; I am saying that there was a series—as there is ordinarily—of checks and balances on drafts.

Senator FAULKNER—But the first or primary draft is prepared by an Australian officer. You make the point, General Cosgrove, that the draft is then passed up the chain of command.

Gen. Cosgrove—That is the only point I am making.

Senator FAULKNER—I accept that.

Gen. Cosgrove—Good.

Senator FAULKNER—But I am saying to you that this really needs to be clear. If when you use the term ‘lone-hand relationship’ that means yes, a draft is prepared by this Australian officer and is passed up the chain of command, I accept that. But the key point is that the first draft—and we do not know how that draft relates, of course, to the letter that was finally signed and sent—

Gen. Cosgrove—And that is my point.

Senator FAULKNER—You do not know that?

Gen. Cosgrove—No, I do not know that.

Senator FAULKNER—All we know is that the first draft was prepared by an Australian officer on these matters that are of the utmost seriousness.

Senator Hill—I have not wanted to understate the importance of the October working paper, but I still think there is this issue of qualitative difference. Clearly—you can see it from evidence; you can see it from what is reported in the February paper—there are allegations and observations of behaviour that was taking place in October which I think is really quite serious. But Senator Brown has characterised it as ‘criminal abuse’ and Senator Faulkner has characterised it as ‘gross abuses’. Obviously Major O’Kane did not characterise it in those terms.

Senator FAULKNER—We do not know how major O’Kane characterised it.

Senator Hill—Yes you do, because I have said that—

Senator FAULKNER—You get Major O’Kane before this committee and we will ask him how he characterised it.

Senator Hill—I have reported the advice that has been given to me and the secretary has reported the advice that was given to him—

Senator CHRIS EVANS—You are the same two chaps who did not know he had done his end of term report. With all due respect, you do not know.

Senator Hill—of his characterisation.

Senator FAULKNER—You did not even know of the existence of this report yesterday, let alone what he thinks and says.

Senator Hill—The only point I am seeking to make is that I am not sure it is fair to, in effect, blend the January investigation that has led to criminal charges with the ICRC reports into overall standard of behaviour within the detention centres and in relation to interrogation.

Senator CHRIS EVANS—I think that is a key point, and it is the one that has been troubling me. The difficulty we have is that we cannot interview Major O’Kane about it and we do not have the benefit you have of a copy of the October report. So we are lacking those two critical pieces of information. But I think you have accepted that you have characterised the October report as very disturbing—

Senator Hill—Yes.

Senator CHRIS EVANS—and containing allegations of serious concern. I will let you use your own words—they are in the *Hansard*; I am not trying to verbal you. The key question is: do you think the mistreatment or the conditions inside Abu Ghraib alleged in the October report constitute a breach of the Geneva convention?

Senator Hill—That is very difficult. The Geneva convention says that detainees have to be treated humanely. If the allegations as to the way in which the prison was being operated were true, at least in relation to some instances I would not regard that as humane treatment. That was the point that I was trying to make to Senator Brown last night. Clearly you would need to know the full circumstances of each instance.

Senator CHRIS EVANS—That is the point. I do not want to get tied up on what the definition of ‘serious’ is. We all have different levels of judgment about those things.

Senator Hill—Evidence of serious misconduct—

Senator CHRIS EVANS—But it seems to me that—

Senator Hill—At the very least—and I think this was the point the ICRC was making: that they were unhappy about certain practices and they wanted remedy.

Senator CHRIS EVANS—The important thing from the Australian point of view is whether those allegations constitute a breach of the Geneva conventions and the sort of standards that those Australian legal officers were expected to uphold and were there to help enforce. Without the benefit of the report, that is the key question for me.

Senator Hill—But the legal officers on the ground clearly did not regard it as a breach of the convention, so whether they regarded it as some allegations of misconduct—

Senator CHRIS EVANS—How do you know that is so?

Senator Hill—Because that is what I have been advised. That is what I said yesterday many times.

Senator BROWN—But the problem is that the legal officers were subordinate to General Karpinski or her subordinates and were not able to investigate the prison and the prisoners. So they are left in the invidious position, as far as the Australian major and colonel are concerned, of not having the authority to investigate in the way that any independent investigator, particularly a legal investigator, must be able to do if they are going to get to the truth of the matter. They were put in this invidious position of being subordinate to a military command that has been found wanting, been reprimanded and been dismissed subsequently by the US command. This is a key matter. It is easy to concentrate on Major O’Kane, but what I want to know is what backup did Major O’Kane and the colonel have, in this position, to have the authority to do the job they were tasked to do.

Senator Hill—You should not be making assertions anyway but you cannot make those assertions without giving me the chance to respond. The ICRC report did not call for another investigation or inquiry. That is what the ICRC is doing itself.

Senator BROWN—It called for a response.

Senator Hill—It is investigating and it makes recommendations to the party that can bring about better outcomes. That is what occurred in this regard. You can say, ‘On the basis of the ICRC report it should have led to another investigation.’ If they had thought that was necessary then I assume that is what they would have said.

Senator CHRIS EVANS—This is no criticism of Major O’Kane and I do not imply any at all. From what I have seen of his work so far it all seems to be very professional. I do not know him and I have not had any contact with him. But isn’t it the case, in a sense, that Major O’Kane’s role in drafting the response was acting almost as a defence attorney for the commander of Abu Ghraib prison? He was drafting not only their response, but in some ways their defence against the ICRC’s complaints about the way that they were running their prison. I accept General Cosgrove’s saying that his job was to provide advice up the chain of command in the legal service for that, but when you try to tell me what his judgment was about the offences, to put him in context, isn’t he the defence attorney?

Senator Hill—No, he is not the defence attorney and the point is—you might not accept it, but we accept it—that those with senior authority within the coalition headquarters would expect the detention and interrogation operations to be conducted humanely. If that flows down through the chain of command, it is not this lawyer’s job to prepare a defence unless, of course, there is an argument that this conduct was not taking place.

Senator CHRIS EVANS—I am not implying any moral judgment in that, but he has to respond. ‘Defence’ is a general term.

Senator Hill—What the ICRC would be wanting, more than anything, is a positive response to its recommendations. Then what would happen is that the ICRC would go back again and use its best endeavours to ascertain whether that positive response has been implemented.

Senator FAULKNER—Have you made an attempt at all, Senator Hill, to find out who tasked Major O’Kane and what the nature of the task was in relation to the response to the October ICRC report? Have you yourself taken that step? Can you tell me who tasked him and what the nature of the task was?

Senator Hill—I have not asked that specific question, but he is responsible to the staff judge advocate, who heads up what was described yesterday as a legal cell. Quite a number of different lawyers are clearly given jobs each day to go and do what lawyers do.

Senator FAULKNER—We know that he is in the staff judge advocate’s office, but do we know whether it was the staff judge advocate who tasked him here? If so, what was the nature of the task? Can you help us with that, Air Commodore?

Air Cdre S. Harvey—No, I would have to get back to you on that. I do not know the answer to that question, other than that I imagine he would have got his tasking from his immediate superior in the legal chain. Where it came from there, I have no idea. He may not have known. I cannot say definitely.

Senator CHRIS EVANS—Can I confirm, Minister, that, as I recall yesterday, you are not prepared to release the draft letter he prepared because it was not an Australian document?

Gen. Cosgrove—It is basically not our letter.

Senator CHRIS EVANS—I just want to confirm that for the record, because that also would be helpful, but you do not feel able to release that to the committee—is that correct?

Gen. Cosgrove—It would not be good practice.

Senator CHRIS EVANS—I am just confirming what the view is. You have a copy of the letter but you are unable to release that to us.

Senator FAULKNER—In relation to Major O’Kane’s end of tour report, are you able to tell us, Senator Hill—if not, perhaps General Cosgrove—what 5b, under ‘Lessons learnt’, means? I quote:

5b. EPW/Detainee/Internee operations in high or low intensity conflict will always become a red-line issue unless properly planned for and resourced appropriately.

What does that tell us?

Senator Hill—My interpretation is that they are always difficult and stressful type environments and you need properly trained and skilled staff to do it appropriately. It has been subsequently said—and we know a lot more as a result of the prosecutions and investigation in the United States—that at least some of the military personnel, the military police, may not have been adequately trained for or experienced in this task. Because of the complexity of this task and the environment itself—bearing in mind that this is, I understand, a facility that is often mortared—it is obviously an enormously traumatised environment and I can quite understand that you would need very capable, experienced, professional staff, and it may not have always been the case.

Senator FAULKNER—This is dated 9 February 2004 and the distribution list is attached. Of course, we know that you, as minister, and senior officers of the Defence Force say they had no knowledge of the seriousness of the abuse until April. But I am interested, first of all—

and I think this is a question best directed to you, General Cosgrove—in what is, in Defence terminology, a red line issue.

Gen. Cosgrove—We do not use that term.

Senator FAULKNER—Can someone assist me?

Gen. Cosgrove—We do not use that term, but if I were to read that I would say it was a problem area.

Senator CHRIS EVANS—It is not a particularly military usage of it.

Gen. Cosgrove—No. There is no definition of a red line area.

Senator Hill—I do not think it is a legal expression either.

Gen. Cosgrove—It is a colloquialism. When I read it I would say it ‘will always become a problem area unless properly planned for and resourced appropriately’. There is no gradation available out of that. It means some things are okay, some things are okay with management, some areas are problem areas.

Senator BARTLETT—Is this report just a report that does not require any follow-up? It is just like one of those things where you say, ‘Thanks for that,’ and put it on file?

Gen. Cosgrove—Each report should be read.

Senator FAULKNER—It did not have any follow-up though, did it, General Cosgrove?

Senator Hill—I assume what happens—

Senator FAULKNER—No, let’s assume nothing, Senator Hill—it is too risky for you to make these assumptions.

Senator Hill—I am going to assume.

Senator FAULKNER—You are going to assume again.

Senator Hill—I am going to assume that the distribution list would receive and read the report, and if there are matters arising out of it that they believe require further action they would take it. For example, that paragraph that Senator Faulkner has just been reading draws to the attention of the legal staff in the ADF the fact that this can very easily become a problem area—

Senator FAULKNER—We are very fortunate that one of the addressees, the Director General of the Defence Legal Service, is with us at the table. While we do not have Major O’Kane, we do at least have Air Commodore Harvey. You are one of the addressees, Air Commodore. You can confirm that for the committee?

Air Cdre S. Harvey—Yes, I can.

Senator FAULKNER—Can you indicate what happened in relation to your area of Defence. First of all, can you say whether this report was received?

Air Cdre S. Harvey—Yes, I can confirm a check of our records indicated that the report was in fact received.

Senator FAULKNER—Can you say when it was received? If the records have been checked I hope you will be able to do that.

Air Cdre S. Harvey—Yes. On 23 February.

Senator FAULKNER—Can you indicate to the committee what occurred after the report was received?

Air Cdre S. Harvey—As is common, a lot of correspondence comes into my office. I look at the correspondence and decide if there are any issues there that are of significance. Then I mark it out to the responsible area within my organisation. In this case, being an after action report, it would have been marked out—and I do recall it was marked out—to the Directorate of Operations and International Law, whose responsibilities, as the name would suggest, cover those sorts of responsibilities. It would be a source document that they would use as a basis for dealing with future legal officers that may deploy overseas and also to draw lessons learnt, I guess, as pointed out in paragraph 5.

Senator FAULKNER—We know that it went to the commander in Camp Victory, Baghdad, and to the staff judge advocate, in Heidelberg, Germany—is that right?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—So, apart from there, it has gone to you as Director General, Defence Legal Service—

Air Cdre S. Harvey—Yes.

Senator FAULKNER—And it has gone to—who is DALs?

Air Cdre S. Harvey—DALs is the director of Army legal services. His position is the senior uniformed Army lawyer under my organisation.

Senator FAULKNER—And you have told us that you have effectively forwarded it on yourself to the director of operations and international law.

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Was there any action in the Defence Force legal service on this report apart from—which I appreciate—your onforwarding it to the director of operations and international law?

Air Cdre S. Harvey—I have not had cause to follow it up. After marking it out to the Directorate of Operations and International Law I am not aware of what they did with it. They no doubt would have read it, analysed it and made decisions about what they needed to do with it, and taken the information on board in terms of future operations.

Senator FAULKNER—So as far as the Defence Force legal service is concerned, effectively a hard copy is taken—is that right—and it is passed on to the director of operations and international law?

Air Cdre S. Harvey—That is correct.

Senator FAULKNER—Have you checked with the director of operations and international law as to what happened to this report after it was received in that office?

Air Cdre S. Harvey—No, I have not.

Senator FAULKNER—I am not sure of the lines of responsibility here, and this may be better directed to General Leahy or someone else, but can someone assist me with what happened to the report with the director of Army legal services?

Air Cdre S. Harvey—I imagine that Major O’Kane would have sent it to the director of Army legal services, merely because he was an Army legal officer. The director of Army legal services would not have had any functional responsibilities other than that this is a report by one of his legal officers.

Senator FAULKNER—Could I ask you to come back after the lunch break, which the chair is keen to ensure occurs, to provide information about what occurred with the director of operations and international law, the Army legal service and any other place the report went? What action, if any, resulted from the report going to those places? Also, when was it received there? Any other details you can provide would be helpful.

Senator CHRIS EVANS—Before we break, could I ask Air Commodore Harvey one quick question. Did Major O’Kane attach any documents to his report?

Air Cdre S. Harvey—No, he did not.

Senator CHRIS EVANS—You are sure of that?

Air Cdre S. Harvey—Yes.

Senator CHRIS EVANS—Thank you.

CHAIR—Before we break, I have two things. I understand that Senator Brown has a letter that he wishes to table and seek a response to.

Senator BROWN—This is the report from General Taguba. I said earlier that it was available on 1 April. In fact, it was handed to the US command on 26 February. Attached to that is the consequent report from General Karpinski’s regional defence counsel, Mr Taylor, on 1 April 2004. I seek leave to table that.

Senator FAULKNER—My general view on these things, as you know, Mr Chairman, and as I think Senator Brown knows, is to agree to granting leave for tabling documents if they are sighted. I am happy to on the basis of the description that has been given, but it is a less than satisfactory situation. The normal courtesies are to provide a copy so that it can be sighted. On the basis that the description is as Senator Brown has outlined it—and I am sure it is—I will give leave for that to be tabled.

Senator BROWN—Thank you.

CHAIR—Mr Smith, I understand that you wish to make some comments before we break.

Mr Smith—Yes. If I may just crave your indulgence and that of committee members, there is something that I want to say on behalf of General Cosgrove and myself. Attention has been drawn to inaccuracies in the statement that we released on 28 May—or inconsistencies between that statement and evidence that you have heard over the last two days. It has been suggested that this amounted to some sort of cover-up by us. It was not. I say that unequivocally on behalf of both of us.

I want to say here that our statement of 28 May reflected the best knowledge we had at that time—that is, on the afternoon of 28 May. We were subsequently advised of the existence of

two working papers prepared by the ICRC in October and November and told that these working papers had been in the possession of, first, an ADF officer and then another Defence official in Canberra since February and May respectively. We remained unclear through the weekend whether these papers were what has been called the October ICRC report referred to earlier. We became clearer about this during Sunday. Had we known of the existence and the contents of those working papers, any statement that we made on 28 May would have reflected that knowledge. In particular, we would have acknowledged our knowledge of the working papers and we would not have said that no Defence personnel were aware of allegations of serious mistreatment.

Moreover, while it might have been Major O’Kane’s understanding that the October working paper—or report, as we erroneously called it—raised general concerns about detainees’ conditions and treatment, this is not an understanding that we would have shared or endorsed. Having since seen the working papers, we do acknowledge that the allegations they describe were allegations of mistreatment, serious by any standard, although not apparently the serious or criminal abuses that have subsequently been disclosed. The statement we made on 28 May was cleared by several senior Defence officers and also by Major O’Kane. Nevertheless, General Cosgrove and I take full responsibility for it and we regret any embarrassment that it has caused to the government.

Senator FAULKNER—I would like to make a brief response. Obviously, given the time, Mr Smith and General Cosgrove can be subject to questioning on the statement a little later on. I am not aware, Mr Smith, of any suggestions by any committee member here that your statement amounted to a cover-up. I do not believe any committee member here has said that. Yesterday I drew to witness’s attention some concerns I had about the statement in the light of evidence that had been adduced at this committee.

I do make this point, however. I thank you for the statement that you have made and the clarification on your and General Cosgrove’s behalf. I think, on reflection, it may have been better to make that statement at the beginning of the hearings yesterday, if you were able to—and I am not aware how much of the evidence that has been provided at this committee has led you to make the statement you have. I do not know that; I would like to ask you that when I have an opportunity. If you were not able to make that statement on your and General Cosgrove’s behalf at the commencement of these hearings yesterday, when opening statements were called for by the chair, I think it would have been appropriate also perhaps, on reflection, to have done it at the beginning of today’s hearing. I think that would have been helpful for the committee. I make only those points to Mr Smith. Obviously we can deal with matters of substance at a later stage.

Senator BARTLETT—Can we get a copy of that statement?

Mr Smith—I think it is probably pretty difficult to read. It is in pencil.

Senator Hill—The *Hansard* system will work its magic.

Proceedings suspended from 12.37 p.m. to 1.45 p.m.

CHAIR—The Senate Foreign Affairs, Defence and Trade Legislation Committee is now back in session. Senator Faulkner has some questions about the statement given by Mr Smith.

Air Cdre S. Harvey—I have some responses to give to previous questions.

CHAIR—It might be best if you give your responses, Air Commodore. The order of this afternoon's proceedings might be changed. Please proceed, Air Commodore.

Air Cdre. S. Harvey—I have some answers to a few of the issues that were raised. A question was raised about Major O'Kane's visits with the ICRC to the prison facilities. Major O'Kane facilitated ICRC visits to Abu Ghraib, as has been previously mentioned, on 4 to 8 January. He also facilitated ICRC visits to the HVD facility at Baghdad international airport on 15 January 2004 and stayed on for a briefing. Major O'Kane did not facilitate any other ICRC visits apart from the visits to those two facilities.

A question was asked about the article that appeared in *The Buzz* newsletter. I believe we are in a position now to hand that up. I seek to do that at this point in time. The only comment I would like to make is that two references have been blacked out. One was blacked out because it names one of the legal officers, which has not been on the public record. There is also a reference blacked out on the top left side after the word 'op'. That blacked out an operational name we thought may have been classified but it is not. I wish to point out that that was Operation Celesta, which is a Southern Ocean operation.

The question was asked: what is the role of the CPA legal officers with the ICRC and were they essentially the sole or prime liaison point? The role of the legal officers was to facilitate ICRC joint task force meetings. While this tasking fell primarily to the Australian lawyers—the various ones that recycled through that position—UK lawyers also performed this function.

A question was asked about intelligence planning and group meetings. This relates to Major O'Kane's report, section 5(a)(ii), I believe. The purpose of these meetings was to improve access of information from the intelligence people to the lawyers with a view to aiding prosecutions.

The question was asked: who tasked George O'Kane with preparing the letter in response to the allegations that was subsequently signed? I am advised that the deputy staff judge advocate—the UK officer we have referred to before—passed the tasking to Major O'Kane and that the tasking went back up the chain. The point I want to make is that the tasking to Major O'Kane came from his legal superior and his work was channelled up through the legal superior rather than directly to the signatory of the letter.

A question was asked about what action was taken in relation to the O'Kane report once it arrived in the Defence Legal Service. I have been informed that, as I mentioned this morning, once the report came in I did mark it out to the Directorate of Operations and International Law and the director in that area for his action, his being the functional area within my organisation for all matters related to international and operations law. He advises me that he marked it down to his deputy director with directions to circulate it to operational lawyers in the joint operations command and that it be held for the 'lessons learned' conference on the operations in Iraq, which would be held at a subsequent time. His advice to me is that he saw nothing in that report that warranted it being sent anywhere else. I believe the direction was also given for this to be provided to the squadron leader replacement of Major O'Kane, although I note that the report was sent just before Major O'Kane returned from the area of

operations. He may have had a handover-takeover with his replacement, so he probably would have got an oral briefing on the issues raised by it.

I have one final matter. There was a bit of a discussion about Major O’Kane’s report and this so-called red line issue. The issue that was involved was lessons from operations. A number of lessons had been learnt, including from this operation, but it was not exclusively from the Iraq proceedings. The issue that was raised by that part of the report was that manning and logistics issues needed to be given a priority in respect of this area. It was just simply to record the lesson learned that there was a need to allocate resources and priority in planning, manning and logistics for these sorts of activities. I believe Mr Carmody has some responses.

Mr Carmody—I have one correction to make to an incorrect statement I made yesterday with regard to the 11 May meeting between one of my staff and Major O’Kane. I stated yesterday that Major O’Kane was asked at that time to hand over any documents he might have. I checked, and this is not correct. What occurred is that Major O’Kane brought some documents along to the meeting, a number of which he simply left with the officer.

CHAIR—Thank you, Mr Carmody.

Senator FAULKNER—I want to address some questions, if I could, to Mr Smith, arising from the statement he made before the lunch break on his own behalf and that of General Cosgrove. I am directing these to you, Mr Smith, because you made the statement. If you prefer General Cosgrove to answer them, it is of no consequence to me, but I am directing them to you because you are the person who made the statement. On the issue I raised very briefly before the lunch break, can you please explain to the committee why you did not see fit to make such a statement, if not at the beginning of the hearings of this committee yesterday morning, then certainly at the beginning of today’s hearings?

Mr Smith—As you said yourself before lunch—and I agree with it—on reflection, it might have been better had I made that statement yesterday. I resolved very early today to do that and was looking for the opportunity which did not present itself, so I did it immediately before lunch. I should say, also, that I was not seeking and did not, I think, introduce any new information in that statement. I was summing up the situation as to where we had got to.

Senator FAULKNER—I understand the point you make, but I think that, with respect, your and CDF’s statement of last Friday, which included words to the effect that ‘attention has been drawn to inaccuracies and inconsistencies’, is of itself significant in nature, and I am sure you would accept that.

Mr Smith—Yes.

Senator FAULKNER—It is an acknowledgment that I think is very important from the point of view of the committee. When you said attention has been drawn to inaccuracies and inconsistencies, did you mean attention at these estimates hearings or more broadly?

Mr Smith—More broadly, I think. Obviously it emerged from the committee hearings and from things that we volunteered during the hearings that the statements that we had made on 28 May were no longer valid in all cases, but there was also some media reporting which reflected on that.

Senator FAULKNER—Are you able now to identify for the benefit of the committee those parts of the statement which you believe warrant correction? In doing so, could you indicate what your understanding of the situation is now? Really what I am asking you to do is identify where there is a problem, an inaccuracy or an inconsistency and what you understand the current situation to be.

Mr Smith—I would firstly go to paragraph 3 of the statement, where we have said:

No Defence personnel were aware of the allegations of abuse or serious mistreatment before the public report of the US investigation in January 2004.

To the extent that that statement might have referred to those very major abuses that have attained such publicity, it stands. But I do believe, as I said to you, that the information in the working papers in October does suggest mistreatment of a serious kind and it is evident that some defence personnel were aware of that before January. Secondly, as I said before lunch, the statement here says:

It is understood from Major O’Kane that the October 2003 report raised general concerns about detainee conditions and treatment ...

Senator FAULKNER—What paragraph are you quoting from?

Mr Smith—The last sentence of paragraph 6.

Senator FAULKNER—Thank you.

Mr Smith—To the extent that in citing Major O’Kane’s understanding we might have been seen to be sharing it or endorsing it, I think we would not have left that inference had we had the information we now have.

Senator FAULKNER—Are there any other—

Mr Smith—I think that we would, as I have said, have acknowledged that there are in the possession of the Defence organisation two working party reports and that may have affected the way in which we expressed the point in the first sentence of paragraph 7. It remains the case that there is no record of the existence of those reports having been communicated back to Defence in Australia in the normal way—that is, through emails and so on—but there was knowledge of the existence of those in Defence from some time in February.

Senator FAULKNER—The Prime Minister has just had a news conference and he has said that he received wrong advice from Defence. Do you believe that is the case? I am not verballing him—

Mr Smith—I have not seen what he said, but I think that if he was working off this media release then certainly he has been wrongly advised.

Senator FAULKNER—I will not go into the substance of them, but are you aware of any formal advices that have gone to the Prime Minister?

Mr Smith—I am not aware of the form of any advice. I understand he has been given advice but, no, I am not aware of the form of that.

Senator FAULKNER—Has any advice gone to the Prime Minister under your name or that of CDF?

Mr Smith—No, not directly to him.

Senator FAULKNER—Are you aware of any advices going to him indirectly, under either your name or that of CDF?

Mr Smith—I am not, because I do not think that I personally have signed any advice to anyone which might have been passed to the Prime Minister. Let me say that that is partly because I was away for the last two days of last week. It might have been otherwise.

Senator FAULKNER—So, if wrong advices went to the Prime Minister, they did not go under your name?

Mr Smith—No, they did not but let me say that I remain responsible for it.

Senator FAULKNER—I am not saying that absolves you of any responsibility but I am trying to establish what the process was.

Mr Smith—I am trying to make it clear that I am not ducking the issue.

Senator FAULKNER—Where did the initiative come from for the joint statement to be issued by yourself and CDF?

Mr Smith—From me in consultation with General Cosgrove earlier this morning.

Senator FAULKNER—No, I meant the Friday statement.

Mr Smith—That came from within our department. Some senior colleagues felt that there was a good deal of misinformation in the public arena and that a public statement should be placed on the public record, which we hoped would be authoritative, of our position that might help to clarify things.

Senator FAULKNER—But the idea came from within Defence?

Mr Smith—Yes, the initiative came from within Defence.

Senator FAULKNER—And you checked with the minister's officers as to the appropriateness of that?

Mr Smith—We did.

Senator FAULKNER—And it was agreed that that was an appropriate course of action?

Mr Smith—I was not here but I imagine the minister said, 'Fine, just get it right.'

Senator FAULKNER—You said, I think in your statement prior to the committee's lunch break, that this was cleared by several senior Defence officers. Could you outline the clearance procedures and who was involved in them?

Mr Smith—Yes. When I was in Perth at the time on Friday and dealing with this matter by telephone, we discussed the notion of a statement with which I agreed and I said I would want it to be signed-off on by all those officers available in Canberra who knew anything about this subject. I believe that it was.

Senator FAULKNER—Can you go through who this was cleared by?

Mr Smith—I believe it was, among others, my deputy, Mr Carmody, who was coordinating this material. I believe that he and Air Commodore Harvey and Major O'Kane

were the three people I specified should see the document. I also indicated that anyone else with knowledge of the subject, as well as CDF, who wanted the same thing, should see it.

Senator FAULKNER—General Cosgrove, can you assist us with any others who might have cleared the document?

Gen. Cosgrove—No, I concur with what the secretary has told you concerning the people who, as a minimum, were to see it. We discussed that Major O’Kane’s view of the document was important because he was mentioned, but I do not know of others beyond the ones that the secretary has mentioned.

Mr Smith—I have just been reminded that there was one other: Director General Joint Operations, Strategic Operations Division, who conducted one of the surveys.

Senator FAULKNER—So where would you say, Mr Smith, the buck stops for this?

Mr Smith—With me.

Gen. Cosgrove—And me.

Senator FAULKNER—I imagine there must have been a fair bit of activity on the weekend, judging by your statement. Can you, Mr Smith or General Cosgrove, explain to me what efforts went into ensuring that if there were any uncertainties in your minds about these issues, as of some time after the release of your statement—my recollection, by the way, is that that was released on Friday afternoon—

Mr Smith—Yes, that was probably around five o’clock.

Senator FAULKNER—That occurred at about five o’clock on Friday afternoon. When did you first become concerned that it might not have been as accurate or all-encompassing as you might have hoped?

Mr Smith—Not until quite a way into the weekend, except on this matter: I was told late on Friday night that some working papers had come to hand and that the officers would do some more work during the weekend to establish the status of those documents and the importance of them, to make sure we understood what was in them. That was the work that went on during the weekend. There was some considerable question about whether these papers were the so-called October ICRC report. The data around that related to the fact that we had the February ICRC report. We knew what that looked like and yet these other two documents did not look anything like that. So we asked, ‘What does this mean? If this is not a report with status what is its standing?’ Then later, towards the end of the weekend—in fact as I got back here on Sunday evening and went into the office where my colleagues were working—we pieced together this jigsaw.

Senator FAULKNER—What sort of Defence and ADF resources went into ensuring that this matter was clarified as much as possible?

Mr Smith—I know that Mr Carmody and some of his staff from the international policy area, Air Commodore Harvey and several of his colleagues plus other quite senior people in the organisation were working hard at it all of last week. I know that they were there until late at night Wednesday, Thursday and Friday. They were there for a good bit of Saturday and

when I got back to Canberra at about 6.30 on Sunday evening they were in there still trying to piece together this ‘jigsaw’ as I have put it—and that is literally what it was.

Senator FAULKNER—So are we talking about a dozen people or 10, 20 or 30?

Mr Smith—I would say there were 10 or a dozen.

Senator FAULKNER—Mr Carmody might help us with this.

Mr Carmody—There were about 10 people, if I recall correctly. There were some more on Saturday than there were on Sunday. As the secretary said, we worked for quite some time during the week and then from about 3 p.m. on Saturday until early Sunday morning, and then from about two to three on Sunday afternoon. I think I finished at about eight o’clock on Sunday night.

Senator FAULKNER—Again, was there a substantial team over the weekend?

Mr Carmody—There were six to eight officers—the ones that were mentioned. I am not entirely sure of everyone who was there but the recollection is about right. They were the people who were essentially involved in sourcing the information that we obtained.

Senator FAULKNER—Why did this effort go in on the weekend? Was it in preparation for this estimates committee? I am not critical of it if it was.

Mr Smith—That followed the discovery of these documents on Friday night, which changed things. If the documents were determined to have some status then that was clearly going to change things.

Senator Hill—There was a whole series of processes from about 11 May. The process, as has been put before this committee, of trying to identify who may have relevant knowledge in relation to these matters started, I think Mr Carmody said, a day or two before 11 May. But it certainly was progressed from then on.

Senator CHRIS EVANS—What happened on 11 May to stir that?

Senator Hill—As I recall it, 11 May was the first sitting day and I prepared for that. In early May the abuses had become public and had come to our knowledge, and really that is the starting point in terms of trying to fully understand whether any Australian had had contact with these issues. We knew that we were not running the prisons. We knew that we were not interrogating prisoners. We knew we were not holding prisoners, although that was one issue that we wanted confirmed. That was my understanding but we needed to have that confirmed. That took a few briefs because we had to go back to each instance in which we had been associated with the capture of individuals. Then the issue arose of the February report, so we had to search to see whether we had had any contact with that report, and that led to the fact of two sit reps that had mentioned the report. We then had to search to confirm our understanding that the report had not been sent to Australia, and we had to follow back as to why that was not the case.

Senator FAULKNER—Why was all this work undertaken on the weekend? I assume it was in advance of these hearings, was it?

Mr Smith—I think that by Friday afternoon we probably thought we were well enough placed for these hearings, and then this discovery late on Friday that there were these things called working papers really initiated a new stream of activity.

Senator FAULKNER—What I still do not understand, Mr Smith, given where you found yourself by the conclusion of Mr Carmody's working group who had obviously worked very long hours—and I think we appreciate that—on the weekend, being a group of really quite some size, is why this committee was not brought into your full confidence in relation to these matters via the appropriate and very common mechanism of an opening statement yesterday. I still do not understand that, and it does concern me.

Senator Hill—I do not know that there is any reason for concern, because, as I said in my evidence, I got to see these documents on Sunday night. On Sunday we were advised that it looked more likely than not that these working papers were in fact what people had been referring to as the October report. There was to be no secret about that. Obviously, the Prime Minister was briefed on that and he made mention of it in the House of Representatives, and in this committee we would go through the whole of the processes. I felt confident that each step would be laid out and that we could clarify, as we got to a part of the sequence, areas in which there were shortcomings or which needed clarification. There may have been a different way to do it but that is the way in which we proceeded.

Senator FAULKNER—Let me ask you this then, Mr Smith. Were you aware, by the time this committee opened its proceedings yesterday morning at nine o'clock, that there were inconsistencies, inaccuracies or shortcomings in the statement that you and General Cosgrove had issued at approximately 5 p.m. on the preceding Friday?

Mr Smith—I was aware of that and I instructed my colleagues to answer the questions that were asked on the basis of the new information they had fully.

Senator FAULKNER—It comes down to this, I suppose: when the Secretary of the Department of Defence and the Chief of the Defence Force make a public statement, and they know that there are inaccuracies and inconsistencies—they are your words, but in the broad, shortcomings, problems with it—and we are in a situation of a public hearing of a parliamentary committee, but even if we were not, what obligations do you feel as secretary of the department fall on your shoulders to correct the public record as soon as possible? It is no small thing, is it, to put a joint statement out with CDF—it is not common occurrence, is it?

Mr Smith—No.

Senator FAULKNER—It was put out because you saw the issue as being serious. That is true, isn't it?

Mr Smith—Yes.

Senator FAULKNER—And having an impact on the Defence organisation as a whole?

Mr Smith—Yes.

Senator FAULKNER—I still do not understand why—and I should perhaps ask General Cosgrove separately—there was no step taken to correct the record when these concerns became clear.

Senator Hill—I think the answer is simply that during the course of the day everything was going to be set out. It could have been done in a different way, and you can argue about that—

Senator FAULKNER—I am not arguing, I was actually asking Mr Smith and General Cosgrove.

Senator Hill—Yes, but I do not know quite what you are insinuating, because it is clear—

Senator FAULKNER—I am not insinuating anything; I am asking a question.

Senator Hill—It is clear from what Mr Smith has said, and it is clear from the fact that the Prime Minister was briefed accordingly, that it was important and it has been important at every stage that what we say publicly is what we understand to be the case at that time on the best information that is available at that time.

Senator FAULKNER—The Prime Minister misled on the *Sunday Sunrise* program, didn't he—whether it was inadvertent or not is another issue? You would accept that, wouldn't you, Senator Hill?

Senator CHRIS EVANS—It was two days after you had discovered the documents.

Senator Hill—No—

Senator FAULKNER—It was. Work was going on on the weekend on this.

Senator CHRIS EVANS—We know you had them from 11 May, but you actually found out you had them on the Friday. That has been the evidence, hasn't it?

Senator Hill—No, documents were discovered on Friday that led to further work being done. On Saturday I was informed of the existence of these documents, but they were not the report as had been anticipated.

Senator FAULKNER—Did you inform the Prime Minister?

Senator Hill—Hang on. So work was being done to try to clarify exactly what was the status of these documents. By Sunday, after the Prime Minister had gone on that Sunday morning program—it came to me anyway by that time—there was a belief that they probably were the reports. The more pieces of the jigsaw that have been put together, the more confident that I am now that there was never a report as such. There were these working documents. With the benefit of all the information we now have, we can see how that fits into place.

Senator FAULKNER—This is the rub, you see, Senator Hill. A lot of this information—and I certainly do not pretend to anybody all the information—we now know has depended on questioning at this estimates committee. What I ask Mr Smith and General Cosgrove, and I would appreciate an answer from either or both of them, is this: in the circumstances of a statement being put out and where inaccuracies and inconsistencies are found to be contained within it—and that is known to the two senior officers who signed the statement—is the obligation on those two senior officers to correct the record publicly? That is a serious question.

Senator Hill—The point that you are not accepting is that there are a number of ways in which you could do that. One way is to go through this process and set out all the facts—

Senator FAULKNER—That is dependent on me and my colleagues asking the right questions. That is not good enough, Senator Hill.

Senator Hill—It is not dependent on you asking the right questions.

Senator FAULKNER—It is completely dependent on that. Frankly, if this issue was not still being discussed at this estimates committee today—we have had 1½ days of intensive questioning from not only me and my colleague Senator Evans but also other senators from the cross-benches and one or two questions from government senators—so much of this information would not be in the public arena.

Senator Hill—A lot of material might not be but in terms of relevant material I think that is questionable.

Senator FAULKNER—I do not think it is questionable at all.

Senator Hill—Although Senator Faulkner is giving himself great credit here, the Prime Minister—

Senator FAULKNER—I am not actually; I am giving the committee process credit. So would any fair judge.

Senator Hill—The Prime Minister referred to these documents after having been briefed accordingly. As I said, we have made an effort at every stage to answer questions as fully and as accurately as possible on the information that is available.

Senator FAULKNER—The only reason these inaccuracies, inadequacies and misleading statements have come into the public arena is because of questioning by senators at this Senate estimates committee. My question to Mr Smith remains—

Senator Hill—That did not come as a result of your questioning.

Senator FAULKNER—It is true, it did.

Senator Hill—It did not. In fact, you came in here and said that the Prime Minister had announced this.

Senator FAULKNER—You did not know, Senator Hill, and neither did a range of other senior officials at the table, about Major O' Kane's end of tour report.

Senator Hill—There is some information that I have learnt, that is true.

Senator FAULKNER—Just rewind the tape, please.

Senator Hill—There is a lot of information that you might describe as padding that I have learnt but in terms of the key issues there is not much that I have learnt that I did not know. By Sunday night—

Senator FAULKNER—How much you knew is not clear to me; but how much the public knew has been greatly enhanced by this committee, and everybody knows that, Senator Hill.

Senator Hill—By Sunday night I had received and read those working documents.

Senator FAULKNER—Let us not have a silly argument about what has been made public at this committee. I would still like to ask Mr Smith and General Cosgrove my question.

Senator Hill—He has answered your question.

Senator FAULKNER—No, he has not. You have answered it on every single occasion.

Senator Hill—That is not true, either.

Senator FAULKNER—My question to Mr Smith is this: does he accept that when a statement is put out in his name, the Secretary of Defence, and CDF's name, that contains inaccuracies there is an obligation to correct the record as soon as those inaccuracies become clear?

Mr Smith—I think there is an obligation to make the record straight and that obligation is being met through this committee process. Had this committee not been meeting then I think that General Cosgrove and I would have been doing one of two things: either preparing another statement on Monday or preparing a brief for the minister to use in the Senate had it been meeting. In fact, this committee served that need.

Senator FAULKNER—Do you accept, Mr Smith, that there has been a range of issues that you were not aware of before this Senate estimates hearing that have come to your attention as a result of questioning by senators on this side of the table?

Mr Smith—There have been a couple of issues but not material in many respects to this statement.

Gen. Cosgrove—You pose that question equally. I agree with what Mr Smith has said. The core of the issue was the nature of the working papers. I believe that it was correct to rectify the record as soon as possible and I believe that doing it today following a very thorough and transparent examination of issues yesterday was appropriate. I believe that if we had corrected it yesterday morning it may have left other parts of the statement open to further challenge. At this point we are able to say that parts of the statement that you have had referred to you are the ones where, if we had been writing that statement today, we would have written differently.

Senator FAULKNER—Mr Smith, as a result of what has been established during this estimates committee hearing into the processes undertaken by Defence in the lead-up to the publication of your statement and when new information came to light and over the weekend, how concerned are you—or are you concerned—about the weaknesses that have been exposed in terms of internal defence procedures and processes? I am speaking here in the broadest sense of public administration of how this department works or does not work.

Mr Smith—Yes, I am concerned and, on a scale, very concerned. I think it goes to two issues that are not new and which we have been seeking to address, with limited success it would seem. One is communication within the organisation and a second is an understanding among colleagues of what we and the minister and the Prime Minister need to know at any one time on an issue.

Senator FAULKNER—Is it so serious in your view that heads should roll?

Mr Smith—I think that the issues are broader than going to particular individuals.

Senator FAULKNER—How do you intend to address that? Obviously, in terms of departmental responsibilities, as you say, the buck stops with you in terms of responsibility for administering the department. How do you do it? Do you have any ideas about how to address this?

Senator Hill—I do not know that this is the place, particularly bearing in mind the time line, to be asking these questions. I also think that, to be fair—and I am not sure that everyone wants to be fair—you should balance some of the administrative shortcomings against enormous administrative successes.

Senator CHRIS EVANS—That is advice that you give to the Prime Minister.

Senator Hill—You have got well away from the issue that I thought this was all about, which was—

Senator FAULKNER—Let me ask you are question, Senator Hill—

Senator Hill—knowledge of the ICRC report within Iraq and whether that was communicated back to Australia. It is now coming to a debate about administrative rules and practices within the department. The secretary has accepted that the processes did not work well enough in this instance and obviously efforts will be made to improve upon that in the future. But, in making that judgment, I think to be fair you need to look at the enormous administrative task that this department has and, overall, the very efficient way in which it carries out its functions.

Senator FAULKNER—The Prime Minister was pretty strident and strong in his criticism of Defence, wasn't he, at a doorstep interview he did just before we recommenced this hearing? Did you hear what he said?

Senator Hill—I heard what he said.

Senator FAULKNER—He was pretty strident and strong in what he said, wasn't he?

Senator Hill—He is frustrated and disappointed because, if relevant documents were brought back to Australia in February, they should have been brought to our attention some time ago.

Senator FAULKNER—You say that it is unfair of me to ask Mr Smith, the secretary of the department, what he plans to do about this.

Senator Hill—It might be fair after a period of time. What I am saying is that I think it is unfair today.

Senator FAULKNER—Given the errors, screw ups, distortions and misleads that we now know about, under the Westminster system, Minister Hill, are you willing to step up to the plate and take responsibility?

Senator Hill—I always take ministerial responsibility. You might remember, but I do not suppose you will because it would be convenient for you to forget, that, even though the advice of the February ICRC reports was brought to Canberra's attention, it was not passed on up the chain and certainly not to ministers. I did not seek to distinguish my state of knowledge on that from that of the head of department. I accepted the explanation as to why that information was not passed up the chain and accepted with that a joint responsibility.

Senator FAULKNER—Don't I recall you saying at the time of the children overboard issue, which received such widespread publicity, that you undertook to ensure that departmental administration would be improved and those shortcomings that were exposed

during the children overboard inquiry would be addressed? You did make those statements, Senator Hill, didn't you?

Senator Hill—I did. The communication shortcomings that were exposed in that instance were addressed and there were structural changes that were made. In fact, one of the communication difficulties there was difficulty in understanding the communication chain between the strategic operations command and the Australian theatre command, one being responsible for the strategic aspects and one being responsible for the operational aspects. Those organisations were subsequently restructured to try to avoid that issue recurring. There was a whole range of other initiatives. There was a process of investigation, there were recommendations and administratively a whole range of changes have occurred. That area of communication shortfall—I would like to think it has been overcome—certainly has been significantly improved. As the secretary is acknowledging, there certainly appear to be other areas of communication difficulty that we still need to address.

Senator BROWN—Senator Hill, yesterday you told the committee that what General Cosgrove is saying is that the legal officers working for the CPA did not receive any document produced during the year of the report on Iraq, since the Red Cross 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 process. When you told us that, did you know that those documents existed?

Senator Hill—I am sorry?

Senator BROWN—When you told us that yesterday, did you know that the documents produced from the Red Cross were, in effect, available?

Senator Hill—I am a little puzzled here. I have said that I became aware of the two working documents, I saw them for the first time, on Sunday night. I said it would appear that, as pieces of the jigsaw were put together, they were probably what people had been referring to as the report but that, if they were working documents as opposed to the final report, it seemed logical to me that they would go to the joint command that was responsible for the running of the prison rather than to the CPA. I was dealing with the issue of why the joint command seemed to be dealing with the working documents of the ICRC and yet the February report was not, as I understand it, delivered to the joint command but to the head of the CPA and the occupying powers.

Senator BROWN—We are talking here about legal officers, which obviously included Major O'Kane. You are telling this committee that if what General Cosgrove is saying is that the legal officers did not receive any documents produced during the year then that would not surprise you.

Senator Hill—I am sorry, you have got me totally confused. We know that Major O'Kane, who was working for the joint command, drafted a response to working documents that appear to have been presented about the end of October or early November. I am not trying to avoid your question; I am just having trouble understanding it. The CPA lawyers, I have assumed, are working for the CPA—which is, as we have described in here, the de facto government and which received the final report. It seems to me, according to the processes we

now better understand, that it had got past the stage of calling for those responsible for running the prison to take action. The February report was calling upon governments to take action.

Senator BROWN—I am referring to Major O’Kane’s report, which became available to the committee today. I agree with Senator Faulkner that, had the committee finished its deliberations yesterday, this may never have seen the light of day. We have it now.

Senator Hill—So you are talking about the report that he made back to Australian officials on completion of his time in Iraq?

Senator BROWN—Yes, I have now come to that report. Under ‘Legal Issues’ at point 5 he says:

c. Operations General

i. Meetings with 205th Military Intelligence Brigade at BCCF (Abu Ghurayb) and advice on legality of interrogation procedures;

We have a report from the *Sydney Morning Herald* correspondent Marian Wilkinson in Washington about the advice letter that went back to the Red Cross, and I quote:

That letter of response said the US Government had decided a certain category of prisoner would not get the protections of the Geneva convention.

In making that decision, the US was relying on a new interpretation of one article in the conventions.

The letter reads in part, “while the armed conflict continues and where ‘absolute military security so requires’, security internees will not obtain full GC [Geneva convention] protection as recognised in GCIV/5, although such protection will be afforded as soon as the security situation in Iraq allow it”.

The second point that was in that letter is, as I understand it, information to the Red Cross that spot visits would halt and that in future visits to the prison facilities would have to be flagged in advance.

Senator Hill—Which letter is that in?

Senator BROWN—This is the letter that went back to the Red Cross on 24 December after the October and November allegations and which Major O’Kane helped to draft. The *Herald* says it has a copy of that letter. I have asked, and other members have asked, for a copy of that letter. In light of that, would you see that the letter is also released to this committee. Can you comment on the fact that that letter asserts that some prisoners would not be treated under the Geneva convention? Is that an Australian point of view? If it is not, what do you think of both that and the halt to the spot visits by the Red Cross, in that letter?

Senator Hill—I have not seen that letter and I do not believe we have that letter. We have a draft that was prepared by Major O’Kane. In relation to the Geneva—

Senator BROWN—Just on that, was that draft available?

Senator Hill—We have had a debate on that, and we have said that we do not believe we can release that publicly because—

Senator BROWN—So I have to ring the *Herald* to get it.

Senator Hill—You are not even after that; you are after the final one that was sent from further up the chain. We have expressed the problems we have with the draft in terms of the

fact that at that time O’Kane was working for the coalition at the coalition headquarters, so it is their authority. Secondly, the process of confidentiality with the Red Cross is something that it regards as vitally important in being able to effectively carry out its functions.

Senator BROWN—This is not a Red Cross letter; this is a letter coming from the—

Senator Hill—So you do not want me to answer all the other questions? We have moved on from those.

Senator BROWN—You answer them, Minister.

Senator Hill—I said yesterday that one of the problems with your coming in every now and again and wanting to get your bit of coverage is that you tend to redo what has already been done. I have said—and we have had put legal evidence before this committee—that there are some circumstances in which the Geneva convention might not apply, but it is our attitude that, even in those rare circumstances, the prisoners should always be treated humanely and that we believe that that is also the position of the United States. The point made by Senator Ferguson and others in the document that you sought to prove to the contrary was that the document itself said that a safeguard is that compliance with the Geneva convention is essential. But, whatever, we do believe that prisoners should be treated humanely. That is the position of the government and it is the practice of the ADF. There is another question you asked that I cannot remember.

Senator BROWN—I asked about the end of the spot visits by the Red Cross. If you have anything to add to that, I will wait for it.

Senator Hill—My understanding has been that O’Kane was seeking to facilitate this; it is not to stop visits. I made the point this morning that, when you read the February report of the ICRC, you realise that, really, they had good access across Iraq for the whole of the period from March until November. I said that there were clearly instances from time to time when there were problems. But, looking at the picture overall, bearing in mind the security environment and the circumstances in which everybody was operating, they certainly had a lot of access to prisons, they had a lot of access to prisoners and they had extensive opportunity to interview relevant people, and they did not shy away from their responsibility to report on that and to recommend change.

Senator BROWN—But when the abuses became manifest in their report to the authorities, then the freedom of access ceased and had to be prearranged—there had to be forewarning.

Senator Hill—You draw that conclusion, but I can think of other circumstances where it makes sense to forewarn of a visit also. One of the key issues is to ensure that there is adequate security for that visit. But I do think the concept of spot checks is important.

Senator BROWN—If you can get an explanation as to why the spot checks happened after the report of abuses began, other than that it was meant to prevent further abuses being uncovered, then I am sure the committee would be glad to hear of it. In the same section of Major O’Kane’s letter, part 5, under ‘Legal issues’, it says Major O’Kane had been involved in the ‘drafting of a two-star information paper on the targeting of civilian structures during offensive operations’. Can you elaborate on that? There are two questions arising from it. Firstly, what is that two-star information paper and what are the guidelines for the targeting of

civilian structures in Iraq? Secondly, can you give an account of what the government's information is about the civilian casualty list in Iraq and, specifically, in Fallujah?

Senator Hill—Can I give figures?

Senator BROWN—Yes, or can you get figures?

Senator Hill—I do not think there are authoritative figures. What I do know is that the coalition, through the combat phase and subsequently, has sought to avoid civilian casualties. General Cosgrove is better equipped to respond to it than me, but I think probably the extent to which efforts were made to minimise civilian casualties is almost unprecedented.

Gen. Cosgrove—To follow up on the minister's remark, I say that the attempt to minimise civilian casualties is extreme. Regrettably it is not perfect, so there are casualties. I do not have any figures, and I am not sure if figures are readily available. In relation to the paper you referred to, of course we will ask, but I need to tell you that the paper which this officer participated in may be regarded by the United States as the property of CJTF7.

Senator BROWN—Thank you. On the civilian casualty list, it is my information that the US command has in fact quite deliberately prevented the accrual of figures which would give the death and injury list of civilians in Iraq. Is that the case?

Gen. Cosgrove—I have no knowledge of that or comment on it.

Senator BROWN—Would you find out?

Senator Hill—That they did what?

Senator BROWN—They have made a deliberated decision not to accumulate a list of dead and injured civilians in Iraq.

Senator Hill—American commanders?

Senator BROWN—That is correct.

Senator Hill—I understood that it has been impossible to accurately estimate civilian casualties. That has been the problem, not that somebody is failing to aggregate the daily or weekly outcomes.

Senator BROWN—I ask, because we are going to be convening on this in some days time, if in the interim you will find out what efforts are put into establishing the death and injury list amongst civilians and whether or not there has been some—

Senator Hill—It does not worry me but I thought the committee wanted to convene in a couple of days time to talk about the budget.

Senator BROWN—Yes, but that gives you time, which is fair enough, to get this information and make it available to the committee.

Gen. Cosgrove—As I understand your question, you are looking for us to establish whether there is a deliberate policy of failing to acquire statistics on civilian dead and injured as a result of military action.

Senator BROWN—That is correct.

Gen. Cosgrove—I have got that and we will ask that question.

Senator BROWN—Secondly, the best estimate of what those casualty and death figures are.

Gen. Cosgrove—Yes, we will ask that question.

Senator BROWN—Finally, regarding Major O’Kane’s letter, the last piece is ‘lessons learnt’. Of the top three lessons learnt, the first he says is:

Multi-National Operations between Troop Contributing Nations are based on cooperation and professionalism rather than a strict command. This impacts on the application of national Rules of Engagement.

Could you interpret that for me, General Cosgrove?

Gen. Cosgrove—That is a little obscure. I have been involved in multinational operations and I agree with the first sentence. The second sentence is one I would need to discuss with the author. It does not leap off the page as being of as great relevance or logic in the flow of the first sentence. It has been my experience that it is quite reasonable and usual, indeed expected, that while you will try to have an agreed common set of rules of engagement in certain circumstances—you work on that; you do not assume it—that is in the context of having your own national rules of engagement, which are paramount.

Senator BROWN—As I read it—and you might ask the major about this—he is saying, as his first lesson learnt from his experience there, that the Australian rules of engagement are impacted upon. I get the implication that they are compromised.

Gen. Cosgrove—I do not believe he is saying that. I disagree with your construction of that. I will ask the question as to whether that is what Major O’Kane meant.

Senator BROWN—This question might have to be taken on notice, too. In General Taguba’s report, he mentions Mr Stephanowicz, a contract US civilian interrogator who has been found guilty of certain matters. It is on page 48 in relation to the abuse of prisoners in Abu Ghraib. My information is that this man spent some time in Adelaide and applied for Australian citizenship. He is described here as being a US national. Does the government have information on Mr Stephanowicz and does it know whether he applied for Australian citizenship and whether he was successful, and when those events took place?

Senator Hill—I have seen reference to him in the press, and the references were to the effect that he was interested in returning to Australia. But I otherwise do not know of him. Do you want to know whether he has sought to return to Australia? What is the specific question?

Senator BROWN—Whether he has sought Australian citizenship and when he was in Australia, if that is possible.

Senator Hill—That would be Immigration or Foreign Affairs. I do not really think it is for us to be chasing the question of his citizenship.

Senator BROWN—What is the government’s position on contract private operatives being involved in military operations, including detention and interrogation of prisoners, Minister? Where does the Australian government draw the line? What control does the Australian government have over such civilian operatives and, indeed, people who have left or will leave the Australian defence forces to take a civilian post in Iraq or elsewhere undertaking military or paramilitary duties of this variety?

Senator Hill—Former employees of government or former military staff are free to take work in the outside world. There are some constraints on them in terms of the Official Secrets Act and their knowledge of events and the like. Subject to those constraints, their choice of employment is their business.

Senator BROWN—Do you find it is okay for them to be in charge of prisoners and to detain people?

Senator Hill—We do not utilise private interrogators. In relation to other countries utilising private sector interrogators, I would have thought that our primary concern is that the Geneva convention obligations are respected.

Gen. Cosgrove—We have not contemplated using civilians in that function.

Senator BROWN—How about in a joint command situation like this where prisoners are being interchanged and end up in the hands of private and untrained interrogators as happened at Abu Ghraib?

Gen. Cosgrove—I think the minister has answered that part. We have not contemplated using civilian interrogators.

Senator BROWN—Do you find that that is an acceptable practice?

CHAIR—I think you have had a reasonable run on this case, Senator Brown. We will be returning to it later as agreed.

Air Cdre. S. Harvey—I would like to clarify one question. An issue was raised about the meaning of the lesson learned regarding the impact of the application of national rules of engagement. When I read the report, that is one that caught my attention as well. I am a little bit hamstrung in talking about it because it involved an incident in which a third nation was involved in an operation and decided not to proceed with that operation on the basis of its rules of engagement. As it transpired afterwards, it was as a result of some political decision rather than the rules of engagement.

I do not want to go into the details or name the country, for obvious reasons, but the point that comes out of this is that it simply highlights the fact that different nations operating under different rules of engagement may give rise to situations in which operations cannot be conducted. The mention of the point in the report was just simply to highlight that the only way this would be achieved would be to have quite synchronised rules of engagement. That is the implication. As I said before, when I first read that it was rather misleading so I just wish to clarify that.

CHAIR—Thank you. We now move to output 6. Senator, do you wish to—

Senator CHRIS EVANS—No. We have not finished this section. I want to ask about the sit reps. Obviously the situation reports were received on 15 and 29 February. Minister, I think you made the point that you accepted that that is when Defence had some knowledge of these matters and you did not want to separate yourself from that issue. I want to be clear when people became aware of those sit reps inside Defence and what happened to them in terms of the chain of command. It seems to me that, putting aside what our officers knew while serving in Iraq—we will come back to that—and putting aside what was in Major O’Kane’s report, the sit reps provided a fairly clear picture of what was occurring in terms of the abuse issues,

the ICRC report et cetera. Even if they were only in note form, they were a fairly good summary of the issues. What happened in terms of the response and when did that go up the line?

Senator Hill—We would have to look at it from the point of view of each addressee, I would think.

Mr Carmody—Can I just seek clarification of that, Senator? Were you talking about Major O’Kane’s sit rep?

Senator Hill—No, he is talking about the February sit reps.

Senator CHRIS EVANS—You told me they weren’t worth reading—

Mr Carmody—And they did not come back to Australia.

Senator CHRIS EVANS—so I am concentrating on the other two.

Mr Carmody—The joint task force sit reps?

Senator CHRIS EVANS—Yes, I think it was the colonel then the group captain.

Senator Hill—No, not the joint task force sit reps.

Mr Carmody—So Colonel Muggleton.

Senator Hill—The sit reps on the February report. The two sit reps that came back to Australia. I think you said yesterday who received them. The question is being asked, I assume in relation to the Defence addressees: what follow-up was there to them?

Mr Carmody—I thought I answered that question yesterday when I said that—

Senator CHRIS EVANS—I find if you ask them every day you sometimes get a different answer.

Mr Carmody—the situation reports indicated a report of a fact and also that that fact was being dealt with, and so I took no further action with those sit reps.

Senator CHRIS EVANS—That is right, but we got distracted then. Clearly when he got up in the chamber on 11 May, Senator Hill had become aware of them because he began to recant from the story on the ABC a couple of nights before about first hearing of it in late April or early May and admitted that there was some knowledge of these matters in February. I think he has explained why, and that was as a result of—

Senator Hill—No, I did not recant from that. I was asked when I first knew about the abuses. The question was being asked in terms of the abuses that had just become public—it was at the beginning of May—and I said: ‘This is the first time I’ve heard about these abuses. We’ve just seen them on the television.’ I said that they were appalling and they needed to be addressed. Subsequently, we have learnt that there was also a parallel ICRC process taking place. I knew that the ICRC was busy in Iraq but subsequently I learnt that they had made a report in February that was known, in the case of the draft and the final report, to an ADF military officer who had advised Australia through a sit rep that that report had been received.

Senator CHRIS EVANS—Mr Carmody basically indicated yesterday that those sit reps were read and filed. Both the minister and the PM were out there after that period saying they had no knowledge of what was developing. I am not trying to verbal anyone but they were out

there clearly without that knowledge in the sense of those issues. What I want to understand is when that knowledge became more widely known in Defence, other than filed away as sit reps. Am I making myself clear, Mr Carmody?

Mr Carmody—I think so, Senator. Quite clearly I do not think they became more widely known until very recently because Colonel Muggleton in the sit rep described the report in a particular way and he noted that US authorities were investigating the allegations, including the detention system in Iraq. At that point in time, the point was made that the February report had been delivered to Ambassador Bremer and that it was being investigated, so I did not take any further action.

Senator CHRIS EVANS—I think you have got that exploration on the record. I am trying to move on from that. Sometime after that you were able, or someone was able, to inform the minister that Defence's knowledge of those matters was a bit more comprehensive than he had been saying publicly. I know, for instance, that on 10 or 11 May you interviewed Major O'Kane, and you knew a lot more after that interview than you did beforehand about his role. How did the sit reps come to light again? There seems to be a recognition that we had this information in the situation reports inside Defence. Clearly, the minister and others operated without the benefit of that knowledge.

Senator Hill—I think the existence of the February report was known because—and I really need to check this—it was getting publicised internationally. We then caused a search to be undertaken—not just in Defence but across government, because we had not seen it—to see whether it had been brought to government's attention, firstly, and, secondly, whether the report had been provided to government. We found the report had not been provided to government—and found out why—but did find that it had been referred to in these two sit reps.

Senator CHRIS EVANS—I am trying to trace back to when that occurred. Are you talking about the 11 May decision to go looking for the report or are you talking about an earlier—

Senator Hill—I think it was in May, and Mr Carmody may have the exact details.

Mr Carmody—I do have the exact date. I provided advice to the minister on 10 May and the advice that I provided was the advice that I have just provided to you about Lieutenant Colonel Muggleton's sit reps.

Senator Hill—I would need to check it but I think that advice is dated 10 May and I think I received it on the 11th.

Senator CHRIS EVANS—I think you referred to this yesterday because your PPQ had changed. You indicated that your advice had changed on the 10th or 11th because when you got up in the Senate on the 11th you said that now you had information about the February knowledge—is that right?

Senator Hill—I knew of the February ICRC report on the 11th. What I did not know was of the so-called October report. We sought to establish a state of knowledge in relation to the February report. Then when people started talking about an October report we sought to establish what that was about.

Mr Carmody—Senator, as Senator Hill correctly put it, this is in relation to the February report, and I refer to the advice that I sent forward, which said that in reporting back to Defence in early February 2004 Lieutenant Colonel Muggleton advised that the detention system in Iraq was of concern but that these concerns related primarily to process concerns in the legal system. Lieutenant Colonel Muggleton noted that the US system generally complied with relevant conventions but that there were some concerns which he believed would be addressed in reviews ongoing at that time including the arbitrary nature of detention and the fact that detainees were denied visits from family members. Lieutenant Colonel Muggleton also referred to an ICRC report delivered in February to CPA Ambassador Paul Bremer, which was highly critical of coalition detention operations. That advice was provided on the 10th, which was really, I think, the first point at which I started to draw some of these activities together.

Senator CHRIS EVANS—Were you paraphrasing Colonel Muggleton's report?

Mr Carmody—Yes, I was paraphrasing Colonel Muggleton's report. This was in advice that I provided to Minister Hill. I did not use the precise words.

Senator CHRIS EVANS—In hindsight it seems to have understated the issues somewhat.

Mr Carmody—I do not think I have, Senator, in terms of what—

Senator CHRIS EVANS—The description seemed to underplay the issues a bit compared with what we now know.

Senator Hill—I think the description was adequate in terms of the sit reps. If one had the report and was reporting on that it might have been expressed differently. That is the point.

Senator CHRIS EVANS—Mr Carmody, obviously these sit reps had lain dormant inside the department. When you went looking for the February ICRC report, in that search you came across the sit reps. Is that a fair—

Mr Carmody—At the time I was looking to respond to a question about Defence's knowledge, if any, about abuse of prisoners at Abu Ghraib, which was the question that I was exploring on and around 10 May. In trying to ascertain what Defence's knowledge regarding the abuse of prisoners at Abu Ghraib might have been, I had my staff looking for any sources of information that we might have compiled within the department that would have had that, and the sit reps, the relevant situation reports, were the first stop. So it was a question of seeking that information and correlating it.

Senator CHRIS EVANS—So it is fair to say that from 10 May Defence was aware of Colonel Muggleton's report, the notification of the ICRC concerns, and then the subsequent one of 29 February from the group captain detailed the outcome of those?

Mr Carmody—That is essentially correct, because of the fact that in the 9th to the 15th report Colonel Muggleton had said there were some concerns and that they were being dealt with and then the subsequent one that you referred to.

Senator CHRIS EVANS—The 22nd to the 29th,

Mr Carmody—The 22nd to the 29th, which I think I read out in some detail yesterday.

Senator CHRIS EVANS—That was authored by a group captain unnamed—is that right?

Mr Carmody—Yes.

Air Cdre S. Harvey—I might just add that in relation to the reporting, looking at the sit reps, the initial reports back indicated relatively minor matters. My information from Lieutenant Colonel Muggleton is that this was based upon the liaison meetings held with the ICRC at which relatively low-level process type issues of food and the like were entertained. It was really only I think on about 17 February—the 9 to 15 February report—that notification of the nature of the gravity of the offences became known. You may recall that that was the report we described as detailed, comprehensive and highly critical. Before that the reports back were very low-level things that came out of the ICRC liaison meetings.

Senator CHRIS EVANS—It is interesting you say that, because you gave evidence yesterday that Colonel Muggleton had told you that Major O’Kane had shown him the October working paper, didn’t you?

Air Cdre S. Harvey—Yes, I did say that. What I am saying is that the reporting that came back through the sit reps—

Senator CHRIS EVANS—No, I am pursuing a separate point. I just want to be clear. Had Colonel Muggleton been made aware of the contents of the October working paper by Major O’Kane?

Air Cdre S. Harvey—That is my understanding. The distinction I wish to make is that the actual reports that came back just listed fairly low-level process issues.

Senator CHRIS EVANS—I am happy to accept that. Did Major O’Kane or Lieutenant Colonel Muggleton indicate to you why they discussed the October report? The department made it clear that the reporting chain was not Major O’Kane to Lieutenant Colonel Muggleton; they were in separate headquarters—one in the provisional authority and one in military headquarters. But they are both Australian legal officers, so I presume they would have had a beer together or whatever. Did either of them explain why they came to share that information?

Air Cdre S. Harvey—No, he did not. I do not know the reasons why.

Senator CHRIS EVANS—It was not because Lieutenant Colonel Muggleton was working on the report as well?

Air Cdre S. Harvey—I cannot answer that question. My knowledge is that he was not working on the report.

Senator CHRIS EVANS—Can you help me with the reporting of Lieutenant Colonel Muggleton and his predecessors and successors in terms of the provisional authority structure? Who did Colonel Muggleton report to?

Air Cdre S. Harvey—Colonel Muggleton reported to the general counsel—I think that is the descriptor of the position—which is the senior legal adviser to Bremer.

Senator CHRIS EVANS—What were his lines of reporting in terms of Australia?

Air Cdre S. Harvey—I think we went through this yesterday. Essentially the selection came as a result of a request by the United States authorities. The only reporting that came back to Australia was his sit reps. That was his only reporting chain.

Senator CHRIS EVANS—And we have established that there was not much of interest in relation to this current matter in that?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Did he have a line of reporting or contact with the Australian Representative Office in Baghdad?

Air Cdre S. Harvey—I am not quite sure of the command and control arrangements. Someone might be able to help me. My understanding is, obviously being in theatre, he would have had contact, but I am pretty sure there would not have been any formal link.

Senator CHRIS EVANS—Did Colonel Muggleton—and I do not mean to personalise it; whoever was filling the position, either him or his successors—provide advice, reports or updates to the Australian Representative Office?

Air Cdre S. Harvey—I am advised that they did. I have just been advised that the sit reps did in fact go to the Australian Representative Office.

Senator CHRIS EVANS—Just the sit reps?

Air Cdre S. Harvey—Yes, just the sit reps.

Senator CHRIS EVANS—Colonel Muggleton's sit reps also went to the Australian Representative Office. Would he have provided them with other information or advice?

Air Cdre S. Harvey—I have no way of knowing that. I presume it was just simply the sit rep.

Senator CHRIS EVANS—We now know that Lieutenant Colonel Muggleton was aware of the October report as well as Major O'Kane and that they discussed the report. I am just trying to understand whether or not Lieutenant Colonel Muggleton provided any reporting on those matters. I understand that we know that the sit reps—I think we found 18 of the 25—did not shed much light on matters. Is that fair?

Gen. Cosgrove—But they were for Major O'Kane—the 18 of 25. Colonel Muggleton's reports were separate from those. If you are talking about Colonel Muggleton's reports, they are not the 25. Those reports are Major O'Kane's.

Senator CHRIS EVANS—That is right. Thank you. That is very helpful. I was going off track. In fact, they were Major O'Kane's sit reps that were directed through the senior—

Gen. Cosgrove—To the other Australian—the senior Australian.

Senator CHRIS EVANS—A senior Australian officer who was not Colonel Muggleton, but another colonel at the time—Colonel X.

Gen. Cosgrove—Correct.

Senator CHRIS EVANS—I appreciate that; I was getting my colonels confused. What reporting lines did Colonel Muggleton follow in terms of reporting back to Australia?

Air Cdre S. Harvey—As far as I am aware, the only reporting back was through the sit reps.

Senator CHRIS EVANS—Through his sit reps?

Air Cdre S. Harvey—That is correct.

Senator CHRIS EVANS—Have you done a survey of those as well?

Air Cdre S. Harvey—Yes, I think all his sit reps have been reviewed.

Senator CHRIS EVANS—What did we find?

Air Cdre S. Harvey—The only ones that made mention of anything of substance are the ones that we have mentioned.

Senator CHRIS EVANS—I am not clear now whether, when I have been talking about this with you, we were talking about O’Kane’s sit reps or Muggleton’s sit reps.

Gen. Cosgrove—We are talking about Muggleton’s sit reps.

Air Cdre S. Harvey—I am talking about Muggleton’s sit reps. That is the question you asked.

Senator CHRIS EVANS—Yes, in terms of the one—you are saying the only one of Muggleton’s that dealt with ICRC or these issues was the one of 15 February?

Air Cdre S. Harvey—I cannot say that. I think it may have dealt with his liaison role, but I think there were some that dealt with the minor process issues.

Senator CHRIS EVANS—Let me rephrase it—

Senator Hill—It dealt with a number of issues, but it made mention of the February report.

Senator CHRIS EVANS—I will rephrase the question. Did any of Muggleton’s sit reps other than the one referred to on 15 February deal with the ICRC report and/or allegations of abuse or involvement of Australian lawyers with abuse issues or treatment issues at Abu Ghraib prison?

Mr Carmody—I can answer that. I am advised that I have two of Lieutenant Colonel Muggleton’s reports. There was the 9th to the 15th—and I have gone through that in detail—about the presentation of the report and the response. And there was a situation report from 12 January to 18 January in which he notes reports of concerns regarding overcrowding of prisons, difficulties in detainee families, gaining access to information on families and the length of US processing procedures—and that this was briefed to a US Department of Defense officer by the CPA’s general counsel. He is actually reporting some information that came to his attention that was briefed to a senior US officer. I had conflated those two items in that summary, if you will, that I gave you before, which you said I had paraphrased. When I provided the advice to the minister, I pushed both those items together because they were the only two significant references in Colonel Muggleton’s reports to anything to do with Abu Ghraib prison abuse revelations.

Senator CHRIS EVANS—I appreciate that. Can someone refresh my memory about Muggleton’s reporting line in country—in terms of Australians? Is his reporting line to the senior Australian officer at Australian headquarters?

Gen. Cosgrove—No, he did not. I believe he reported back to Australia—and, obviously, to the ARO.

Senator CHRIS EVANS—So he would report directly to someone in Australia?

Gen. Cosgrove—I think his reports went to—is it the international policy division?

Mr Carmody—The detail was provided yesterday—I do not have it with me—on the distribution of his situation reports. It was to a range of addressees. International policy division was one; the Defence Legal Service was another.

Senator CHRIS EVANS—I appreciate that that is already on the record. I am trying to work out the chain of command. Who did he report to?

Gen. Cosgrove—I have just been informed that he reported via the TLO, the temporary liaison officer at the Australian Representative Office, to international policy division.

Senator CHRIS EVANS—His line of reporting was in fact through the Australian Representative Office. Both his sit reps and his line of authority are back through the Australian Representative Office?

Senator Hill—Through our de facto defence attache.

Senator CHRIS EVANS—I am trying to be clear. That is a sort of agreed position.

Senator Hill—I guess that is because the CPA is a political office.

Senator CHRIS EVANS—That is right, and that is why I wanted to ask whether Major O’Kane, to the knowledge of anyone in Defence, ever reported to the Australian Representative Office his involvement with the ICRC report of October and preparing the response.

Gen. Cosgrove—That would be unlikely because it was not in any military chain of command.

Senator CHRIS EVANS—I want to nail this. You say it would be unlikely.

Gen. Cosgrove—We will check.

Senator CHRIS EVANS—I think we need to be precise. If anything, we have learnt that. From what you have just told me it is in his chain of command.

Gen. Cosgrove—Muggleton dealt through the Representative Office; O’Kane was working through military headquarters and his reports went to another senior Australian in that same headquarters who sent on a conflated report to the senior Australian at the national headquarters, who then sent them on to Headquarters Australian Theatre—now Headquarters Joint Operations Command.

Senator CHRIS EVANS—My apologies, General, you are right. Perhaps you could take on notice—

Gen. Cosgrove—Yes, we will need to. I am just flagging other questions for you. It is unlikely that he reported to the Representative Office.

Senator CHRIS EVANS—I will get the chance to ask the Representative Office that question tomorrow.

Gen. Cosgrove—Are they on tomorrow?

Senator Hill—Some of us are back again tomorrow.

Senator CHRIS EVANS—There is no end to estimates, General Cosgrove. Before I give Senator Brown the call I want to finish this issue. Can Air Commodore Harvey or Mr Carmody confirm for me that the documents handed over by Major O’Kane on 11 May included what we now know as the October and November working documents of the ICRC—is that right?

Mr Carmody—That is correct, Senator.

Senator CHRIS EVANS—And a draft letter prepared on behalf of the American MP forces in response to an ICRC report. What other documentation did he make available to you?

Mr Carmody—I do not have that in front of me; I will have to take that question on notice.

Senator CHRIS EVANS—There was other documentation?

Mr Carmody—I do not know. I believe there was but I will take it on notice.

Senator CHRIS EVANS—That would be helpful.

CHAIR—We will take a short break.

Proceedings suspended from 3.29 p.m. to 3.48 p.m.

Gen. Cosgrove—Mr Chairman, we have a clarification on the processing of reports out of the CPA—our people in the CPA—through to the representative office. The clarification is that the reports from our lawyers on the CPA went to our temporary liaison officer at the representative office in Baghdad, not to DFAT staff members—for example, the Australian representative or any of his staff. It may be that the TLO showed them, but that was simply the conduit by which they were conveyed back to the international policy division.

Senator Hill—This is a big chance for Senator Brown.

CHAIR—It is indeed. You are very perceptive, Minister.

Senator Hill— I think Senator Brown has orchestrated this.

Senator BROWN—General Cosgrove, can you establish whether the consular officials in Baghdad were informed about these reports that went to the TLO?

Gen. Cosgrove—We will find that out.

Senator BROWN—I wanted to ask Air Commodore Simon Harvey and Mr Carmody about the Karpinski letter that went back to the Red Cross on 24 December, which we know was drafted at least with the assistance of Major O’Kane. You have seen that draft report. I wanted to ask you if it does include, firstly, the condition that there are some prisoners who would be outside the Geneva convention and, secondly, the new condition that spot inspections by the Red Cross had come to an end.

Senator Hill—We have said on at least two occasions that we are reluctant to bring into play the draft prepared by O’Kane because, firstly, it was a document that was prepared for the joint coalition headquarters and, secondly, it relates to an exchange with the ICRC which the ICRC always prefers to keep confidential.

Senator BROWN—I am asking the two gentlemen, Minister, because they have seen this draft letter. We are in the position where the final report has been released and is public in the United States but the draft report is being suppressed here—

Senator Hill—The response.

Senator BROWN—The letter back to the Red Cross over the signature of General Karpinski. You are saying that the committee cannot see the draft letter, but the final letter has been released in the United States and is available. That is incredible. I am asking why on earth we cannot see that draft letter written in the name of General Karpinski when the final letter is available.

Senator Hill—We cannot answer for a US decision to publish what you refer to as the final letter. What we are trying to do is keep to proper process in relation to the draft that was prepared by Major O’Kane. I did hesitate yesterday because, if it is possible to introduce it, I would prefer to because that avoids unnecessary suspicion. But we are not going to be able today to decide whether that is possible. I am happy to take a question on notice calling for its release and to make relevant inquiries to ascertain whether that might be possible.

Senator BROWN—Thank you, it would be helpful if you could do that—and ditto for the letter of August 27 that was drafted by Major O’Kane to do with drafting the policy for the interrogation of prisoners.

Senator Hill—I do not know whether we have that one. If you are asking for that to be produced, if we have it then we would have to take that on notice as well.

Senator BROWN—Thank you.

Senator CHRIS EVANS—If you leave it under the table—

Mr Carmody—No, I do not know.

Air Cdre S. Harvey—I do not recall.

Senator BROWN—I just want to return briefly to the matter of civilian targeting, which the letter from Major O’Kane raises. Is it possible for the committee to have more information? He is talking in that letter about drawing up guidelines for civilian targeting. I presume that effectively means guidelines against civilian targeting.

Senator Hill—Civilian targeting?

Senator BROWN—Yes.

Senator Hill—I am sorry, which letter?

Senator BROWN—The letter from Major O’Kane. I referred to this before the break, Minister. If you look on page 3 of that letter at the top under the blacked-out section, it says:

... and drafting of a two-star information paper on targeting of civilian structures during offensive operations.

General Cosgrove has been good enough to see whether that information paper may be made available and was also good enough to say that he would look at the numbers of civilians who have become casualties in the course of the Iraq war. I wanted to ask particularly about Fallujah.

Senator Hill—Perhaps I was focusing on something else before the break. I would not want an invalid interpretation to be put on this reference. It depends a lot on what you call ‘civilian structures’. If the civilian structure is being used, for example, to protect forces in an offensive operation then the status of the civilian structure changes. In Australia’s rules of engagement these sorts of issues are obviously addressed, and no doubt they are addressed in the US rules of engagement. There is a lot of debate about them because you have various levels of authority that would be needed before a difficult target like that is made legitimate.

It does not surprise me that lawyers in the joint military command are writing papers on these issues or reviewing legal questions in relation to these issues, but I would not want it to be interpreted that it would be a paper relating to the targeting of a civilian structure that is simply that—a civilian structure—because, as you know, Senator Brown, civilian structures achieve a certain protection under the Geneva convention—

Senator BROWN—Yes, that is commonsense.

Senator Hill— and certainly under the protocol to which we are a party.

Senator BROWN—I have not drawn, and would not draw, any inference from it. I am just looking at the words on the paper and the phrase ‘during offensive operations’ comes after ‘civilian structures’. I am interested in seeing that draft paper if that is possible.

Senator Hill—I will make inquiries but I doubt that that would be available.

Senator BROWN—General Cosgrove has already said he would look at that matter too. I wanted to ask about Fallujah. Press reports have said that in the brief but bloody battle in Fallujah in recent weeks a minimum of 700 people died, many of them civilians, including children and women. We know from proceedings in this committee that at least one Australian was involved in that battle at Fallujah. Can you tell the committee what is known about the civilian death toll and injury toll in that battle?

Senator Hill—I do not think ‘battle at Fallujah’ is the right way to characterise it.

Senator BROWN—Engagement; it does not matter.

Senator Hill—Do we know anything about a civilian death toll? Australian forces, as you know, were not engaged in that operation.

Senator BROWN—They were, Senator.

Senator Hill—Australian forces?

Senator BROWN—At least one Australian was involved in that particular—

Senator Hill—We do not have infantry in Iraq, except to protect our assets, our diplomats and the like. I read that there was an Australian—

Senator BROWN—A warrant officer.

Senator Hill—on exchange to the US who said that he had been involved. I am not sure whether that is what Senator Brown is talking about.

Senator BROWN—To the—

Senator Hill—I thought it was to the US forces.

Gen. Cosgrove—I believe that is so.

Senator Hill—It was a third country.

Gen. Cosgrove—That is right. It was a third country deployment.

Senator BROWN—An article in the *Australian* on the 11th of this month titled ‘An Aussie’s fight for Fallujah’ would indicate that Australia was involved there.

Senator Hill—Is that the article to which I am referring, which talks about an Australian who was third party deployed?

Senator BROWN—Yes.

Senator Hill—That is not Australia being involved in those offensive operations. We obviously would not have the level of information that we would have if we were directly engaged.

Senator BROWN—Did the defence forces give Warrant Officer Joe Day permission or did they go as intermediaries in this story becoming public?

Gen. Cosgrove—There was no attempt to conceal or promote Warrant Officer Day’s activities. He is there legitimately and carrying out his duties with the permission to be with his unit on operations in Iraq.

Senator BROWN—Absolutely. I have a legitimate right then to ask about what happened at Fallujah.

Gen. Cosgrove—I was not questioning your right. I was talking about Warrant Officer Day.

Senator BROWN—I am asking about what happened in the fight for Fallujah, as it is called here, because there was a big civilian death and injury toll there.

Senator Hill—What I was saying is that our knowledge of casualties would be incidental knowledge because we were not participating in the operations. We would be getting it from third parties.

Senator BROWN—Again, there is this terribly difficult or artificial line drawn. Where Australians are seconded or are in some way or another under the command of people from another country it seems that the responsibility for knowing what happens in those circumstances ceases. I do not accept that. Australia is one of the countries involved in the coalition in Iraq. Australia was involved in this particularly bloody conflict in Fallujah. I think it is fair enough for this committee to expect that information about that engagement be available to the committee from you, Minister. I will put it this way: has there been an effort by the government to establish what happened in Fallujah in view of the prominence of that battle in the Australian and world media?

Gen. Cosgrove—We take situation reports on a very regular and comprehensive basis on operations in Iraq. We have some information that is relatively easy to put in the public domain and other information which is more sensitive. That would obviously be the information with an intelligence quotient to it. We do that in order to monitor the safety of our people and to gain a broad situational awareness of events. Some time ago we ceased public briefings on operations in Iraq because of the essentially protective nature of our on-the-

ground presence. When I say that, I mean that those limited combat forces we have in Iraq are therefore protective duties. In that regard, we do not ordinarily attempt to make public statements beyond that which is made available quite properly through coalition military forces' media statements on the ground in Iraq.

If our forces were involved in active operations, then we would make reference to those active operations. I can, for example, tell you a good deal about what our P3s, our C130s and our ship HMAS *Stuart* are doing. I can tell you day to day and quite comprehensively the sorts of hazards and risks that our security detachment is undertaking. I can tell you—and we have discussed at some length—the sorts of contributions our individuals are making on the staff. I can tell you, or somebody else can tell you, of some of those other, more specialised elements we have inside Iraq. But, when you turn to the military operations of a partner and ask us here in estimates to provide you with a thumbnail sketch of military operations in Fallujah, which were, now, a few weeks ago, I know of your interest in it but we do not have that information here in a brief. We did not anticipate that we would be required to chronicle the military operations of a coalition partner there. There are 32 nations in the coalition, and it is something which, if we provide it to you, I think we would have to provide subsequently, perhaps by way of a briefing, accepting that that brief, of course, might be classified in some aspects.

Senator BROWN—Could I ask you to come back to the committee, then, with a briefing that is not classified on what has been called here the 'fight for Fallujah'.

Gen. Cosgrove—We might need some definition there; that is a journalistic definition. Could you perhaps provide some dates? Otherwise, it is a bit up in the air. We might prepare a briefing and then miss out on your expectations by a day or so here and there.

Senator BROWN—Yes. If you could give the committee your knowledge of the operations in Fallujah in April and/or May—

Gen. Cosgrove—Sixty days worth of military operations—this is going to take a while.

Senator BROWN—No, in brief, and so that we make sure the brief covers the period concerned in this story and what is called the 'fight for Fallujah'.

Senator Hill—We will see what we can get for you, but I do not think it will be very different from what has come out of public sources. I think, necessarily, it will be very imprecise.

Senator BROWN—I would expect the maximum information that is available. It is a matter of public interest. There has been a big civilian death toll in Fallujah. There has been quite a bit of publicity about the one or two Australians who were involved in that. It is part of the—

Mr Smith—There was one, wasn't there? Do you think there was a second?

Senator BROWN—There have been reports of another.

Senator Hill—I thought the killing of the American contractors was pretty awful as well.

Senator BROWN—I agree with you—it was bloody awful—but I want to ascertain what further information there is about Fallujah that may be available.

Senator Hill—We will see what we can find.

Senator BROWN—Thank you.

Senator CHRIS EVANS—I apologise because I think General Cosgrove put on the record further information regarding the TLO not reporting through DFAT staff members—

Gen. Cosgrove—With regard to what I was saying, I can further clarify the previous answer. Our intent was that the report go from the CPA to the temporary liaison officer and that he would forward it on but with information from Foreign Affairs and Trade to say that the Australian representative did get the sit reps. From about November last year the sit reps have been widely available, and DFAT of course are available for estimates tomorrow.

Senator CHRIS EVANS—But the formal line of reporting—

Senator Hill—They are the CPA sourced sit reps, I assume, not the joint military command sourced sit reps.

Gen. Cosgrove—Yes. Clearly they are the sit reps from the lawyer or lawyers at the Coalition Provisional Authority.

Senator CHRIS EVANS—Lieutenant Colonel Muggleton's predecessors or successors.

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—But his direct line of reporting was more particularly to the TLO at the Australian Representative Office?

Gen. Cosgrove—Yes, so he would not be sending it to the ARO—to the representative—he would be sending it to the liaison officer.

Senator CHRIS EVANS—But it sounds like he was making them available to the Australian Representative Office more broadly.

Gen. Cosgrove—That sounds like what has been happening.

Senator CHRIS EVANS—What I wanted to ask, Mr Carmody, is whether you have interviewed the TLO in relation to knowledge of prisoner treatment, abuse et cetera.

Mr Carmody—I have not interviewed the TLOs but the TLOs have been spoken to. That was in my testimony yesterday. The first, second and current TLO, who is the third officer, have all been asked questions about their knowledge of prisoner abuse.

Senator CHRIS EVANS—Now that you remind me, I remember that but I wanted to test whether they had had a conversation with Colonel Muggleton about the October report.

Mr Carmody—I can take that on notice but the previous answer, if they have said they have no knowledge of any allegations of abuse, should close that. But I will take the question on notice.

Senator CHRIS EVANS—Yes, I am conscious that we have had a different time frame.

Senator Hill—Not necessarily, because there are different characterisations of what was reported in the October report.

Senator CHRIS EVANS—I think that is right. That is really why I wanted to restate the question, because I think we also know from the survey that the answer depends on what question you ask.

Senator Hill—That is right.

Senator CHRIS EVANS—Now there is a broader understanding of the issues, the answer might be different. So maybe you can take on notice what the TLO knew of Muggleton's work and his knowledge of the matters and what he knew of O'Kane's work and knowledge of the matters and whether or not he had reported to him on those issues.

Mr Carmody—Certainly I will.

Senator CHRIS EVANS—Is that clear?

Mr Carmody—Yes.

CHAIR—Now that that is completed, I would like to move on to outcome 6, Intelligence for the defence of Australia and its interests.

[4.13 p.m.]

Senator CHRIS EVANS—I wanted to ask some questions surrounding the Colonel Collins matter firstly. I am not sure where to start.

Mr Smith—If your questions are about the issue of the redress of his grievance, properly defined, they would be for Army or CDF to respond to. Where the work done by Captain Toohey went beyond the narrow definition of redress of grievance into the areas of intelligence, Mr Bonighton might be able to help.

Senator CHRIS EVANS—Thank you; I appreciate that. I understand that it does cover a wide range. I suppose it is a big issue. I would like to start with questions on the search warrant issue, if I may, which I suppose will go to Mr Bonighton. What understanding does Defence have as to how Colonel Collins came to be on the search warrant?

Mr Bonighton—Our understanding of the search warrant issue is that Lieutenant Colonel Collins's name came up in the course of a security investigation which was being undertaken by the Australian Federal Police. His name appearing on the warrant is a matter for the Federal Police. Defence does not put people's names on warrants.

Senator CHRIS EVANS—I appreciate that. Did Defence provide any information to the AFP about a potential list of persons who they thought ought to be contacted and interviewed in relation to the matter?

Mr Bonighton—I am not familiar with the details of the investigation itself. It took place in 1999-2000, I believe. However, I surmise that a normal operating premise would be that you would look for the names of people who worked in particular areas if there was some indication that those areas were involved in the unlawful disclosure.

Senator Hill—You would brief the police on the background but the police would decide who to pursue through the warrant, I assume.

Mr Bonighton—Yes, absolutely. Mr Lewincamp is telling me that, at the time, we gave the investigators a list of everybody who had access to the product that had been leaked. I imagine that was how names were compiled.

Senator CHRIS EVANS—So you did not make any judgment about the names that went forward to the AFP; you merely said that they were people who would have had access to the product that ended up being leaked. Is that fair to say?

Mr Bonighton—That is fair.

Senator CHRIS EVANS—And you gave them a list of Defence employees who might have had access?

Mr Bonighton—I do not know the exact detail of that and I am not sure that the Federal Police would either. You are really looking at a police investigation. Again, I could surmise. We certainly gave them a list of everyone who got access to the product. That could have been beyond Defence and it almost certainly was.

Senator CHRIS EVANS—You are talking about people in other agencies?

Mr Bonighton—Yes, there could well have been.

Senator CHRIS EVANS—I was thinking of the world of Defence, but obviously the product would have gone to other agencies.

Mr Bonighton—Indeed.

Senator CHRIS EVANS—You gave them a list of people who would have had access to the product. I presume they are all in government agencies.

Mr Bonighton—Yes, I think that would be fair to say. It would be national security classified information.

Senator CHRIS EVANS—That was given to the AFP. Have AFP provided you with feedback on that investigation?

Mr Bonighton—My understanding is that the investigation was concluded in 2000 and the AFP did not take any further action as a result of that investigation.

Senator CHRIS EVANS—And did the AFP provide any advice to Defence as to why they did not take any further action?

Mr Bonighton—The obvious one, that they had not come to a conclusion as to where the unlawful disclosure had occurred.

Senator CHRIS EVANS—So it was not a question of insufficient evidence to support a prosecution so much as inability to identify the source.

Mr Bonighton—My understanding is that there were a number of people who had access to the material and like many of these sorts of investigations it is extraordinarily difficult to narrow it down to an individual.

Senator CHRIS EVANS—So AFP reported back to Defence in 2000 that they had been unsuccessful in finding the source of the information.

Mr Bonighton—Yes.

Senator CHRIS EVANS—Was that the end of the matter as far as Defence was concerned?

Mr Bonighton—Yes, indeed; there was nothing else that we could fruitfully undertake at that point.

Senator CHRIS EVANS—Can you tell me whether or not that investigation had an impact on Colonel Collins's security classification or clearances?

Mr Bonighton—To the best of my knowledge it did not.

Senator CHRIS EVANS—So there was no suggestion that his security status was impacted during the investigation or subsequent to the investigation?

Mr Bonighton—I believe not.

Senator CHRIS EVANS—I just want to be clear: do you know that that was the case?

Mr Bonighton—I did not know for a fact that that was the case, but my understanding is that he continued to have access to classified information. I can certainly check that for you.

Senator CHRIS EVANS—I was not being difficult. I was just trying to be clear whether you had knowledge of it and were reasonably certain or whether you did not have knowledge of it. So, as far as you understand, it had no impact on Colonel Collins's security clearance or security status, either then or subsequently.

Mr Bonighton—Correct.

Senator Hill—We are talking about the investigation.

Mr Bonighton—Indeed.

Senator CHRIS EVANS—There is an issue later on, isn't there, about the question of Colonel Collins's security status, but Defence say, I take it, that that had no relationship to this particular incident or investigation—is that right?

Mr Bonighton—My understanding is the investigation had no impact on his security clearance.

Senator FAULKNER—My first question on a broad issue is to General Cosgrove, but he may refer it elsewhere. At this time in the electoral cycle—which I think you would appreciate is, at least for politicians, a sensitive time—I was wondering whether there were in existence any protocols for the use of photos of Defence Force personnel. I also want to follow this through with General Leahy in terms of the Army. I did not know if there were any such things. Say, for example, I was interested—which I quickly add I am not—in having a pamphlet of myself as a Labor candidate for the Senate—

Senator CHRIS EVANS—I think we all agree he has got a good face for radio!

Senator FAULKNER—Harsh but fair. This is a hypothetical instance: if I wanted to produce a pamphlet of myself and, let us say, someone earlier today had taken a still photograph of you and me in this estimates hearing, I am wondering about the appropriateness or otherwise of using that sort of material in political paraphernalia. I just use that as an example. Are there any protocols that go to this in the broad? I just wondered if you would be able to help us.

Gen. Cosgrove—I do not think there are. I have been around a very long while. There is a convention that is well understood that we will seek to avoid an overt association of a military person in an image or in any other way with a political activity. People can belong to political parties, but they are not to use their Defence Force status in any way in that connection. The same goes for those who are not overtly associated with a political party but may fall into that outcome if not careful.

Senator FAULKNER—Thanks for that. I think I understand the convention. I am thinking of this more from the point of view of it being exploited from the political side as opposed, if you like, to the defence side. Is it beyond convention or are there protocols?

Gen. Cosgrove—There are not. It is commonsense, I think. Imagine that an Army officer and a local member participate in a tree planting ceremony on a base. If that member took a photograph and put it in the member's electoral newsletter, it is hard to see how we could have a protocol that would govern that. If it were more deliberate than commonsense again would apply and we would have some concerns.

Senator FAULKNER—I suppose my concern here is perceived endorsement. I do not know—I will quickly say this to you, because someone might find such an example—if a Labor candidate has done this over the years. I suspect at times it has been done. I do not know, but recently I have had drawn to my attention a couple of examples with some parliamentary candidates in Western Australia. They happen on this occasion to be Liberal candidates, but in this material the point is that there are photographs of senior defence personnel. The photographs themselves are not political in nature, but they are associated with political material. I am not going to the specific instance. It is just one of these things. I can show you an example of it if you like. What I am trying to get clear is just how we deal with this.

Senator Hill—Those who participate in a parliamentary exchange with the military no doubt would come out of it with a fist full of photos of their warrior-like activities.

Senator FAULKNER—Yes.

Gen. Cosgrove—I think it is just a commonsense approach. If you established that the ADF person entered into that photographic opportunity knowing that it would be used for electoral purposes, that would be obviously beyond the pale. If, on the other hand, it was a casual photo, it is hard to see how you could police it, much less regulate against it.

Senator FAULKNER—I think these probably are casual. Without doubt, the photographs were not taken for the purposes of political exploitation. I do not think there is any question about that. The issue is whether there is a broad view about the appropriateness or otherwise of these sorts of photographs being depicted in party political material. I do not think it really matters per se what the party is. Obviously if there is a principle to apply, it applies to all of us, whatever side of politics we are on. I want to know whether there is an ADF view about the appropriateness or otherwise of these sorts of things appearing in political propaganda.

Gen. Cosgrove—I can tell you what I would say about its use overtly for political purposes. I can tell you what I would say about ADF members who deliberately entered the opportunity for that reason. But if you got to what we might call random use, where the ADF

member did not know that it might be used that way, it would be terribly hard to regulate and police.

Senator FAULKNER—I accept that completely and I am not suggesting that. But I wonder whether there is an ADF view about whether you would prefer politicians like me from the Labor Party or Senator Hill from the Liberal Party—it does not matter so much which political party we might happen to be members of or represent—not to have this sort of material in party propaganda.

Gen. Cosgrove—If it was party propaganda—and somebody has to judge that—I would not want ADF members to engage in something which would be seen to deliberately benefit any side of politics.

Senator FAULKNER—I am happy to show you a sample and, if you would like to see it, I will. Are there any prohibitions or is there a Defence instruction of any description in terms of actually not providing this material to political parties? If somebody goes to Defence PR and says, ‘I’d like a really nice photograph of General Cosgrove because I want to put General Cosgrove’s photograph in a Labor Party pamphlet—

Gen. Cosgrove—We would probably say no, but that would be commonsense. I would have to check to see whether there is a specific regulation. I would like to say that I was au fait with every regulation in Defence. I am aware of a longstanding convention, so beyond the regulation I could say to you that an approach like that should be politely declined and it should be pointed out that General Cosgrove may not wish his photo to be used for political purposes—or whoever else the request was concerning.

Senator FAULKNER—It is certainly not obviously encouraged and I did not think for one moment that it would be encouraged by Defence.

Gen. Cosgrove—No.

Senator FAULKNER—Is it fair to say that it would be discouraged by Defence?

Gen. Cosgrove—If we thought that it was to be used unmistakably for political purposes—you said political propaganda; that is pretty strong—

Senator FAULKNER—Political propaganda is the sort of material that the Liberal Party, the Labor Party and other parties produce—pamphlets and the like. Propaganda may not be the most generous terminology but I reckon a lot of people in the community would think it was fair.

Gen. Cosgrove—What about the guy standing for council or something?

Senator Hill—If the local member out at the awards ceremony at the barracks and so forth puts the photos in his newsletter, that does not cause me any distress, no matter which side of politics it is.

Senator FAULKNER—What about the local candidate?

Senator Hill—It would not keep me awake at night either. If you put something in an electoral brochure saying ‘Cosgrove supports Labor’ and then a photo that you happened to have had taken at the local barracks when you were there for the presentation—

Senator FAULKNER—Probably get sued for that!

Senator Hill—of the flag, that would be inappropriate. A lot of these things require a commonsense approach.

Senator FAULKNER—My broad question goes to the appropriateness of photographs of uniformed personnel—not necessarily including a local member, a local candidate or anyone else—appearing in material produced by political parties and whether that is deemed to be something that the ADF would encourage or discourage.

Gen. Cosgrove—It would depend on the circumstances; the circumstances would provide an answer to that. If it were to be used for unmistakably political purposes, we would not want that to be done.

Senator FAULKNER—I am happy, privately, if you like, to show you the sort of material that is being produced and you might care to reflect on it and let me know in due course what your response is. Specifically, to General Leahy—and I might say, General Leahy, that in the cases that I am aware of this is mainly from the Army; I have not seen much material depicting the other two services—I very briefly wanted to raise a question with you directly about a matter which you were involved in: what was described as the 2004 Ryan Youth Leadership and Development Forum. I think you are aware, aren't you, General, of the occasion that I am referring to?

Lt Gen. Leahy—I am.

Senator FAULKNER—The media release for that particular event said:

The Chief of the Australian Army, General Peter Lahey ...

Your surname was incorrectly spelt.

Lt Gen. Leahy—A common occurrence.

Senator FAULKNER—It says:

The Chief of the Australian Army, General Peter Lahey AO flew in especially to open the Forum.

Was that accurate?

Lt Gen. Leahy—I did not fly in especially. I had other business in Brisbane that day. But I did fly in to open the forum.

Senator FAULKNER—It is not accurate; you did not fly in especially to open the forum. That is neither here nor there. This is a forum, you may be aware, that achieved some notoriety because the Australian cricket captain, Ricky Ponting, also attended. Were you aware of that?

Lt Gen. Leahy—I was aware that he attended but I did not see him on the day.

Senator FAULKNER—Were you aware that Mr Johnson, the MP, the member for Ryan, stated on ABC radio last Friday:

It was entirely a community event ... There was not a single penny asked from the schools or from the students and I think what Senator Faulkner raised in Senate Estimates is quite deceptive and an act of fraud on his part, not my part.

You may or may not be aware that Mr Johnson said that, but just for the sake of complete record I like these things to be read in in their entirety. Were you aware that he said that?

Lt Gen. Leahy—I was not.

Senator FAULKNER—Are you aware that Mr Johnson sent out an email on 1 February 2004 soliciting support for the function from schools, which states:

If each school was in a position to make a relatively small financial contribution to the event of \$4000, I would look after the balance of his expenses.

I interpolate here: 'his expenses' refers to Ricky Ponting's expenses. It continues:

For your support I would have in mind that each school would bring its First XI squad, including coaches etc...the kids' parents, and of course your good selves and spouses.

If you are able to give me a firmer indication of your school's interest and commitment, I can start to get things moving.

Were you aware of that email that was sent out to schools?

Lt Gen. Leahy—No.

Senator FAULKNER—Which of course puts the complete lie to what was said in the parliament. There was a forum and a cocktail party; I do not know if you were aware that there were two functions.

Lt Gen. Leahy—I am aware. I attended part of the forum.

Senator FAULKNER—Were you aware that people attending the forum and the cocktail party were making out cheques to the Ryan Liberal campaign?

Lt Gen. Leahy—I was not.

Senator FAULKNER—Thank you. That is all I have on that, Chair. I am sorry you had to wait so long, General, to answer those few questions.

Lt Gen. Leahy—It was a great pleasure to be here.

Senator FAULKNER—Now you are misleading the committee!

Lt Gen. Leahy—I withdraw!

Senator FAULKNER—You know that is a very serious offence!

Senator CHRIS EVANS—More importantly, did Ricky Ponting ask for your autograph?

Lt Gen. Leahy—I did not meet Ricky Ponting on the day.

Senator CHRIS EVANS—His loss. Talking about these Collins matters, perhaps a better starting point for me is to go through the sequence of events. Are you the officer, Mr Bonighton, that is going to lead me through this?

Mr Smith—It depends. If it relates to the redress of grievance issues—

Senator CHRIS EVANS—No, we will come to that later.

Mr Smith—or career management issues and the initiation of the report undertaken by Captain Toohey then Mr Bonighton is not the person.

Senator CHRIS EVANS—I guess it goes first of all to the inquiry by Mr Blick and then the three or four various legal opinions or reviews. I would like to go through the processes a bit. As I understood it, the first inquiry was when Inspector-General Blick was tasked in

December 2001 to investigate the Collins allegations. Is that right or was there something before that?

Mr Bonighton—On 6 December 2000 Lieutenant Colonel Collins wrote to Minister Moore and on 20 December 2000 Minister Moore referred the matter to the IGIS.

Senator CHRIS EVANS—What was the substance of the Collins complaint to Minister Moore?

Mr Bonighton—I think he had four issues, broadly. They were: that his 1998 assessment in an intelligence estimate relating to East Timor was not accepted by the Defence Intelligence Organisation or by the Defence policy areas; second, a belief that Australia was involved in a secret plan with Indonesia to keep other countries out of East Timor and that a senior ADF officer had removed material from the top-secret joint intelligence support system with the intention of passing that to the Indonesians; third, his belief that the conduct of the security investigation into Mr Mervyn Jenkins, the DIO attache in Washington in 1999, had contributed to Jenkins's suicide; and, fourth, that DIO had been soft in its reporting of Indonesian complicity and orchestrated violence in the lead-up to the Australian intervention in East Timor and had cut INTERFET access to that communication system for a period of up to two days in December 1999.

Senator CHRIS EVANS—That INTERFET access was cut?

Mr Bonighton—Yes.

Senator CHRIS EVANS—So on 20 December—

Mr Bonighton—My apologies, he said to January 2000 but in fact that was clarified later as December 1999.

Senator CHRIS EVANS—Minister Moore referred it to the then inspector-general, Mr Blick, on 20 December 2000 for his inquiry—is that right?

Mr Bonighton—That is correct.

Senator CHRIS EVANS—When did Mr Blick report?

Mr Bonighton—Mr Blick took a number of actions. Firstly, he said that the second and third issues did not fall within his remit and passed those back to the minister for investigation by others. Mr Blick then commenced his investigation into the two other matters. That investigation took some considerable time. He did not report until May 2003.

Senator CHRIS EVANS—Do we know why Mr Blick took so long?

Mr Bonighton—I do not—although it was a complex investigation in that he examined a great deal of DIO product. He interviewed a number of people. It took a long time.

Senator CHRIS EVANS—We will come back to that. Can you tell me what Minister Moore did in relation to complaints Nos 2 and 3 that were referred back to him by the inspector-general?

Mr Bonighton—Complaints Nos 2 and 3 were referred back to the department. The department looked at the allegation about the senior ADF officer and passed that to ASIO for investigation. That was in January to May. ASIO investigated that and found that the actions

were in no way suggestive of espionage. ASIO proposed the matter be not further investigated, to which Minister Reith agreed in May 2001.

As for the second of those issues, the department responded to Lieutenant Colonel Collins, referring to the Blunn inquiry into the conduct of the security investigation of the Jenkins death in Washington. That investigation had found that there was nothing improper or contrary to Commonwealth procedures in the processes used by the investigators or in the way they were used.

Senator CHRIS EVANS—So Blick's report comes back in May 2003. What can you tell me about the Blick report and what action was taken following it?

Mr Bonighton—The Blick report found, in effect, that the matters that had been referred to him were generally to be without foundation. I guess the most damaging of those had been that access to INTERFET for the classified database had been cut. I think that was an appalling allegation to have been made, so it was important that it be addressed with considerable vigour by Mr Blick. My understanding is that he examined all of the circumstances surrounding that event and came to the conclusion that there was no evidence to support the view that the Director DIO had cut off that access.

Senator CHRIS EVANS—That was a finding that he made?

Mr Bonighton—That was a finding he made.

Senator CHRIS EVANS—Are those his words? I think that for the record we may as well get his precise words.

Mr Bonighton—He concluded there had been 'no policy decision to cut access'. There were two possible explanations for this. One was that it was a policy decision to cut that access or it could have been a technical problem. It was a prototype system that had been deployed in the field for the first time. There had been considerable difficulties with it up to this time; we are talking about a couple of months I guess. The forces deployed in September, this incident occurred in December 1999 and any suggestion that there was a policy decision just does not stand up to the facts from what we understand of that as well, so we were very keen to see Mr Blick's report.

Senator FAULKNER—I am sorry to interrupt but it is really quite difficult to hear you, Mr Bonighton.

Mr Bonighton—My apologies. What if I move a little bit forward? Let us try that.

Senator FAULKNER—It is a struggle. Thank you very much for that.

Senator CHRIS EVANS—So what happened with the Blick report once it was given back to the minister, as I presume it was?

Mr Bonighton—The report was passed back to Lieutenant Colonel Collins in a sanitised version. It also was passed to Captain Toohey for use in the redress of grievance, which by this time Lieutenant Colonel Collins had put forward.

Senator CHRIS EVANS—But it went to the minister, I presume, in terms of formal reporting, did it?

Mr Bonighton—Yes, that is the way the inspector-general works. His reports go to the minister.

Senator CHRIS EVANS—What did the minister do with it—tick it, resolve that it be forwarded, endorse it?

Mr Bonighton—I do not think he endorses it, as such. What he does is decide what is to be done with it. It was thought that obviously Colonel Collins should be made aware of the findings. The other finding of course was to do with DIO's product. We have heard much lately about the pro-Jakarta lobby and whether DIO's product was soft on the Indonesians. Again, having examined all that product, it was his view that there was no evidence to support that either—that in fact what we were seeing were conscientious attempts by analysts to find out what was going on at that time.

Senator CHRIS EVANS—What did the minister do with the report other than refer it on? Was it Senator Hill by then?

Mr Bonighton—No, it was Minister Reith, I believe at that point. Sorry, it was Senator Hill.

Senator CHRIS EVANS—May 2003. They change so often it is hard to follow! I think Senator Hill was well and truly in the chair by then. What happened with it apart from Senator Hill authorising a copy to go to Collins—or a sanitised version, as you put it? Did anything else happen with it?

Mr Bonighton—Not my knowledge. It was obviously given to Captain Toohey to assist him in his investigations.

Senator CHRIS EVANS—Was that given to him at the same time?

Mr Bonighton—Yes, I believe it was.

Senator CHRIS EVANS—I see. So it happened that those two events came together—the Blick report comes back to the minister and Toohey is already dealing with the grievance matter. Is that a fair summary?

Mr Bonighton—Yes, I think he was just setting up his inquiry at that time and made a request to have that report.

Senator CHRIS EVANS—Toohey requested that the minister have access to the Blick report?

Mr Bonighton—Yes, he was obviously aware that that report was in existence.

Senator CHRIS EVANS—When did Toohey get sent that report? Was that in May 2003 as well?

Gen. Cosgrove—On 22 July 2003 Lieutenant Colonel Collins was provided with an unclassified copy of the IGIS report. It went to Toohey at around the same time.

Senator CHRIS EVANS—Did Toohey get the unclassified version or the classified version?

Mr Bonighton—The unclassified version.

Senator CHRIS EVANS—He got the same version that Collins got?

Mr Bonighton—Yes. There was actually very little sanitisation of that report. It was pretty much complete.

Senator CHRIS EVANS—I want now to pull in the other stream, Mr Smith, which is the sense of the redress of grievance. Do I go to General Cosgrove for that?

Gen. Cosgrove—Start with the Chief of Army and when it gets to me I will take up the narrative.

Senator CHRIS EVANS—General Leahy, did you get a copy of Colonel Collins's letter to the minister or was the first issue that came to Army's attention the redress of grievance?

Lt Gen. Leahy—To the best of my recollection, the first time that I became very conscious of this was the redress of grievance. I was aware that Lieutenant Colonel Collins had some issues, but I began paying attention when we became aware of the redress of grievance.

Senator CHRIS EVANS—When was that lodged with you?

Lt Gen. Leahy—Let me just refer to my notes, please. The redress of grievance was lodged on 29 April when Colonel Collins filed a redress to his commanding officer of Headquarters Training Command Army in Sydney.

Senator CHRIS EVANS—That is where he was posted at the time, was it?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—That was 29 April 2003?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—Had there been any issues of contention surrounding that posting?

Lt Gen. Leahy—No, he had previously been posted to Brisbane. In the normal course of an officer's career and management he was posted to Sydney into training command.

Senator CHRIS EVANS—That was on his return from East Timor?

Lt Gen. Leahy—I think it was some time afterwards. He had been in the Deployable Joint Force Headquarters in Brisbane. He had been in East Timor on operations; he had returned to Brisbane and spent some time there. I do not know the exact amount of time but it was some time after he had returned from East Timor.

Senator CHRIS EVANS—I am not sure whether you can do these things, but had there been any appeal against that posting per se or any correspondence over that posting?

Lt Gen. Leahy—Not that I am aware of.

Senator CHRIS EVANS—I think you know what I am after. There had been no argy-bargy in relation to that posting?

Lt Gen. Leahy—In the normal course of posting officers, sometimes there is discussion but I am not aware of any dissent or any real problems with it.

Senator CHRIS EVANS—That is all I was checking. As you said, sometimes there are discussions. Someone might say, 'I've got a sick kid; I can't go to Sydney,' or that sort of thing. But there was nothing like that?

Lt Gen. Leahy—Not that I am aware of.

Senator CHRIS EVANS—You got the redress of grievance on 29 April 2003. Did that come to you?

Lt Gen. Leahy—No, as I said, that was given to the commanding officer of headquarters training command—that is, a lieutenant colonel. That is the normal course of events for a redress of grievance: it is given to the commanding officer of the unit.

Senator CHRIS EVANS—Does he have the authority to deal with it or does he have to pass it up the line?

Lt Gen. Leahy—He normally has the authority to deal with it.

Senator CHRIS EVANS—What did he do with it?

Lt Gen. Leahy—He determined that there was a redress. He was obliged to try and answer the redress because one of his officers had essentially made a complaint. He then sought to find an officer to deal with the redress and to develop the terms of reference. That is what he did.

Senator CHRIS EVANS—When you say he had to find an officer, what did that involve?

Lt Gen. Leahy—Under the Defence (Inquiry) Regulations there are a number of courses of action that are available. It might be that you would find a general service officer; it might be that you would find a legal officer. In this particular case a legal officer was selected to do the review.

Senator CHRIS EVANS—Is there a reason you would choose a general services officer versus a legal officer? Is there an issue about rank or the seriousness of the charge?

Lt Gen. Leahy—It tends to depend on the nature of the redress: whether it is complicated or whether there might be some other issues involved in that. There is also increasingly an issue of who is available to do the redress. You would use commonsense at the time.

Senator CHRIS EVANS—Where does a commanding officer get this list of potential people from?

Lt Gen. Leahy—He would be aware of what the officers in his command were doing and of the extraregimental duties that they had. He would look around at what tasks people had and what their normal duties were. He might also seek advice from legal officers who might be available.

Senator CHRIS EVANS—As I understand it, the lieutenant colonel, training, appointed Captain Toohey.

Lt Gen. Leahy—Captain Toohey was appointed. Yes, that is correct.

Senator CHRIS EVANS—When was he appointed?

Lt Gen. Leahy—My notes tell me that on 14 May the terms of reference for the redress were issued to Captain Toohey.

Senator CHRIS EVANS—Who draws up the terms of reference?

Lt Gen. Leahy—In this case I believe it was Captain Toohey who was consulted and drew up the terms of reference.

Senator CHRIS EVANS—But the authority is with the commanding officer?

Lt Gen. Leahy—The commanding officer would sign the appointing authority for the investigation.

Senator CHRIS EVANS—So the investigation is not merely about the complaints laid out in the redress but could be a broader or narrower thing according to the commanding officer's decision?

Lt Gen. Leahy—There is a fairly set pro forma for a Defence inquiry. It asks a series of questions, and in this case there would have been particular aspects added to that pro forma for the inquiry. The commanding officer and Captain Toohey, in consultation, would have determined the exact nature of the terms of reference.

Senator CHRIS EVANS—So Captain Toohey was asked about it and advised on it but in the end the decision lay with the lieutenant colonel—is that correct?

Lt Gen. Leahy—It is the appointing authority—the lieutenant colonel—who signs the document in the end, yes.

Senator CHRIS EVANS—Can you outline for me in summary what the redress sought by Colonel Collins was?

Lt Gen. Leahy—Primarily it dealt with his reputation and with the impact on his career.

Senator CHRIS EVANS—What did he seek by way of redress?

Lt Gen. Leahy—Lieutenant Colonel Collins requested a formal investigation and report by a senior legal officer from another service—and that was part of the selection that went on—into 'the abuse of power by Defence officials manifest in malicious rumours about the spread by persons in Defence between 1998 and the present'. The next point was 'the effects on Lieutenant Colonel Collins of the consequential malicious rumours'. The next point was 'the denial of natural justice and abrogation of the duty of care owed to Lieutenant Colonel Collins by the Army'. Finally he requested 'the implementation of policy and procedures to ensure the fair treatment of, and proper support for, any soldier subject to unjust or malicious accusation'.

Senator CHRIS EVANS—Did he seek a particular redress in the sense of a solution to the problem?

Lt Gen. Leahy—That is what his redress was—what I have stated.

Senator CHRIS EVANS—Toohey went about his investigation and he completed it in September—is that right?

Lt Gen. Leahy—The Toohey report was submitted on 7 September.

Senator CHRIS EVANS—And that went back to the lieutenant colonel?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—And what did he do with it?

Lt Gen. Leahy—He considered it—

Senator CHRIS EVANS—He or she?

Lt Gen. Leahy—He, I think. I will have to confirm that.

Senator CHRIS EVANS—No, it is a he. There is another lieutenant colonel in the picture, isn't there—Tina Mathewson?

Lt Gen. Leahy—That is the chief legal officer at Training Command.

Senator CHRIS EVANS—Sorry; that is where I got confused.

Lt Gen. Leahy—I just cannot recall the name of the bloke—the lieutenant colonel—who is the commanding officer of Training Command. He sought—and this was essentially a procedural matter—a legal review on the safety of the report and whether or not it had complied with the terms of reference. Essentially he was asking for a legal review on whether or not it could be accepted.

Senator CHRIS EVANS—Is that a common practice? Is that a required practice?

Lt Gen. Leahy—I have just had advice from TDLS that it is required.

Senator CHRIS EVANS—So you appoint a lawyer to do a redress but then you get another lawyer to review that—is that the case?

Lt Gen. Leahy—Yes, that happened in this situation. As I explained, though, it might be that the redress could be done by a general service officer but you would normally seek a lawyer to do the review to say that it is safe in law.

Senator CHRIS EVANS—Captain Toohey was a reservist. Was he on full-time service at the time?

Lt Gen. Leahy—I do not know. We are going to be rescued by Director General Legal Services, who clearly has not had enough of this table today.

Senator CHRIS EVANS—We have been a bit easy on him during the day, so we might take a harder line tonight.

Air Cdre S. Harvey—I want to point out the procedure. In this particular case, as has been pointed out by Chief of Army, Captain Toohey was appointed as an investigating officer. In that role his functions were primarily as a line officer conducting an investigation. The fact that he had legal skills was obviously helpful to him. The issue then arose of what would happen after the report had been given to the commanding officer. In accordance with the administrative inquiries manual, in just about every case it is recommended, but not mandatory, that legal review be obtained to ensure that, as the general has mentioned, the report that is prepared complies with the terms of reference and that the findings are justified by the evidence.

Senator CHRIS EVANS—Do you know whether Captain Toohey was a reservist at the time?

Air Cdre S. Harvey—Of his investigation?

Senator CHRIS EVANS—Yes.

Air Cdre S. Harvey—Yes, he was.

Senator CHRIS EVANS—So you would have had to pay for his services?

Air Cdre S. Harvey—Yes, he would have been paid.

Senator CHRIS EVANS—How is that organised?

Air Cdre S. Harvey—Being a reservist, he would have been paid through my organisation. I think from memory he was paid a training day rate.

Senator CHRIS EVANS—I do not know many lawyers who would work for a training day rate. This is no comment on Captain Toohey; it is a general observation. This committee has been looking to hire a lawyer recently and we have learnt a bit. Is an officer appointed in this way paid at a training day rate or do you pay them the going legal rate?

Air Cdre S. Harvey—You can pay in two ways. You can be paid by sessional fee, which is as a legal officer doing specialist duties. In this particular case I am pretty sure he was paid as an investigating officer at a daily training day rate for legal officers.

Senator CHRIS EVANS—Later on in the estimates we will get to the legal cost issues. I am beginning to understand what is driving them up. So the Lieutenant Colonel gets the legal review report on the safety of the report. That was done by Lieutenant Colonel Tina Mathewson—is that right?

Lt Gen. Leahy—Lieutenant Colonel Mathewson is the chief legal officer in training command. I am not sure—

Senator CHRIS EVANS—She did the legal review?

Lt Gen. Leahy—No, Brown did the legal review.

Senator CHRIS EVANS—So what did Tina Mathewson do?

Lt Gen. Leahy—She would have worked as a staff officer on training command. She would be dealing with this issue and other legal issues for the commander training command.

Senator CHRIS EVANS—Did she review the Toohey report?

Lt Gen. Leahy—I do not know. I will have to take that on notice to answer the question.

Senator CHRIS EVANS—Is there someone else who can help us today or not?

Gen. Cosgrove—I think we will have that for you fairly soon.

Lt Gen. Leahy—The staff will be calling now to find out, although I think she is in Malaysia, so it might take a little while.

Gen. Cosgrove—No, I think we know what her input was.

Senator CHRIS EVANS—It has just never been clear to me what her role is. The name came up as being another lawyer but it was never clear to me what her role in this was.

Lt Gen. Leahy—In the documents I have seen, I have not seen a review by Mathewson; I have seen a review by Brown. So she was certainly not formally involved in the process.

Air Cdre S. Harvey—The role of Lieutenant Colonel Tina Mathewson is as legal adviser to the training command general, so she provides legal advice to the appointing authority, effectively. I hope that clarifies issues.

Senator CHRIS EVANS—No. We have established who she is and her job description. What we want to know about is her role in the Toohey-Collins matter.

Air Cdre S. Harvey—As the legal adviser, she would have provided advice to the appointing authority. We are checking this to confirm that but normally she would have responsibility for preparing the terms of reference.

Senator CHRIS EVANS—We have already established that that was not the case, though; it was Toohey who did that.

Air Cdre S. Harvey—As I said, normally that is the case but we are checking on that to give you a definitive answer. I am just saying what she would normally do in the case. In this particular case we are checking.

Senator FAULKNER—General Leahy, just for the record, I think you referred to an officer with the surname of Brown?

Lt Gen. Leahy—That is correct.

Senator FAULKNER—I missed which Brown we were speaking about.

Lt Gen. Leahy—I am not sure of his rank.

Mr Smith—Colonel Brown.

Lt Gen. Leahy—He was a consultant at the time in training command. He was a legal consultant, an Army Reserve officer.

Air Cdre S. Harvey—I might be able to help there. Colonel Brown is, I believe, a federal magistrate on the reserve.

Senator FAULKNER—That is all right. I assumed it was a different Brown from the one I had read about—I think it was a Jason Brown, from memory—in the *Bulletin* magazine.

Air Cdre S. Harvey—The Brown we are talking about is, I think, Roger Brown.

Senator FAULKNER—That is fine. I assumed that. I thought that for the purpose of the record it would be helpful.

Senator CHRIS EVANS—Can someone tell me who did the legal review of the two-year report?

Air Cdre S. Harvey—Colonel Roger Brown, Army Reserve.

Senator CHRIS EVANS—Will you take on notice and get back to me shortly what the role of Lieutenant Colonel Tina Mathewson was in that function?

Air Cdre S. Harvey—We will make inquiries on that.

Senator CHRIS EVANS—Certainly it has been suggested at various stages that she had some sort of legal role in this as well, and I have not been able to quite—

Lt Gen. Leahy—I would assume, as we have stated, that it is in her function as the staff legal adviser to training command.

Senator CHRIS EVANS—Perhaps you could take that on notice. We have now established her title and role, and I just want to be clear what role she played in this. So the legal review was done by Colonel Roger Brown. When was his legal review completed?

Lt Gen. Leahy—The date in my notes is 22 September.

Senator CHRIS EVANS—And his legal review was provided to the appointing authority?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—What did the Brown report find?

Lt Gen. Leahy—My understanding—and it is only recollection; I have not read it for a little while—is that it said that in a procedural manner this report was acceptable.

Senator CHRIS EVANS—What did the appointing authority then do?

Lt Gen. Leahy—He considered the report and in October he passed it to his superior officer, who is the chief of staff of training command, in essence because he felt that the findings of the report were beyond his power to effect.

Senator CHRIS EVANS—By that you mean the findings of the Toohey report?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—So he passed it up to his chief of staff?

Lt Gen. Leahy—Yes.

Senator CHRIS EVANS—Who was?

Lt Gen. Leahy—October 2003—Brigadier Vince Williams.

Senator CHRIS EVANS—What did he do with it when he got it?

Lt Gen. Leahy—He also considered it also and, in November, it was passed to me.

Senator CHRIS EVANS—Unactioned between those two?

Lt Gen. Leahy—Essentially for the same reason: that it is beyond their power to effect and that the redress sought by Lieutenant Colonel Collins was not within the power of training command.

Senator CHRIS EVANS—So in November it turned up on your desk?

Lt Gen. Leahy—That is right.

Senator CHRIS EVANS—And what did you do with it?

Lt Gen. Leahy—I read it and reviewed it and determined that I could take action only on some of the recommendations as they were within my authority, and they are the ones that essentially deal with what the original redress was in the career management area. I determined that I was not able to take action on other elements of it, so on 5 December I passed it to CDF.

Senator CHRIS EVANS—Lucky CDF! Before we move on to the CDF, who has probably run out of places to pass it on to—I suspect the buck stops with him—Chief of Army, you said you could only deal with some of the recommendations, with the career management issues. I think CDF is on the record as having expressed some concerns about how they were handled.

I just want to check: what did you then do to action those, given that you had obviously passed the other issues on to the CDF? Did you then take responsibility for the career management issues and the resolution of those?

Lt Gen. Leahy—Yes.

Senator CHRIS EVANS—Can you tell me how you handled that? What did you do?

Lt Gen. Leahy—Essentially I asked for advice from my director general personnel. There were some issues in relation to the career management that I was not satisfied with. In April this year, I had an interview with Lieutenant Colonel Collins. Colonel Collins, I and the director general personnel Army were attending that interview. We discussed the issues that Colonel Collins had raised.

Senator CHRIS EVANS—This was the interview where there was some discussion about legal representation?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—So you attended with whom?

Lt Gen. Leahy—Director general personnel.

Senator CHRIS EVANS—Who was that?

Lt Gen. Leahy—It is Brigadier Maurie McNarn.

Senator CHRIS EVANS—Was Colonel Collins represented?

Lt Gen. Leahy—He attended without representation.

Senator CHRIS EVANS—So there were just the three of you?

Lt Gen. Leahy—That is right.

Senator CHRIS EVANS—Why did it take so long—from November to April—to get something happening?

Lt Gen. Leahy—I passed it in December to CDF. We then had December and January, which is normally a pretty quiet period through Defence with people on leave. There was other correspondence going on at the time, which I think we are all familiar with. It was a matter of trying to get things stable to get the information from DG person to arrange a time that was mutually acceptable to Colonel Collins and me.

I might add that during all this period the chief of staff of training command, which is now Brigadier Mike Paramor, and other staff at training command were consulting with Colonel Collins and making sure that he was supported as well as he could be at the time. It has been characterised to me, certainly in my discussions with Brigadier Paramor in the lead-up to all of this, that he was getting good support and it was fairly frequent. It was not as though he was not being spoken to about career matters; it is just that it took some time for it to get to me.

Senator CHRIS EVANS—Was there a rotation due between the lodging of the redress in April 2003 and your meeting in April 2004?

Lt Gen. Leahy—A rotation for who?

Senator CHRIS EVANS—For Colonel Collins. Was there are posting cycle due in that period?

Lt Gen. Leahy—Not essentially due. A normal posting cycle for an officer is about two years. We would like to try to get three years to provide some stability. He is getting into the range. There was some discussion about a posting that might have been applicable for him to go to Puckapunyal.

Senator CHRIS EVANS—So you are saying that he would be due for posting around now—

Lt Gen. Leahy—Around about now.

Senator CHRIS EVANS—in the normal course of events. When did he start at training command?

Lt Gen. Leahy—In 2001.

Senator CHRIS EVANS—Do you know the month?

Lt Gen. Leahy—I will have to get that for you.

Senator CHRIS EVANS—If you could take that on notice I would appreciate it.

Lt Gen. Leahy—Yes.

Senator CHRIS EVANS—You had this meeting in April with the director of personnel, Brigadier McNarn, and Colonel Collins.

Lt Gen. Leahy—That is right.

Senator CHRIS EVANS—What was the upshot of that meeting?

Lt Gen. Leahy—I would rather not give the detail of it for the reason that I was not keen to have a legal officer involved in it. These are personal, private and confidential matters. We met to discuss those personnel issues relating to his redress and other issues that might be relevant to him. I would characterise the meeting as talking about support that we might give him, his career management issues and whether there were any outstanding needs or outstanding issues he had with us. I issued him an agenda for the meeting. He came down and we had, I think, quite an agreeable discussion. I would like to, if I can, leave it as characterised as an agreeable discussion.

Senator CHRIS EVANS—My interest in the meeting is purely to know—and this is my next question—what is happening in terms of his career management needs. I am not necessarily after the specifics if you have not finalised that, but I would like some reassurance that that is progressing.

Lt Gen. Leahy—We have discussed that he would maintain his posting, which is essentially outposted to Puckapunyal, and that his location is in Sydney. He works for the authority's land warfare development centre in Puckapunyal but he remains in Sydney to do that. We discussed—

Senator CHRIS EVANS—I am sorry, I do not quite understand that, General. His current posting is at training command in Sydney, isn't it?

Lt Gen. Leahy—I have just, I fear, reminded myself that he may have actually been posted to Puckapunyal—and I will ask my staff who are listening to confirm that—but he is working in Sydney with a posting to Puckapunyal open to him.

Senator CHRIS EVANS—I must admit that is not helping to clarify matters for me.

Lt Gen. Leahy—Perhaps I will wait until I get the advice. It may have been that he was posted to Puckapunyal, indicated a desire to remain in Sydney and, because of the nature of his redress and some other issues, has remained in Sydney but is working remotely for the land welfare development centre at Puckapunyal.

Senator CHRIS EVANS—Are you saying that may be, or that is what has happened?

Lt Gen. Leahy—I do not want to confirm until I get staff advice.

Senator CHRIS EVANS—Yes, why don't we wait until we get the advice. You can come back to me about what has happened with that posting. Are there further meetings planned with Colonel Collins to do with these management issues?

Lt Gen. Leahy—None with me. He has since had a normal career management interview with his career manager, who is a lieutenant colonel. In the course of his career I would expect that there would be further meetings. The director general of personnel Army was at the meeting so that he could carry forward the issues that we discussed. I would expect that there would be further discussions, certainly with DG PERS and with Lieutenant Colonel Collins.

Senator CHRIS EVANS—Is that the only aspect that you were dealing with, effectively—those career management issues?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—Perhaps we can come back to you when you have got some advice on what has happened in terms of Colonel Collins's posting.

Senator FAULKNER—I want to raise an associated matter. I am not sure, General Cosgrove, who this is best directed to—it may be Mr Bonighton—but I am sure you will assist me. This is about something I read in the *Bulletin* magazine that did concern me. I would just like to understand what it means and what, if any, action has been taken as a result of it. You would be aware, I think, of the article in the *Bulletin* magazine in relation to issues pertaining to Colonel Collins. It was quite a major press article.

Mr Smith—We remember, Senator.

Senator FAULKNER—I knew you would, Mr Smith. It was just one element of that that I wanted to ask about. I do not know if you recall it, but because of its seriousness I do not doubt that you would. It was the suggestion of a Mr Brown—it certainly was not Colonel Roger Brown; I think it may have been a Mr Jason Brown—in relation effectively to when matters in 1999, which I do not need to go through the detail of because I think everyone is aware of them, were being followed through. Lieutenant Colonel Collins had reported these matters to Mr Brown, I think without disclosing where they came from. There was a suggestion that Mr Brown had said that he had such 'coercive' power that 'things he set in

train could even force people to commit suicide'. I think witnesses at the table would recall that small element. Would that be right, Mr Bonighton?

Mr Bonighton—Yes, that is correct.

Senator FAULKNER—I was concerned—and I do not know if witnesses at the table were or not—that this might be a direct reference to Mr Jenkins. But the suggestion was that this was contained in an official record of interview between Toohey and Collins. I do not know if that can be confirmed or not, but that was the suggestion. That was published in the *Bulletin*. The key issue for me—and you can confirm that if you are able to—and the one issue I want to ask about is: was there follow-through as a result of that? It seems a very serious matter on the face of it. It seemed to me to be a very serious matter. I do not know if that is shared by witnesses at the table. It quite shocked me to read it. I wondered if there had been any follow-through investigation, inquiry or other processes put in train as a result of that. It may not have been, obviously, at the time of publication. It may have occurred earlier. I am not aware of that. I just wondered if I could seek some assurance from one of the witnesses that such a matter, which on the face of it is—I think it is fair to say, because it concerned me—very concerning, was treated seriously by Defence. That is my question.

Mr Bonighton—We, too, thought it extremely serious. It was in fact the original allegation that the Lieutenant Colonel Collins had made when he wrote to Minister Moore initially. He was saying that actions taken by the Defence security branch personnel may have contributed to that suicide. So we were concerned about that. It had been previously investigated by Mr Blunn under the auspices of the Inspector General of Intelligence and Security. Mr Brown's role as the head of the Defence security branch was simply one of commissioning the Defence participation in that security investigation into the mishandling of documents in Washington. He did not participate in any of the questioning and had no role to play in it. Mr Blunn found that there was no inappropriate action taken in the course of that investigation. So it had already been investigated.

Senator FAULKNER—What you are saying is what I want to be assured about. It was described as a record of interview. Collins's statement, as I understood, was in the record of interview between Toohey and Collins. I might have got that wrong, but that was certainly my strong recollection. I might have got that wrong, but that was my strong recollection. I think that is right, isn't it? You are nodding, General.

Gen. Cosgrove—That is my recollection, too.

Senator FAULKNER—What is the timing of that record of interview? I am not quite sure how the Blunn inquiry fits this in terms of timing. That is all I am asking.

Mr Bonighton—This was part of a 1999-2000 security investigation, so it goes back that far. As I said, it was investigated.

Senator FAULKNER—But you are able to assure me, Mr Bonighton—because all I want to be is assured—that this specific allegation was taken seriously and was investigated. That is what I want to basically understand or hear from you.

Mr Bonighton—It was indeed. Mr Brown issued a statement, it is my recollection, where he categorically denied that conversation.

Senator FAULKNER—I saw that through a Defence spokesperson Mr Brown had emphatically denied the allegation that was published by the *Bulletin*. I am aware of that and I am pleased to see that. But that is not what I am asking. I just want to seek an assurance that this was treated seriously and thoroughly investigated. That is the assurance I want to hear, and you have given me that.

Mr Bonighton—It had already been thoroughly investigated by Mr Blunn—the conduct of that Jenkins inquiry.

Senator CHRIS EVANS—General Leahy, are you in a position to clarify that—

Lt Gen. Leahy—I think I will be very shortly. Lieutenant Colonel Collins is currently posted, as at 19 January this year, to Headquarters Land Warfare Development Centre, which is in Puckapunyal, but he remains in Sydney, as I suggested, outposted—working remotely—for service and personnel reasons. He has an option to move to Puckapunyal at any time.

Senator CHRIS EVANS—Do I take it from that that you sought to post him to Puckapunyal, you have subsequently had a discussion about that and you have agreed that he does not have to take that up? Is that a fair characterisation?

Lt Gen. Leahy—That is correct, yes. He was posted to training command on 14 January 2002. So that is about the two-year—

Senator CHRIS EVANS—So he was due to get rotated?

Lt Gen. Leahy—About due, yes.

Senator CHRIS EVANS—You were going to send him to Pucka. When was the decision taken that he could remain in Sydney at training command?

Lt Gen. Leahy—I do not know the exact date but it would have been taken in the course of the redress events and other issues. One of the agreeable matters in our discussion was that he told me that he was content to stay in Sydney and that at some time in the future he may exercise his option to go to Puckapunyal.

Senator CHRIS EVANS—Thanks for that. I am sorry, General Cosgrove; I thought we might clear that up before we moved on.

Gen. Cosgrove—Shall I continue?

Senator CHRIS EVANS—Yes.

Gen. Cosgrove—On 5 December 2003 the Chief of Army passed the redress of grievance to me. I read the redress and considered the investigation that accompanied it in detail and became concerned that aspects of the redress and the accompanying investigation did not seem to hold together. I was concerned that it seemed to be on issues outside my purview. It seemed in some ways not to be in accordance with the terms of reference, which wanted different things, but the investigation had gone into a different area. In some ways I worried that the evidence I saw did not seem to directly and inescapably lead to the conclusions. I sought further legal advice within Defence from the office of TDLS as to whether it would be appropriate to have a further legal review to inform me as to whether these doubts were valid or whether the investigation and the redress could stand. I decided on the basis of that advice to commission another lawyer to provide me with an independent legal review of the Toohey

report, clarifying the process undertaken and making comment on the substantiation behind the findings.

Senator CHRIS EVANS—TDLS provided advice that went to what? Whether or not you should or could seek—

Gen. Cosgrove—Whether it was reasonable, whether my doubts had any substance or whether I was just not getting it.

Senator CHRIS EVANS—Their advice was not restricted to the question of whether you had the power to seek further legal advice but actually examined some of the concerns that you had?

Gen. Cosgrove—Whether it was reasonable to seek further legal advice or not. In that regard they said it was reasonable and, indeed, safe to seek further legal advice.

Senator CHRIS EVANS—So they did not actually provide any assessment themselves—

Gen. Cosgrove—I did not ask them for it. I wanted to know whether we could find somebody with very strong credentials who would be expert in the area of looking at the legal processes: the way in which the evidence had been assembled and drawn to the conclusions that the investigating officer had drawn.

Senator CHRIS EVANS—Did you seek advice from anybody else apart from TDLS before seeking another independent legal review?

Gen. Cosgrove—No.

Senator CHRIS EVANS—So you then sought an independent legal review. Is this the one that was provided by Colonel Tracey?

Gen. Cosgrove—That is right. I commissioned Colonel Tracey on 18 December 2003.

Senator CHRIS EVANS—How did you come to choose Colonel Tracey?

Gen. Cosgrove—He was recommended as a very prominent lawyer in the field by TDLS staff.

Senator CHRIS EVANS—When we say ‘the field’ which field are we in?

Gen. Cosgrove—I would have to ask TDLS the name of the field but I guess it was administrative law.

Senator CHRIS EVANS—Are we all happy with that?

Gen. Cosgrove—I have not heard any booing from the back, Senator.

Senator CHRIS EVANS—I always check because, as I understand it, Colonel Tracey has appeared in some high-profile other the cases. So admin law is what we are concentrating on.

Mr Smith—My only knowledge of him is that I have heard him described as Australia’s pre-eminent admin lawyer.

Senator CHRIS EVANS—I am not seeking a dispute either. I seriously do not know. As with all of these things, I was just wondering how the selection process was done. Is he a Reservist?

Gen. Cosgrove—Yes, he is.

Senator CHRIS EVANS—If he is Australia's pre-eminent admin lawyer I suspect he was not on Reserve officer rates for the purpose of the inquiry

Gen. Cosgrove—I do not know that, Senator. Do you want to know that?

Senator CHRIS EVANS—I am interested in how these people are commissioned and remunerated in the sense that I know good advice does not come cheap.

Gen. Cosgrove—Sessional fees, Senator.

Senator CHRIS EVANS—You referred that to him for independent legal review. Did you give him any terms of reference?

Gen. Cosgrove—Yes, we did.

Senator CHRIS EVANS—Who drafted those?

Gen. Cosgrove—TDLs on my behalf.

Senator CHRIS EVANS—Are you able to share those with us?

Gen. Cosgrove—I expect so but I do not know that I have actually got them to hand here.

Senator CHRIS EVANS—Perhaps you could take that on notice for me. I know a lot has been published in the *Bulletin* but I am not sure whether I have seen those. I always like to go to the original sources.

Gen. Cosgrove—It was a letter which requested legal advice and I have used the words 'clarifying the process undertaken and making comments on the substantiation behind the findings'. It was a letter from me but there is no problem with your having that letter.

Senator CHRIS EVANS—Thanks, General. So on 18 December you set Colonel Tracey at the task?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—He provided his report back to you on 4 February?

Gen. Cosgrove—Yes, that is right. Colonel Tracey reported that the inquiry process into Lieutenant Colonel Collins's redress of grievance had miscarried insofar as it had purported to deal with matters which did not fall under the command and control of the appointing authority, insofar as it had led to an investigation of bodies external to the Australian Defence Force and insofar as it had led to recommendations for action by CDF, which he could not lawfully take.

Senator CHRIS EVANS—Do you think that is in part caused by the fact that he was provided with a copy of the Blick report?

Gen. Cosgrove—I have no idea what influenced his decision.

Senator CHRIS EVANS—I mean in the sense that Captain Toohey obviously not only had the redress of grievance issues but also the Blick report.

Gen. Cosgrove—I cannot speculate on that. In the end, I was looking at an investigation which was expected to stand by itself.

Senator CHRIS EVANS—We will follow the theme first and might then come back to a couple of those issues. So on 4 February you got this report from Colonel Tracey. What did you then do with that?

Gen. Cosgrove—Of course, I now understand that I have a difficulty because I have an investigating officer—namely Captain Toohey—and a report which is, at least in main part, the parts that deal with intelligence issues, ultra vires. I think Captain Toohey saw Colonel Tracey's legal review. That discussion probably took place between Captain Toohey and lawyers of TDLS.

Senator CHRIS EVANS—So basically you got Toohey in to show him the Tracey review of his work?

Gen. Cosgrove—That is correct.

Senator CHRIS EVANS—And I assume from previous publicity that he was not very happy.

Gen. Cosgrove—I will not go into that part, if you do not mind, because I was not present at that meeting.

Senator CHRIS EVANS—Is this normal practice?

Gen. Cosgrove—I do not know whether it is normal practice. I do not normally deal with issues of this complicated nature. It just seemed prudent.

Senator CHRIS EVANS—So Captain Toohey was brought in to read the Tracey report and have a discussion with TDLS—

Gen. Cosgrove—With lawyers about Tracey's legal review of his own report.

Senator CHRIS EVANS—What flowed from that meeting?

Gen. Cosgrove—It was then for me to go forward. I passed the redress of grievance to the Chief of Army, seeking answers on Army's progress regarding matters requiring action by Army. I pointed out to him that I wanted him to action those parts of the redress that still were for Army. I think we have a date for that letter.

Lt Gen. Leahy—Yes, I will just confirm that. I have dates of reply.

Senator CHRIS EVANS—Were these the matters that he was already dealing with?

Gen. Cosgrove—They were matters of which Army was aware.

Senator CHRIS EVANS—Before we had the indication that the Chief of Army said, 'Well, this is the bit that I can cope with because this is in my remit and I'll pass the rest up to the Chief.' I am not clear on this. Are you saying that you then passed bits back to him or is this some formal recognition that the Chief of Army was to continue to deal with the career management issues?

Lt Gen. Leahy—We had commenced action on these issues, but CDF was now asking for formal advice on what we were doing. That was provided to him in two letters: one on 24 March and one on 25 March.

Gen. Cosgrove—Just while we are pausing at that moment, the letter requesting a review by Colonel Tracey was prepared and signed by TDLS staff acting on my behalf, but it is to the same effect. It is the letter that commissions Tracey to do the study.

Senator CHRIS EVANS—You did not actually sign the letter but it was for you?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—Why did you need to write to the CDF on consecutive days about this?

Lt Gen. Leahy—He asked us what we were doing. Due to the nature of this, we thought it prudent and, if the CDF asks for something, we provide it.

Gen. Cosgrove—The letter on the 24th said that they were getting on with action. I wrote in pen script on that letter, ‘Well, what precisely are you doing?’ I got a reply the next day with more detail.

Senator CHRIS EVANS—I see. What did that letter contain?

Lt Gen. Leahy—The one on 25 March. It contained confirmation of the posting.

Senator CHRIS EVANS—To Pucka or to Sydney?

Lt Gen. Leahy—The fact that he was working from Sydney means that the posting to Puckapunyal was then extant. That, I think, occurred in January.

Senator CHRIS EVANS—So that arrangement preceded your meeting with Colonel Collins?

Lt Gen. Leahy—That is right.

Senator CHRIS EVANS—Who negotiated that?

Lt Gen. Leahy—His command, noting the work Colonel Collins was doing with his redress, determined that he should stay in Sydney for the time being. That is entirely within the remit of training command.

Senator CHRIS EVANS—So they can say, ‘Despite the fact that you have posted him somewhere else, we want to hang on to him’?

Lt Gen. Leahy—They command the Land Warfare Development Centre at Puckapunyal and they were well and truly aware of the work that he was doing and the fact that he could do it from there. We talked about the posting and the ongoing counselling and support that he was getting. We talked about the fact that they had been providing through training command ongoing updates to the officer and the fact that we were dealing with the matters of redress in relation to his career management and to some broader issues of management which, as you might recall, some of the issues of redress related to.

Gen. Cosgrove—On 8 April I wrote to Headquarters Training Command Army advising them of the status of the lieutenant colonel’s redress of grievance. On the same date I referred the Collins file, the overall body of work done by Captain Toohey, to IGIS for his further consideration.

Senator CHRIS EVANS—Can you tell me why?

Gen. Cosgrove—The advice to me was that the issues in the Toohey report that related particularly to intelligence were beyond my authority to deal with; yet, even though there may have been some issues with the supportability of some of the allegations, nonetheless they were still there. So I thought that rather than just saying, ‘The overall Toohey report is ultra vires—end of story,’ it should be sent on for a review by an authority which has oversight of intelligence issues. I wrote to Headquarters Training Command Army detailing these actions. That was on 8 April.

Senator CHRIS EVANS—So you did not feel confident that the advice provided by Colonel Tracey was sufficient for you to act?

Gen. Cosgrove—It was such a sensitive issue that I believed that, while there was any possibility of new allegations or fresh evidence, even if the process would not allow me to deal with it, it should be kept in front of a responsible officer until such time as it could be satisfactorily resolved.

Senator CHRIS EVANS—But surely at some stage it gets to the point of being reviewed to death and delayed so long by reviews that the protagonists die or fade away. I am being a bit provocative, but you know what I mean. This is just going to go on and on, isn’t it?

Gen. Cosgrove—Understand that, for the usual good and valid reasons, I would not necessarily have been privy—and nor would any of the people in my office or in TDLS, or Colonel Tracey—to all of the intelligence issues that Colonel Collins may have been concerned about in this and previous grievances and complaints. In that respect it seemed to me that, even though there were serious legal issues to do with my ability to progress the Toohey report in itself, the information it contained ought to be available to the inspector-general.

Senator CHRIS EVANS—When did you become aware that Colonel Collins had written to the Prime Minister?

Gen. Cosgrove—I am not sure. I know that he wrote on 18 March. I am just not sure when I heard that.

Senator CHRIS EVANS—Are you able to check?

Gen. Cosgrove—No, because somebody may have mentioned it to me; that is my difficulty.

Senator CHRIS EVANS—I am not asking you about a rumour. I am asking about the formal advice you would have got. I assume the PM, on receiving the letter, then asked Defence for some advice, so I presume you would have got some sort of request across your desk.

Gen. Cosgrove—I do not believe that I got a request from the Prime Minister. It may be that the events of 13 April came first—the *Bulletin*.

Senator CHRIS EVANS—Maybe I should ask Mr Smith.

Lt Gen. Leahy—Army received a copy of that letter through the chain of command and I feel sure that I would have informed CDF of that at about that time. I am not sure of the exact date that we got a copy of that letter but we would have informed—

Senator CHRIS EVANS—You are referring here to the Collins letter to the PM?

Lt Gen. Leahy—That is correct.

Senator CHRIS EVANS—And you got it through the chain of command through Lieutenant Colonel Collins?

Lt Gen. Leahy—Lieutenant Colonel Collins provided a copy of that letter to his chain of command.

Senator CHRIS EVANS—Could you take on notice for me the date on which you received that and the date you provided that to General Cosgrove.

Lt Gen. Leahy—I will certainly take on notice the date I received it. I am not sure if we would have provided a written advice but I feel sure that, at about that time, we would have informed General Cosgrove verbally.

Senator CHRIS EVANS—Perhaps you can take both questions on notice and see how you go.

Gen. Cosgrove—It is entirely possible it was a verbal advice. We will do our best to let you know if there is a firmer memory of that.

Senator CHRIS EVANS—I appreciate that that came through Colonel Collins following his processes. I was not sure there were processes about writing to the Prime Minister.

Lt Gen. Leahy—Not accepted ones.

Senator CHRIS EVANS—Nevertheless, he did the courtesy of pushing the copy up the chain of command.

Gen. Cosgrove—We have not taken issue with him on that. For somebody intent on writing to the Prime Minister, he did what I suppose is the only next thing you do, which is to tell your employer.

Senator CHRIS EVANS—Mr Smith, maybe you can help me. We know from the public record what the Prime Minister has said: that there was a letter to the Prime Minister from Lieutenant Colonel Collins, I think dated 18 March 2004, expressing a range of concerns he held. Did the Prime Minister's office or department seek advice from Defence in relation to that letter? If so, when?

Mr Smith—The Prime Minister's department did, as you would expect, and I believe that they did that at about the time the Toohey report was published in the *Bulletin*. The date of that I cannot recall.

Gen. Cosgrove—The date the *Bulletin* published a copy of the Toohey report was 13 April.

Senator CHRIS EVANS—I had 14 April, but it was obviously around that date.

Mr Smith—If I recall correctly, that is when the Department of the Prime Minister and Cabinet began to consult with us about a reply.

Senator CHRIS EVANS—So, prior to the publication of the *Bulletin* almost a month later, you had not had any request from PM&C?

Mr Smith—Not that I am aware of.

Senator CHRIS EVANS—This is your chance to be aware, Mr Smith. That is why if there is somebody else who can help us I would rather that we got it straight.

Mr Lewincamp—I first became aware of Collins's letter to the Prime Minister on the evening of 13 April, about the same time as the Prime Minister's department was seeking advice from us on the content of the *Bulletin* article which was to be published the next morning.

Senator CHRIS EVANS—When you say you 'became aware' of it, do you mean you became aware of it because you were the officer that PM&C went to?

Mr Lewincamp—I had a phone conversation with an officer of Prime Minister and Cabinet who was seeking advice about the *Bulletin* article and at the same time the officer informed me that Lieutenant Colonel Collins had written to the Prime Minister some two weeks previously.

Senator CHRIS EVANS—It seems like it is more likely to be four weeks previously.

Mr Lewincamp—Whatever the time, but I was under the impression—

Senator CHRIS EVANS—When you say 'two weeks', you are saying that that is your memory of what he said?

Mr Lewincamp—Of what she said.

Senator CHRIS EVANS—Of what she said; sorry. So someone from the Department of the Prime Minister and Cabinet contacted you, as the relevant officer to contact, about the *Bulletin* report—is that fair?

Mr Lewincamp—That is correct.

Senator CHRIS EVANS—In discussing the *Bulletin* report, they referred to Lieutenant Colonel Collins's letter?

Mr Lewincamp—That is correct.

Senator CHRIS EVANS—Is it fair to say that Defence had no knowledge of Lieutenant Colonel Collins's letter before then, other than the one that came up the chain of command, so there had been no earlier contact with PM&C?

Mr Lewincamp—There had been, as far as I know, no earlier contact with PM&C—not that I am aware of.

Lt Gen. Leahy—Senator, I can confirm that my office received an electronic copy of the letter from Lieutenant Colonel Collins on 19 March and that was then forwarded electronically to CDF's office on the same day.

Gen. Cosgrove—I do not dispute that memory at all.

Senator CHRIS EVANS—So on 19 March you found out about it because Lieutenant Colonel Collins had copied it up the chain of command but, in terms of the other side of the department knowing, they did not become aware of it till the call from PM&C. Did you get a subsequent request from PM&C for advice, documentation or assistance in preparing a response to Lieutenant Colonel Collins's letter or was that part of the call?

Mr Lewincamp—We had a request some time afterwards—it was not on that evening; it was several days later—whereby we had several discussions with Prime Minister and Cabinet which involved a number of the Australian intelligence agencies, because the Prime Minister wished to respond to Lieutenant Colonel Collins's broader claims about the performance of the intelligence community.

Senator CHRIS EVANS—But were they as much discussions to do with the response in the media, in the public debate sense, or were they specifically directed at Lieutenant Colonel Collins's letter?

Mr Lewincamp—Specifically directed at the letter—our response to that letter.

Mr Smith—Subsequently, when the draft reply from the Prime Minister was nearly complete they asked us to have a read of it and affirm that the facts as they were in there in relation to Lieutenant Colonel Collins were correct. We did that.

Senator CHRIS EVANS—So the letter was drafted at PM&C but you were asked to tick off the contents? When did that letter go out to Collins?

Gen. Cosgrove—Is this the Prime Minister's letter?

Senator CHRIS EVANS—Yes.

Mr Smith—It was on 23 April, I believe.

Senator CHRIS EVANS—Did Defence provide briefings for the PM's department on the substance of the claims in the *Bulletin*?

Mr Smith—I do not believe we provided any written briefing. We probably discussed some of the issues by telephone if they were seeking it.

Mr Lewincamp—We had discussions with staff of Prime Minister and Cabinet to assist them in drafting talking points for the Prime Minister. There was one written brief provided to the head of Prime Minister and Cabinet on the issues raised in the *Bulletin* article which I wrote to Dr Shergold.

Senator CHRIS EVANS—Do you have the date of that briefing?

Mr Smith—It was a letter from Mr Lewincamp to Dr Shergold.

Mr Lewincamp—It was on 19 April.

Senator CHRIS EVANS—Are you indicating that that was somehow more personal than departmental, Mr Smith? I know Mr Lewincamp is mentioned in the article.

Mr Smith—We had a sense that one side of the story had been presented. I thought Mr Lewincamp had become, in a sense, a victim of this. His side of the story was not available to the Prime Minister or his department. I thought it was inappropriate for him to write to the Prime Minister directly but I did suggest that he write to Dr Shergold and set out his position on those issues on which I felt he had been badly dealt with in Colonel Collins's letter and in the Toohey report.

Senator CHRIS EVANS—So it is fair to say it was not in the nature of normal departmental advice to PM&C but more an opportunity for Mr Lewincamp to place his—

Mr Smith—Yes, that would be fair.

Senator CHRIS EVANS—Do you want to provide a copy of that to the committee?

Mr Smith—It was a letter to Dr Shergold setting out Mr Lewincamp's position on this and I think that remains between Mr Lewincamp and Dr Shergold.

Senator CHRIS EVANS—That is fine. Sometimes people like to share these things with us; sometimes they do not. If you never ask, you never know.

Senator Hill—Throw out a hook.

Senator CHRIS EVANS—Sometimes, Minister, you are very keen to give me information.

Senator Hill—Is that right?

Senator CHRIS EVANS—Yes; sometimes not. I did not say it is the norm. That was the only written advice provided to PM&C in relation to the *Bulletin* articles and the letter from Colonel Collins?

Mr Smith—Yes, as far as I can recall, and Mr Bonighton affirms that, too.

Senator CHRIS EVANS—The rest were done by telephone contacts?

Mr Smith—I believe so. If we find anything else, we will let you know, but as far as we can recall that was the case.

Senator CHRIS EVANS—Can I come back to you, General Cosgrove. You decided on 8 April to refer the Collins file to the inspector-general—is that correct?

Gen. Cosgrove—That is right.

Senator CHRIS EVANS—That was after you knew of the Collins letter to the Prime Minister?

Gen. Cosgrove—Yes. I have accepted that I was told on 19 March.

Senator CHRIS EVANS—I am not trying to put words in your mouth but no doubt that would have added to the complexity of the issues?

Gen. Cosgrove—Actually I had to confine myself to what I was looking at because I was looking at a redress of grievance that needed to be finalised in the best way possible. So, while the letter to the Prime Minister was important, I had to deal with the issue that I had before me. I thought at the time that the best solution was to refer all of the Toohey report to the inspector-general. Noting that it is the minister who makes references to the inspector-general, I note that the minister confirmed his desire that the IGIS review the Collins documentation. He did that on 15 April.

Senator CHRIS EVANS—I was going to come to that. I presumed you sought other advice or discussed these options with people after you got the Toohey report. Did you seek advice from the minister or seek his guidance?

Gen. Cosgrove—No. I deal with a lot of redresses. From that point of view, this was a redress to be dealt with in terms of the administrative aspects to the best of our ability and, in terms of those aspects outside of my purview, to find an outcome.

Senator CHRIS EVANS—But you have said now that you had some correspondence with the minister about this. I just trying to understand the process.

Gen. Cosgrove—After the *Bulletin* published a copy of the Toohey report, in the course of discussions I briefed the minister that I had provided the Collins files to the IGIS for his consideration and any appropriate action. I think the IGIS asked the minister for a formal reference.

Senator CHRIS EVANS—Maybe we can go back a step. You say you wrote to the IGIS on 8 April—is that fair?

Gen. Cosgrove—Yes.

Senator CHRIS EVANS—Do you have the power to refer matters to the IGIS?

Gen. Cosgrove—That is the issue. I sent it to him, perhaps in my innocence, saying, ‘For your consideration and any appropriate action.’ He politely responded a few days later to say—

Senator CHRIS EVANS—‘Nice try, General, but.’

Gen. Cosgrove—could he possibly have a reference from the minister, which the minister was agreeable to providing on 15 April.

Senator CHRIS EVANS—So on 8 April you wrote to the IGIS, who is now Mr Carnell—is that right? He sent you back a letter dated, what, the 10th? Or did he write directly to the minister?

Gen. Cosgrove—I do not have a record of them but it was obvious between the eighth and the 15th.

Senator CHRIS EVANS—Did he write to you or did he write direct to the minister?

Gen. Cosgrove—I have a feeling he came to me to outline—

Senator CHRIS EVANS—the niceties of the situation?

Gen. Cosgrove—Right.

Senator CHRIS EVANS—Did you then approach the minister?

Gen. Cosgrove—By this stage, of course, we were in pretty constant discussion with the minister. I think it was a question of raising an advice to the minister that he might care to task IGIS.

Senator CHRIS EVANS—So you say that you wrote to IGIS on 8 April referring the Collins file to him. He then, some days later, said to you, ‘You need a reference from the minister for me to act.’ You then sought from the minister that reference?

Gen. Cosgrove—I alerted the minister to the fact that IGIS had the documentation. The minister decided to confirm that with a reference.

Senator CHRIS EVANS—You say though that you did not discuss this with the minister before you wrote to IGIS.

Gen. Cosgrove—No, I did not.

Senator CHRIS EVANS—Did you take any other advice before referring it to the inspector general?

Gen. Cosgrove—No, I did not.

Senator CHRIS EVANS—So the last advice you got on this was the Tracey opinion?

Gen. Cosgrove—Yes. I discussed with a number of people what I might potentially do—for example, any further legal review, which I decided against, and disposal of the administrative issues concerning Colonel Collins. That part was relatively simple. That was obviously an issue to pass back to Army. Then there was the outstanding issue of the intelligence. In that discussion, without saying I took formal advice, I came to the conclusion to refer it to IGIS, which later was a formal reference.

Senator CHRIS EVANS—Minister, were you happy to refer it to IGIS?

Senator Hill—I do not have those papers with me. I think that IGIS was able to do a certain amount of the work without a reference from me. But he could not do some of it and needed a reference. I am just not sure of that. There have been several pieces of correspondence with IGIS, but basically I was happy with the fact that he was looking at it again and looked to support him in doing his task.

Gen. Cosgrove—I should offer there, too, that Mr Carnell's group did start to look at the information, but this issue of a reference came up and that was what was provided.

Senator Hill—I think they got to a point where they needed a reference from me in terms of the legislation, and I met that request.

Senator CHRIS EVANS—When did you provide that, Minister?

Gen. Cosgrove—On 15 April.

Senator CHRIS EVANS—They could not have done much work if they were not requested to start until the eighth.

Gen. Cosgrove—We had stressed that we would like their early attention to it, and they were happy to oblige, but this issue of a more formal reference came up.

Senator CHRIS EVANS—So you stressed you wanted early attention to these matters.

Gen. Cosgrove—Yes. Not in the documentation I sent them, but there was discussion to say that it was something I would like them to look at quickly.

Senator CHRIS EVANS—Were you aware that the article was going to appear in the *Bulletin*?

Gen. Cosgrove—No, I had no idea.

Senator CHRIS EVANS—It had dragged on for a year. I am just trying to get the sense now of the urgency, given that it had taken a year to get to there.

Gen. Cosgrove—I wanted to deal with it. I could see that it had been a long while. I knew that, even dealing with it quickly through Colonel Tracey's good officers, we had the Christmas leave period intervening, so that had been, if you like, an artificial month that had been added. I was anxious to move ahead. It was also quite complicated, so it could not be rushed but needed to be done without delay.

Senator CHRIS EVANS—Have you had any report back from IGIS?

Gen. Cosgrove—That report goes to minister.

Senator CHRIS EVANS—Even though you referred it originally.

Gen. Cosgrove—In the end it becomes a matter for who the inspector general reports to.

Senator Hill—The inspector general has reported to me, but his report raised certain issues that he believed needed to be further pursued. He needed the support of me in doing that in terms of, I suppose, a further reference, which I gave him. That process is continuing. So basically he has reported to me on a number of the issues but he has not concluded his work. His work has led him to other matters that he has wanted to pursue further.

Senator CHRIS EVANS—So it is fair to characterise that he has reported in substance to you on a number of the matters that he is considering and that he sought extra power or extra terms of reference—what sort of authority did he need to pursue these other issues?

Senator Hill—He needed authority to interview certain individuals. So it may be that the original referral was not expressed widely enough—I am not sure. I can get the sequence of correspondence if it is important. Basically he is still at his task, but he has done a lot of the work. I know that he is making efforts to complete the task as quickly as possible.

Senator CHRIS EVANS—I am not as familiar with the detail of the inspector general's authorities as I should be. Why does he need further authority to interview certain individuals? Is that to interview the individuals who otherwise would not want to be interviewed?

Senator Hill—I think it might have been that the original reference enabled him to simply review Mr Blick's report. But in doing so he formed the view that to be totally satisfied of certain things he should conduct some other interviews. But, as I said, I am going from memory now. If you regard it as important I will get the correspondence and refresh my memory.

Senator CHRIS EVANS—Given the time and how we are proceeding, perhaps you might take it on notice to come back to us if the sense of that is not right.

Senator Hill—Okay, on the sequence of the referrals.

Senator CHRIS EVANS—But I am just trying to understand conceptually—

Senator Hill—The goal was to complete the task that General Cosgrove asked of him. But he needed a reference and now some addendum to that reference in order to—

Senator CHRIS EVANS—Have you given that to him?

Senator Hill—Yes, I have positively responded to each of his requests.

Senator CHRIS EVANS—And you say he is looking to complete the work quickly. What will be the process once he completes his work?

Senator Hill—He reports to me. Then obviously I would want to find a way to bring his report to the attention of Mr Collins or of parties that are affected by the report. So I have to deal with the issue of confidentiality. It might be that he will produce his final report in a form that distinguishes between a public document and a private document—I am not sure.

Senator CHRIS EVANS—Do you think that will provide a final resolution of these Collins issues? I suppose from an outsider's point of view it seems that Mr Bonighton was saying earlier that effectively some of the concerns that Lieutenant Colonel Collins has raised have already been addressed by the inspector general. I think a point you made just then is whether these were grounds outside the Blick inquiry. I am just trying to understand why you thought it was important to refer them to the IGIS on this occasion and what he will do in this matter that was not done before.

Senator Hill—I did not refer them to IGIS. General Cosgrove referred them to IGIS but then it became an issue as to whether that was a correct process under the legislation. What IGIS could do would be to review the Blick process and findings and, whilst I do not want to foreshadow the outcome of that, I am hoping that there will be an outcome that is fair to all parties concerned and brings this matter to finality. But I do not know that I can be confident that that will occur.

Senator CHRIS EVANS—Turning to the question about the release of these various legal opinions—

Mr Smith—Before you get to that, Senator, can I just tidy up a loose end from earlier? You asked whether written material was sent to the Department of Prime Minister and Cabinet. I have been reminded that, in addition to Mr Lewincamp's letter, Colonel Angus Campbell, the chief of staff to General Cosgrove, did fax some information to PM&C the evening before the *Bulletin* article appeared. We had been advised that it would be appearing the next day and so Colonel Campbell sent to them some information about time lines relating to the redress of grievance and some draft talking points which were the talking points that we had provided to Senator Hill's office as well. Sometime after that a chronology was also prepared and provided to them.

Senator CHRIS EVANS—The draft talking points and chronology were prepared inside Defence?

Mr Smith—Those ones were, yes.

Senator CHRIS EVANS—And they were prepared at the time?

Mr Smith—To advise Prime Minister and Cabinet of the background to the whole issue.

Senator CHRIS EVANS—Which section did they come out of?

Mr Smith—I am not sure where they originated from but Colonel Campbell put them together, I imagine, from discussion with Army office.

Lt Gen. Leahy—Senator, while we are correcting issues from earlier, you asked me a question about who drafted the terms of reference, and there was a little bit of confusion. I can confirm that Captain Toohey drafted the terms of reference for the appointing authority, who was the CO of training command headquarters. Lieutenant Colonel Mathewson, the chief legal officer for training command, provided advice to the CO of training command headquarters, who was the appointing authority. So Toohey drafted the terms of reference.

Senator CHRIS EVANS—What advice did the lieutenant colonel provide?

Lt Gen. Leahy—I do not know exactly, Senator. It would have been in the normal course of her duties as a staff adviser.

Senator CHRIS EVANS—I got the sense at one stage that it was written advice, which was why I thought there was a fourth report.

Lt Gen. Leahy—No. There may be some written advice but it would not be seen in any way as a report. It was probably advising the CO of training command headquarters of his options as to who he might choose. In this case Captain Toohey was chosen because you might recall from the redress of Lieutenant Colonel Collins that an officer from another service was asked for. Captain Toohey had the appropriate security clearance and he was available.

Senator CHRIS EVANS—Perhaps you could take on notice for me what role Lieutenant Colonel Mathewson played. What advice did she provide? Was it written advice? I do not necessarily want the advice but what issues did it go to? Was it about the appointment process? Was it about the review of the Toohey report? That will give me a sense of where it fits in the matrix.

Lt Gen. Leahy—Yes, Senator. I mentioned that Mathewson might be in Malaysia; she is not, so she is available. We should be able to get that information, although probably not tonight.

Senator CHRIS EVANS—It is not a pressing matter to be found out tonight, but I wanted to get a sense of where she fitted into the picture. In terms of the various legal advices and the publication of those, can someone take me through the process? Who authorised those releases and when did they occur—bearing in mind that the *Bulletin* was the main source of most of this?

Senator Hill—I authorised the publication of Tracey's report. I did so because there was, in my view, clearly more than one side to this story. There were reputations other than that of Mr Collins that deserved to be protected as well. I thought, in the interests of fair play, that the other side of the story should be seen.

Senator CHRIS EVANS—You released that on 14 April—is that right, Minister? That was the day that the *Bulletin* article came out?

Senator Hill—It was shortly after the *Bulletin* article came out. Whether it was that day or a day or so after, I am not sure.

Senator CHRIS EVANS—The trouble with the *Bulletin* is that the date on the issue seems to be a week after it comes out, so I can never work out what is what.

Mr Smith—The *Bulletin* arrives on the street on Wednesday mornings but you can usually get a copy on Tuesday nights, at least on the Internet. The events would have unfolded from the Wednesday morning onwards.

Senator Hill—The advice I have been given is that we believe it was the 14th.

Senator CHRIS EVANS—Your press release, Minister, is dated the 14th.

Senator Hill—I think it was quite late in the day on the 14th.

Senator CHRIS EVANS—They usually are! So you took the decision that day to release the legal advice; is that correct?

Senator Hill—That is my recollection, yes.

Senator CHRIS EVANS—Did you consider releasing the other legal advices on that day?

Senator Hill—The papers I saw included something from Brown—

Gen. Cosgrove—That is Colonel Brown.

Senator Hill—I considered that. I looked at the regulations and it seemed to me—whether I was right or wrong is another thing, but it seemed to me—that that was not adding to the Toohey report. The regulations, as I read them, said the obligation on—what title do you give the person who is running the process?

Gen. Cosgrove—I would say he is the reviewing officer.

Lt Gen. Leahy—The appointing officer.

Senator Hill—The appointing officer is to take advice before he progresses the matter further, which includes legal advice. So I saw that as really of the same colour as the Toohey report. It has been referred to by others I respect, including General Leahy, as a review but I actually did not read it as a review, and I think I referred to it publicly as more of a process document, whereas I saw that the Tracey document was clearly a review of the whole story and led to quite different conclusions. Thus, that was the basis on which I thought fair play required the Tracey report be released.

Senator CHRIS EVANS—But you obviously changed your mind and then on 16 April released the Brown review. Is that right?

Senator Hill—I think I was taking the attitude that, whilst that was my view, others were immediately suggesting that there was something in the Brown document that I was deliberately withholding. I took the view that where there is a situation like this, where a whole range of reputations are being attacked and there are a series of legal assessments, then probably it is better to try and be as transparent as possible.

Lt Gen. Leahy—Senator, I might help in relation to the Brown review. I think I said during my earlier statements it was procedural. Quite often it will be reviewed as to its correctness in law—that does not mean as to its correctness in judgments—and that is that the terms of the reference have been followed, that people have been interviewed and so on. It is, to my mind, not a statement that the findings are correct—although Brown, to my recollection, repeated some of the findings. It is more that the procedural aspects of the appointing authority and his tasking have been followed.

Senator CHRIS EVANS—I am sorry; I do not quite understand the point you are making.

Lt Gen. Leahy—I was just supporting the minister in terms of the Brown report. I think he had proposed that I might have positioned it more as a judgmental thing. It was a procedural thing more than judgments.

Senator CHRIS EVANS—Have the annexes of the Toohey reported been released?

Mr Lewincamp—No, they have not, although some four of them have been published on the *Bulletin* web site.

Mr Smith—And excerpts from them in the *Bulletin* itself.

Senator CHRIS EVANS—Are you telling me that there is nothing left to reveal, or that there are other annexes?

Mr Lewincamp—There are other annexes.

Mr Smith—Whether the *Bulletin* has them I cannot say, of course, but it has published four.

Senator CHRIS EVANS—Given that the minister has released the Toohey report and now the Brown report, what is the rationale for the failure to release the annexes of the Toohey report?

Mr Smith—There are several issues there. One is that many of them are informal interviews with people Toohey talked to during his investigation, and they were interviews done in the expectation of confidentiality, privacy and so on. Secondly, they embrace some very highly classified material. Thirdly, the advice we have is that some of the material in them might be defamatory and that if we were to release them it could be said that we were uttering a defamation.

Senator Hill—But all of the material is before the new IGIS, so in writing his report he will take into account everything that has been produced.

Senator CHRIS EVANS—Are you telling me that he subscribed to the *Bulletin* or that you provided him with the documents?

Gen. Cosgrove—We saved his subscription on this occasion.

Senator Hill—He will take into account everything that has been produced to date.

Senator CHRIS EVANS—What is the progress of the leak inquiry? I gather that there is an inquiry going on into the leaking of documentation relating to these matters. Can somebody give me an update on the progress of that?

Mr Bonighton—That inquiry is continuing. It commenced on about 14 April.

Senator CHRIS EVANS—Who has carriage of it?

Mr Bonighton—It is being carried by the Defence Security Authority.

Senator CHRIS EVANS—Are there any outcomes at this stage?

Mr Bonighton—Not as yet.

ACTING CHAIR—Mr Lewincamp, did you want to say something?

Mr Lewincamp—Yes, if I may. I had hoped that the questioning would allow me to make some defence of my organisation here, but that has not arisen. I would not like to miss this opportunity to defend my organisation against this public vilification and the besmirching of both its reputation and mine by an outrageous report by someone of almost breathtaking incompetence—Captain Toohey. At the very best he is incompetent and has failed to do his job properly; at worst he has been malicious.

My organisation has been working very strenuously to provide the best possible service to the government in the provision of intelligence. The claims that have been made against the organisation have no basis in fact. They have been investigated on numerous occasions. The fact that they keep being repeated by the same individuals without any further evidence being adduced reflects on them, I think, and is something that the committee ought to be aware of. Toohey has sensationalised his findings. There is no substance to the findings that he has made. He has failed to respond fully to the redress of grievance that Collins put forward. There are a number of issues that he does not address in the way that he should have done. He has failed to follow the normal forms of evidence.

He failed to provide any procedural fairness to me or to the members of my organisation in the findings that he made. He had a responsibility to give us the opportunity to respond to them, so he failed to follow even the basic provisions of the conduct of a grievance under the terms of the Defence regulations. Colonel Tracey has made quite damning findings on all of those matters. Frankly, I think it is outrageous that we have an opportunity for somebody to make those sorts of claims and get the publicity that they have gotten but we do not have an opportunity to respond fully to that and be assessed on our performance in an appropriate way.

Senator CHRIS EVANS—I do not know whether that was a statement on behalf of the department or you as an individual.

Mr Lewincamp—It is certainly a statement on behalf of the Defence Intelligence Organisation.

Senator Hill—Mr Blick found of Mr Collins that he held views genuinely but that they were not supported by the facts. Mr Collins continues to express those views and to express his grievances, and there continue to be processes looking at those concerns. I said to you that I put the Tracey review on the public record because I thought that, without that, Toohey's report was unbalanced, to say the least. But it is true that, whilst Mr Collins continues to press his case, various individuals within the Defence organisation are being attacked. It is not easy for public servants to respond. I have said that I have confidence in the Defence Intelligence Organisation; I think they are doing a good job and I have confidence in Mr Lewincamp as its director. I would like to see an end to this process where individuals are attacked. Mr Collins was the one who said he wanted the issues reviewed by Mr Blick. They were reviewed by Mr Blick, and he was dissatisfied with the outcome of that process. Now he has gone through the military chain, and General Cosgrove has sent it back to the new IGIS, Mr Carnell, who is reviewing the work of Blick. It is my earnest hope that, at the end of this process, that aspect of the matter—the allegations that are made by Mr Collins in relation to the Defence Intelligence Organisation—is concluded.

In relation to the management of Mr Collins's career, I think that that was correctly referred back by the Chief of the Defence Force to the Chief of Army, and that would seem to me to have been progressed in a constructive way as well. But this whole process has been going on far too long, in my view, and I do not think it is actually benefiting anyone. If I am accused of therefore being part of another cover-up, so be it, but there has to be a point when these matters are brought to a conclusion.

Senator CHRIS EVANS—That may be the case. I will respond briefly to Mr Lewincamp. The suggestion seemed to be that somehow we had not allowed him the opportunity at estimates to respond to allegations. I suppose the first thing to say is that I am not sure that that is the job of the estimates committee necessarily. It certainly is our job to test concerns about public administration et cetera, and I am happy to do that.

ACTING CHAIR (Senator Ferguson)—I am not sure what the role of estimates is, because it does not seem to have very much to do with budget outlays.

Senator CHRIS EVANS—It shows that it is a living institution that is developing and maturing. Mr Lewincamp wanted to put something on the record. I do not want to respond directly to that but I want to make the point that, if there are concerns about these matters, they should be taken up through the proper chains of the Public Service and through the minister in terms of defending the department et cetera. I am happy to test some of these assertions and these issues as much as I can at estimates, but I am also aware that many of these things—the key questions that have involved DIO—go to questions to which, when I do ask them, Mr Bonighton gives me a very polite, ‘Thank you, Senator, but I couldn’t tell you that.’ So one of the reasons why we have had the involvement of the joint committee on a few of these matters is that they have the capacity to get behind some of those issues. I just want to make the point that there is no lack of willingness by this committee to pursue some of these issues. As I understand it, there are processes put in place by the department and there are other avenues. But, as I say, if it were not for the time limit and the chairman calling me to order, I would be happy to—

ACTING CHAIR—I thought we were going to get a question on expenditure and I thought we were going to stop before we started those sorts of questions.

Mr Smith—Mr Lewincamp has taken that opportunity to make a statement. He did that because he exercised very admirable restraint under some provocation during the publicity around the Toohey report. He did not seek to make interviews, as others involved did. He maintained his privacy and confidentiality. He has spoken as he has because this is the first legitimate opportunity he has had.

ACTING CHAIR—I think we had better draw to a close. In light of some of the statements that have been made over the past two days, Mr Lewincamp is quite entitled to make a statement well within the guidelines that we have used over the past two days. The estimates committee will meet again at a date to be determined, as I understand it.

Senator CHRIS EVANS—I think there are going to be some discussions with the minister about that.

ACTING CHAIR—There are going to be discussions about during the sitting week. I thank the officers and everyone concerned. The last two days have been pretty tedious and very constant for all concerned. Thank you very much. We will reconvene with Veterans Affairs.

Proceedings suspended from 6.41 p.m. to 7.45 p.m.

Captain Toohey has provided to the committee a response to adverse comment made by Mr Lewincamp. The response reads, inter alia, as follows:

1. Thank you for allowing me to make this brief submission which I request be read into Hansard.
2. During the Senate Estimates Hearing conducted in the Parliament of Australia on 30 May, Mr Frank Lewincamp, the Head of the Defence Intelligence Organisation was given the opportunity to severely criticise my professional competency and ethics, as well as the accuracy and legal efficacy of an investigation I carried out at the behest of Headquarters, Training Command Army. That investigation canvassed a Redress of Grievance submitted by LTCOL Lance Collins of the above mentioned Command. I think it is a matter of public record that the Report and selected transcripts was leaked to the Bulletin magazine and further, that same publication gave me a right of reply in a question and answer format. All these circumstances were given very wide media coverage as well being the subject of a separate submission I have soon to make in another place. I think it is therefore unnecessary to labor this aspect any further with this particular forum.
3. Mr Lewincamp's misconceived criticisms of myself, which turned into a vitriolic and pusillanimous attack upon me ...
9. Mr Lewincamp's attack upon me focused, as you will be aware, upon my competency as a lawyer and senior naval investigator. He did not seek to present a factual rebuttal to my findings and conclusions, but instead, relied upon the Tracey document to assert that I proceeded improperly in undertaking my investigation and that I exceeded my authority and acted unprofessionally. In short, that I am 'breathtakingly incompetent'. However, in presenting these views, Mr Lewincamp conveniently overlooked the fact that the Defence Force [Inquiry] Regulations mandate a legal review of an Inquiry Officer's findings and that that review occurred: see the Brown Report. Very significantly Brown found that my Inquiry had not miscarried and that my findings and recommendations were supported by the evidence. Further, the Tracey document is not a legally mandated review of my Inquiry and, in my view, contains a significant number of factual errors and, on its face, shows that the author did not have before him the full transcript of evidence of my Inquiry, so that his conclusions regarding my findings and recommendations cannot be accepted qualification.
10. It is also useful to note at this point that Mr Lewincamp's own evidence before my Inquiry—see the transcript of his evidence—was that he had prevented the electronic intelligence link between Canberra and INTERFET being re-activated for at least '12 hours', a clear admission by him that he had taken a positive decision NOT to reconnect the link and this at a time when Australian Defence personnel were engaged in active operations in East Timor and were thus placed at risk by the continued inability—for 12 hours on Mr Lewincamp's own admission—to access that intelligence link.
11. Mr Lewincamp's attack upon me demonstrates, in my submission, an inability to deal openly and directly with difficult facts and a desire, on his part, to obfuscate and to engage in personal attacks upon those who upset him. This is exactly what LTCOL Collins was complaining about. It is also exactly because of this approach to intelligence matters that many members of the Defence community are seeking a Royal Commission into the operation of Australia's Intelligence operations.
12. Thank you, Mr Chairman and Senators, for allowing me to make this submission.

MJ Toohey

Captain RANR

Barrister and Solicitor

8 June 2004

DEFENCE PORTFOLIO**In Attendance**

Senator Minchin, Minister for Finance and Administration

Department of Veterans' Affairs**Portfolio overview****Corporate and general matters**

Outcome 1: Eligible veterans, serving and former defence force members, their war widows and widowers and dependents have access to appropriate income support and compensation in recognition of the effects of war and defence service.

1.1: Means tested income support, pension and allowances

1.2: Compensation pensions, allowances etc

1.3: Veterans' Review Board

1.4: Defence Home Loans Scheme

1.5: Incapacity payments, non-economic lump sums through MCRS

1.6: Individual merit reviews of MCRS decisions

1.7: Incapacity payments, non-economic lump sums through MRCA

1.8: Individual merit reviews of MRCA decisions

Mr Bill Maxwell, Division Head, Compensation and Support

Mr Ken Douglas, Division Head, Health

Mr Barry Telford, Principal Adviser Rehabilitation, Compensation and Support

Ms Peta Stevenson, Acting Branch Head, Defence Links, Compensation and Support

Dr Keith Horsley, Director, Health Studies

Mr Mark Johnson, Branch Head, Disability Compensation, Compensation and Support

Ms Jeanette Ricketts, Acting Branch Head, Income Support, Compensation and Support

Mr Wayne Penniall, Branch Head, Aged and Community Care, Health

Mr Paul Pirani, Branch Head, Legal Service, Compensation and Support

Mr Arthur Edgar, Branch Head, A New Military Compensation Scheme, Compensation and Support

Mr Bruce Topperwien, Executive Officer, Veterans' Review Board

Outcome 2: Eligible veterans, serving and former defence force members, their war widows and widowers and dependents have access to health and other care services that promote and maintain self-sufficiency, wellbeing and quality of life.

2.1: Arrangement for delivery of services

2.2: Counselling and referral services

2.3: Deliver medical, rehabilitation ... under MCRS

2.4: Deliver medical, rehabilitation ... under MRCA.

Mr Ken Douglas, Division Head, Health

Mr Roger Winzenberg, Branch Head, Health Services, Health

Ms Olivia Witkowski, Acting Branch Head, Younger Veterans and VVCS,
Health

Mr Chris Harding, Branch Head, Hospitals and Business Development, Health

Ms Jo Schumann, Branch Head, Health Infrastructure, Health

Mr Wayne Penniall, Branch Head, Aged and Community Care, Health

Dr Keith Horsley, Director, Health Studies

Dr Graeme Killer, Principal Medical Adviser

Outcome 3: The service and sacrifice of the men and women who served Australia and its allies in wars, conflicts and peace operations are acknowledged and commemorated.

3.1: Commemorative activities

3.2: War cemeteries, memorials and post-war commemorations.

Ms Kerry Blackburn, Division Head, Corporate

Mr Kevin Bell, Acting Branch Head, Commemorations, Corporate

Air Vice Marshal (Rtd) Gary Beck, AO, Director, Office of Australian War
Graves

Ms Katherine Upton, Assistant Director, Office of Australian War Graves

Outcome 4: The veteran and defence communities have access to advice and information about benefits, entitlements and services.

4.1: Communication, community support ... to the veteran community and providers, including veterans' local support groups.

4.2: Advice and information to members of the defence force community ... under the MCRS

4.2: Advice and information to members of the defence force community ... under the MRCA.

Mr Ken Douglas, Division Head, Health

Ms Kerry Blackburn, Division Head, Corporate

Ms Carol Bates, Branch Head Strategic Support, Corporate

Mr Wayne Penniall, Branch Head, Housing and Aged Care, Health

Outcome 5: Serving and former defence force members and dependents have access to support services provided through joint arrangements between DVA and Defence.

5.1: Joint Defence/DVA projects.

Mr Bill Maxwell, Division Head, Compensation and Support

Mr Barry Telford, Principal Adviser Rehabilitation, Compensation and Support

Mr Mark Johnson, Branch Head, Disability Compensation, Compensation and
Support

Mr Arthur Edgar, Branch Head, Military Compensation, Compensation and
Support

Ms Peta Stevenson, Acting Branch Head, Defence Links, Compensation and
Support

Dr Keith Horsley, Director, Health Studies

Output group 6: Provision of services to the Parliament, Ministerial services and the development of policy and internal operating regulations—attributed to outcomes 1 to 5.

Mr Ian Campbell, Acting Secretary

Ms Kerry Blackburn, Division Head, Corporate

Ms Carolyn Spiers, Branch Head, People Services, Corporate

Mr Sean Farrelly, Branch Head, Resources, Corporate

Ms Gail Urbanski, Branch Head, Parliamentary and Corporate Affairs,
Corporate

Mr Paul Pirani, Branch Head, Legal Service, Compensation and Support

Mr Bob Hay, Chief Information Officer, Corporate

Ms Karin Malmberg, Director, Resources, Corporate

Mr Dermott Walsh, Director, Resources, Corporate

Australian War Memorial

Outcome 1: Australians remember, interpret and understand the Australian experience of war and its enduring impact on Australian society through maintenance and development, on their behalf, of the national memorial and a national collection of historical material, and through commemorative ceremonies, exhibitions, research, interpretation and dissemination.

Major General (Rtd) Steve Gower, Director

Mr Mark Dawes, Assistant Director, Corporate Services Branch

Mr Ian Kelly, Acting Assistant Director, Public Programs Branch

Ms Nola Anderson, Assistant Director, National Collections Branch

Ms Rhonda Adler, Chief Finance Officer

Department of Veterans' Affairs

CHAIR—We now move to consideration of particulars of proposed budget expenditure for the Department of Veterans' Affairs. I welcome Senator Minchin, the Minister for Finance and Administration, representing the Minister for Veterans' Affairs and the officers of the Department of Veterans' Affairs. The committee has before it particulars of proposed budget expenditure for the year ending 30 June 2005, documents A and B, and the portfolio budget statements for the Department of Veterans' Affairs. The committee will begin with the portfolio overview and then consider the outcomes.

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 that Thursday, 22 July 2004 is the return date for answers to questions taken on notice at these hearings. I have a final note on 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 those questions as soon as possible. I reiterate that the committee's return date for other questions on notice is 22 July 2004, and the committee would appreciate it if all answers are received 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 the 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 a reasonable opportunity to refer questions asked of that officer to superior officers or to the minister. Minister, do you or any of the officers wish to make an opening statement?

Senator Minchin—No, thank you.

Senator MARK BISHOP—Welcome, Mr Campbell and officers of the department. I want to talk firstly about some aspects of the Clarke bill which has been introduced into the House and I think it is to be introduced into the Senate. In particular, I want to ask you some questions about the new DFISA allowance. I am curious to understand the rationale behind the allowance to be paid to compensate those whose disability pension is counted as income by Centrelink. Can you tell me why FaCS did not agree to exempt the disability pension in the Social Security Act?

Mr Maxwell—It is certainly true that one of the objectives in implementing that particular recommendation was to, in effect, exempt the disability pension paid under the Veterans' Entitlements Act as income for the purposes of the Social Security Act and, in so doing, remove an anomaly that exists between that act and the Veterans' Entitlements Act itself, with its service pension.

Senator MARK BISHOP—In fact, it was its central purpose.

Mr Maxwell—But it is equally true that in effecting that reform, there was no particular desire to then create an anomaly with the treatment of that particular income stream within the FaCS population—the social security population—by having a particular pension treated as non-income for a former member of the ADF when perhaps similar income streams from other social security pension population groups were not equally treated. At the end of the day the decision was that it was best given effect by creating a payment under the Veterans' Entitlements Act which reflects that it is a unique treatment and available only to former members of the ADF whose income support is necessarily drawn from Centrelink. But the disability pension in fact reflects their ADF service.

Senator MARK BISHOP—You referred to it as the creation of an anomaly. Was Centrelink or FaCS fearful of perhaps a flow-on of that anomaly to their own population base under the SSA?

Mr Maxwell—I would prefer to say that the government choice was to ensure that this unique veterans payment was identified as such and paid under the VEA. It would be obvious that a concern in thinking would be that if you in fact did it under the Social Security Act you would inevitably create some pressures for other classes of income amongst the social security population to be exempted.

Senator MARK BISHOP—Is that decision—to create a specific allowance and not go down the path that you and I have just been discussing—essentially a decision of cabinet? Is it cabinet that makes that decision?

Mr Maxwell—It is a government decision.

Senator MARK BISHOP—In those discussions or negotiations that were conducted, did DVA propose that only the disability pension should be exempted or did DVA insist that all of the special rate be exempted as well?

Mr Campbell—It is not appropriate for us to talk about the advice that we put to ministers and to cabinet in those circumstances. What is on the record is the decision that the government took.

Senator MARK BISHOP—Why is it not appropriate to discuss this?

Mr Campbell—It is certainly not appropriate for us to be putting out in this arena the various types of policy advice that we might put to ministers at various times.

Senator MARK BISHOP—You can certainly put on the public record the policy advice. I am not entitled to ask you questions behind that advice or the rationale behind it but I certainly am entitled to ask you.

Mr Campbell—Yes, you are entitled but I do not think that we are entitled to actually put out in the public arena the various types of policy advice that we put to our minister and to cabinet.

Senator MARK BISHOP—Given that the special rate was split for the purposes of indexation, as you are aware, why wasn't it split here? What is the rationale for the different approach?

Mr Maxwell—I can advance a rationale, and it is pretty obvious. That simply is this: were that treatment adopted for DFISA, it would yield an ongoing anomaly as to the treatment of the same pension under the Veterans' Entitlements Act for a service pensioner. I do not think that would make much sense at all.

Senator MARK BISHOP—What I am talking about is that the special rate has a general rate and an above general rate and the government's decision has been to change the method of indexation of one part of the special rate, to shift it from CPI to MTAW and leave the other at CPI.

Mr Maxwell—That is true.

Senator MARK BISHOP—I accept that. That is a different decision in principle from what is occurring here. So what I am really asking you is why, in terms of the one payment, has there been a different approach adopted in principle to forms of indexation?

Mr Maxwell—Senator, with respect there has not been a different approach adopted in principle. The special rate is indexed now on a two-part formula. Whether the special rate is payable to a veteran who draws his or her income support from the Veterans' Entitlements Act or whether they draw their income support from the Social Security Act, it is consistent. If I can again perhaps stretch the comments I was making a moment ago, if you are suggesting that an approach might be to only exempt part of the special rate by means of paying a

reduced DFISA, then my response is that that would immediately create an anomaly between the recipient of a TPI pension who draws service pension under the Veterans' Entitlements Act—where it is all exempt—and the equivalent drawing of income support under the Social Security Act. We would not in fact have removed the anomaly; we would have removed part of the anomaly.

Senator MARK BISHOP—You do not regard the form of indexation of those who receive the special rate under the VEA—now two-thirds of it being indexed by MTAWA and one-third by CPI—and the creation of the new allowance as creating an anomaly?

Mr Campbell—We are talking about two different issues here. As Mr Maxwell has pointed out, the purpose behind the DFISA allowance is to treat a person who is receiving their income support from the VEA in the same way as a person who is receiving their income support under the Social Security Act. We have done that in the way that Mr Maxwell pointed out.

Senator MARK BISHOP—By the creation of the allowance?

Mr Campbell—That is right. The second issue you are raising is why there is now going to be differential indexation provisions for the special rate.

Senator MARK BISHOP—Correct.

Mr Campbell—Going on the reasons that Mr Maxwell pointed out and as the government pointed out when it made the announcement, the special rate is made up of two components: the general rate and the above general rate. The general rate is generally accepted to be compensation for pain and suffering and the above general rate is generally accepted to be income loss compensation. If you have a look across the range of indexation arrangements in government, it is the norm that compensation for pain and suffering loss is indexed by the CPI and compensation for income support loss or income loss—economic loss—is by a wage index. When you take that into account, it is a very logical split to say that the general rate up to 100 per cent is for pain and suffering, so it continues to be indexed by the CPI, but the above general rate, which is for economic loss, is indexed by a wage index.

Senator MARK BISHOP—So those who are receiving their DP pay from Centrelink—

Mr Campbell—Nobody under the VEA receives DP from Centrelink. The DP we are talking about, which has the indexation, is all paid under the VEA. Some of the people who receive that, as Mr Maxwell pointed out, receive their income support from Centrelink. The others receive their income support from us via the VEA.

Senator MARK BISHOP—Are those who receive their income support from Centrelink not going to receive this additional allowance now?

Mr Campbell—And those who are on the TPI or the special rate at Centrelink will have the same indexation arrangements as a veteran who was receiving their income support under the VEA from us.

Senator MARK BISHOP—That is right. So the TPI who receives his special rate from Centrelink is going to effectively have an indexation factor of 100 per cent of MTAWA applied to the amount he received via the allowance but the person who receives the payment from DVA under the VEA is only going to have part of it indexed by MTAWA.

Mr Campbell—I think there is a little confusion here. Let us take someone who is on the special rate. They receive that special rate and it is non-taxed and non means tested. That special rate does not change irrespective of whether they are receiving their income support under the VEA from us or under the Social Security Act from Centrelink. They get the full amount of the special rate. What has been happening is that that special rate is not taken into account in the means testing for the service pension under the VEA but it has been counted in the means testing for income support pensions—say, the age pension—under the Social Security Act. The purpose of DFISA, as Mr Maxwell explained, is to actually remove that anomaly so that both of those individuals will receive exactly the same amount of income support. We do that by the payment of the DFISA allowance. I should not say DFISA allowance because there is an ‘a’ on the end; it is the defence force income support allowance. That is what is happening and they will receive exactly the same amount of money in income support. The second issue you have raised is a completely distinct issue and it has nothing to do with DFISA. It is the decision by government as to how they are going to index the special rate payment. It has nothing to do with DFISA. DFISA has no impact upon it.

Senator CHRIS EVANS—I accept that there is no connection between the two payments. I am not trying to suggest there is. All I am trying to suggest is that there appears to me to be a contradiction now in the different policy approaches adopted by government. That is what I am asking about.

Mr Campbell—That was my first answer. The special rate is broken into two components: pain and suffering compensation, which is up to 100 per cent of the general rate; and economic loss, which is above the general rate. The amount up to 100 per cent which is pain and suffering is indexed by the CPI, which is government policy and has been government policy for a long time. The amount above the general rate, which is economic loss, will be indexed by what is in effect the formula but really by a wage index. I will not go through the complications of it. That is the reason why it is treated differently. I cannot see how there is a relationship to the DFISA decision.

Senator MARK BISHOP—The above general rate is going to be indexed by MTAWA and the general rate is going to be indexed by CPI. So effectively two-thirds of the special rate paid by DVA is going to be indexed by MTAWA. What is the indexation factor on the DP made by Centrelink going to be?

Mr Campbell—Centrelink do not pay DP to veterans.

Senator MARK BISHOP—Then what do you call the payment by Centrelink?

Mr Campbell—They pay the age pension or some other income support payment.

Mr Maxwell—It is additional income.

Senator MARK BISHOP—That is right; sorry.

Mr Maxwell—But, as Mr Campbell has said, at the end of the day the two individual veterans will receive exactly the same monetary outcome. The only difference is that the one drawing income support from Centrelink will have their income support payment in two forms. They will get the Social Security Act derived income support pension and they will get

an amount from this department to top it by way of DFISA to the same amount that the service pensioner TPI equivalent at DVA would receive.

Senator MARK BISHOP—With that exact amount that he receives—the combination of the two—is it the net or the gross that will be the same?

Mr Maxwell—The net will be the same and the gross will be the same, because there is no difference. It is a top-up payment, so it has to come out at the same result.

Senator MARK BISHOP—Taking into account now the two types of payments, one made by DVA and the other made by Centrelink—one effectively for those with QS and one effectively for those without QS—is there now no difference between the payment to TPIs with qualifying service and the payment to those without?

Mr Maxwell—That is the purpose of the DFISA payment—to remove the difference. There are still differences in terms of eligibility. The qualifying service veteran will still qualify for the age version of the service pension five years earlier than the former ADF member without qualifying service.

Senator MARK BISHOP—But the policy purpose is to eliminate the distinction between the sums paid by the two agencies for QS and non-qualifying service?

Mr Maxwell—The policy objective was in fact to remove the effective counting as income of disability pension paid under the Veterans' Entitlements Act.

Senator MARK BISHOP—And the effect is that those with qualifying service and those without qualifying service are going to be in receipt of the same amount?

Mr Maxwell—They will now get the some monetary amount.

Senator MARK BISHOP—Have you had representations from any elements within the veteran community objecting to the introduction of parity regardless of the nature of their service?

Mr Maxwell—I am not aware of any that have been received since the decision was announced.

Senator MARK BISHOP—Mr Campbell—you understand the point I am making?

Mr Campbell—Yes, I understand the question. No, I am not aware of any. That is not to say that there has not been some veteran somewhere who has raised some issue. But the removal of the means testing of our disability pension under the Social Security Act—which is effectively what has happened—has been a major issue of high priority for most of the main veteran organisations. For the last two or three years it has been a very significant element in their bids to government.

Senator MARK BISHOP—I am not suggesting it has not been, Mr Campbell. You were in Brisbane on Friday and you observed some of the discussion on the significance of qualifying service at the meeting we both attended. Have you had any complaints from that organisation or any others on the introduction of parity?

Mr Campbell—I have not personally, and I am not aware of the commission or the department having any complaints about the introduction of the DFISA.

Mr Maxwell—Senator, I should have added in my earlier response that the other difference that still applies to a qualifying service veteran is the availability of the gold card at age 70, without a compensation base. I think those two, the earlier age of age qualification plus the gold card at age 70, are still fairly distinctive differences between the treatment of the two former ADF people.

Senator MARK BISHOP—Those two pre-existing differences that you refer to still remain, it is just that there is a lot less difference than there was five or eight years ago.

Mr Maxwell—Yes, but it is not the case that the service pension always discounted as income under the Social Security Act. That only arose in the mid-eighties. At the time most people went to war, for example, it was not a feature.

Senator MARK BISHOP—That is right. I just wanted to get on record whether the government or the department had received any complaints about the introduction of parity. Mr Campbell has said that none have been received and he is not aware of any.

Mr Maxwell—And neither am I.

Senator MARK BISHOP—And you can confirm that, Mr Maxwell. Thank you. This new allowance that is going to be paid by DVA: what are the figures on the admin cost of setting up the new system?

Mr Farrelly—The set-up figures in year 1 for DVA, in 2003-04, are about \$5.8 million. The ongoing costs in the second year are \$1.2 million, down to about \$400,000. So over the five years it is about \$8.2 million in all.

Senator MARK BISHOP—After year 1, that figure of \$1.2 million that goes down to \$400,000 over the four out-years is just the normal operational cost from adding on people and taking them off, updating the software and all those sorts of things, isn't it? Can we talk about that \$5.8 million. That is a significant amount to set up a new system, isn't it? Can you give me the break-up of those costs?

Mr Farrelly—For salary costs, initial implementation in state offices is about \$1.8 million, and implementation in the national office is about \$1 million. There are below-line costs of \$0.7 million.

Senator MARK BISHOP—What are below-line costs?

Mr Farrelly—Things like PCs, telephones, desks and so on that go with the people.

Senator MARK BISHOP—What about the other \$2.3 million?

Mr Farrelly—Essentially, IT costs.

Senator MARK BISHOP—Were costings done on alternative methods of implementation of the government decision prior to the government signing off on the current method of payment?

Mr Farrelly—I think that is rather along the same lines as the previous question about advice to government and alternative policy options.

Senator MARK BISHOP—So is the answer yes or no?

Mr Farrelly—The answer is that I am really not at liberty to comment on alternative options that might have been put to government.

Senator MARK BISHOP—But you would have done alternative options on the costings, surely? That would be a relevant consideration that government would be interested in, if one system is going to cost the best part of \$10 million over five years and the alternative system is going to cost maybe half a million dollars or less over 10 years. Surely that would be a relevant consideration government would be interested in. I would be.

Senator Minchin—But as the officer has said, the general rule at estimates is that it is not appropriate for officials to talk about the internal advice they provide to the government. They are here to talk about government decisions and government administration but not to talk about internal advice. That is a common standard.

Senator MARK BISHOP—That is fine. We are talking about government administration. We are talking about the cost of the implementation of a new allowance not the rationale or justification for it. The cost that has been chosen is somewhere between \$8 million and \$10 million over a five-year period. I am simply asking if there were alternative costs done for different systems.

Senator Minchin—I would have thought that goes to internal advice from the bureaucracy to the government.

Senator MARK BISHOP—Can I ask you the question then if you are refusing the officers permission to answer?

Senator Minchin—I am not in a position to give you an answer to that question either.

Senator MARK BISHOP—Why is that?

Senator Minchin—Because (a) I do not have the information and (b) I am not going to comment on internal advice that we received from our officials.

Senator MARK BISHOP—Are you saying to me that you cannot discuss the alternative costings provided to government on alternative systems?

Senator Minchin—I think you could find a way to ask your question that does not breach the rules relating to the way in which estimates are conducted. You might just want to think about rephrasing your question.

Senator MARK BISHOP—All right. In that case, Mr Farrelly, I ask you: what were the alternative methods of implementation considered?

Mr Farrelly—One alternative was that Centrelink and FaCS administer the arrangement rather than Veterans' Affairs.

Senator MARK BISHOP—And were costings done on Centrelink and FaCS administering the arrangement?

Mr Farrelly—They were.

Senator MARK BISHOP—What were the figures for those costings?

Mr Farrelly—I do not have those details with me, but we could take it on notice.

Senator MARK BISHOP—Could you take that on notice and provide that to the committee?

Mr Farrelly—Yes.

Senator MARK BISHOP—I want to get the numbers, if I can, for the various client groups that are affected.

Mr Maxwell—The DFISA lot recipients?

Senator MARK BISHOP—Yes.

Mr Maxwell—We can provide that. My colleague will check and see if we have that with us.

Senator MARK BISHOP—Have you entered into any new arrangements between yourselves and Centrelink to ensure that pension reduction is being properly refunded or are we going to carry on with the current arrangements?

Mr Maxwell—DFISA being a top-up payment, it simply requires Centrelink to advise us of how much the maximum pension has been discounted by applying the Social Security Act. We then arrange to pay that amount.

Senator MARK BISHOP—So they just send you advice on how much extra each person is to receive each fortnight, you pass that on to your systems people and it is implemented.

Mr Maxwell—Essentially. It is a slight oversimplification but, in essence, that is what it is. They advise us what discount they have applied by counting it as income and we simply generate the equivalent amount of money as the DFISA payment. I need to add that that is after adjustment for the differences in treatment of rent allowance regarding the rent assistance between the two regimes as well.

I will have take your previous question on notice. Whilst we have a total of some 19,000 recipients and we know that 950 of those are special rate recipients, I do not have the information here on the other pensioner groups involved. With your agreement, we will take it on notice and give you the full figure.

Senator MARK BISHOP—That is fine. Will partners of Centrelink pensioners whose pension is also affected get a refund from DVA? Are they affected by this arrangement as well?

Ms Ricketts—Yes. They will receive exactly the same treatment. That means that their pension will be calculated on the Social Security Act and a DFISA calculation will be done. They will receive a DFISA payment from this department as well.

Senator MARK BISHOP—What is to be done about those eligible for a Centrelink pension and not in payment due to excess income but whose DP refund would now entitle them to a part pension at least?

Ms Ricketts—They will receive that adjustment as a DFISA payment. If the inclusion of the disability pension results in no payment of a primary payment from Centrelink, the calculation will then be done excluding the disability pension and the difference will be paid as the DFISA payment.

Senator MARK BISHOP—Will they be able to apply for a pension? If so, how are they going to be advised of their new entitlement?

Ms Ricketts—They will be able to apply for the primary payment. The payment of DFISA hinges on eligibility for a primary payment under the Social Security Act. They will have their eligibility for that payment established and then they will have the payability of that payment established. If there is no payability, DFISA will then be calculated. Providing there is a payment of DFISA, that will be paid. These people will be informed through articles in *Vetaffairs* and also by letter that they may be eligible for a primary payment for social security and they will be encouraged to apply through Centrelink to have that eligibility determined.

Senator MARK BISHOP—Are those people we are talking about now part of the 19,000 or are they extra?

Ms Ricketts—We have calculated the number of people based on information we have available to us. We have done an estimate of the number of people we think will come on to payment and that has been added to the number that are already in payment. So the 19,000 covers a very small number who are currently falling outside a payability at social security who may qualify for some payment with the inclusion of DFISA.

Senator MARK BISHOP—And it is your estimate that a small number will come in?

Ms Ricketts—Yes. I think the estimate was 600 who may qualify.

Senator MARK BISHOP—For the record, can you explain the different impacts of taxation on the amounts that will be refunded?

Ms Ricketts—That decision has not been finalised yet. We are still looking at it. An early decision was that DFISA would be taxable.

Senator MARK BISHOP—Would be taxable or not taxable?

Ms Ricketts—Would be taxable. The majority of people who receive a primary payment under the Social Security Act have a taxable payment. They may not have a tax liability but the pension payment itself is taxable. However, there are some payments, such as the disability support pension paid to a person who is under pension age, which are non-taxable. We have gone back to have another look at tying the taxable status of DFISA to the taxable status of the primary social security payment. So if your primary payment is not taxable we are looking at linking your DFISA payment to that and making it non-taxable.

Senator MARK BISHOP—And if your primary payment is?

Ms Ricketts—If your primary payment is taxable, your DFISA payment will be taxable.

Senator MARK BISHOP—Is this going to create further anomalies that I am going to receive letters about along the lines of, 'Why am I being treated differently to my brother or sister?'

Mr Maxwell—I think the answer is no, it ought not, because there will be no different treatment. Service pension under the VEA is also in theory taxable. Whether or not you pay tax on it depends entirely on your taxable income. This is no different. That is not to say that you will not receive correspondence.

Senator MARK BISHOP—Ms Ricketts, you said in your introductory remarks that the earlier decision had been to make the allowance taxable. Can I conclude that that is no longer the decision?

Ms Ricketts—There has been no new decision, but we are examining the issues and the drafting with the Office of Parliamentary Counsel.

Senator MARK BISHOP—Presumably that will be resolved before we return here in a fortnight's time.

Ms Ricketts—One would certainly hope so.

Senator MARK BISHOP—There are some draft amendments about.

Ms Ricketts—Yes, there are a number of draft amendments that will be introduced by the government.

Senator MARK BISHOP—Can we anticipate further amendments on this issue of the taxable or non-taxable treatment of the DFISA allowance?

Ms Ricketts—I cannot give a guarantee that the decision will be finalised before the current amendments are introduced, but we are hoping that it will be finalised before that time.

Senator MARK BISHOP—This is probably a question for you, Senator Minchin. Is the government hoping to have the Clarke bill concluded in the Senate by the end of the June sittings?

Senator Minchin—My presumptions in that regard have been confirmed by Mr Campbell. Yes, it is our desire to have it completed by the time we rise at the end of June.

Senator MARK BISHOP—That is what I thought.

Senator Minchin—I am sure we will get lots of cooperation from the opposition.

Senator MARK BISHOP—Ms Ricketts, coming back to the discussion about the differential treatment of taxation on the amounts which will be refunded, does this mean that a younger person on the DSP, which is not taxed, will get a larger allowance or refund than someone on an age pension, which is taxed, even though their level of DP is the same?

Ms Ricketts—No, it does not mean that. The pension may well be taxable, but in order to attract a tax liability one needs more than the pension payment. With the aged person's savings taxation changes that were introduced a couple of years ago, most age pensioners do not attract a liability if their only income is the taxable pension. You need additional income on top of the pension to have a tax liability, despite the fact that the pension itself is taxable.

Senator MARK BISHOP—But if I were getting a service pension now, say, as well as some form of taxable amount paid by Centrelink and it is now going to increase by up to \$250 a fortnight, would that not in some cases put my income level into the area where I could have a tax liability?

Ms Ricketts—Yes. A person who is receiving a pension from Centrelink or a pension from DVA which is taxable may in fact have to pay tax, but what their tax liability will be depends on how much other income they have. The DFISA will not make any difference to the

person's tax liability on its own. So if all they have is a pension and we are going to increase that pension to the maximum rate, that will not attract a tax liability.

Senator MARK BISHOP—I understand that.

Ms Ricketts—But if the person has other income, certainly some of their DFISA may attract a tax liability.

Mr Maxwell—In exactly the same fashion as a service pensioner at DVA under the Veterans' Entitlements Act with, say, a \$50,000 a year income outside of the pension would possibly have a tax liability which might include a part of their pension, because their income package is of a sufficient size to attract taxation. But there ought to be no difference between the two candidates receiving the package from either DVA or Centrelink and DVA at the end of the day.

Senator MARK BISHOP—I understand the point. Those at the bottom end who are simply in receipt of the extant pension from Centrelink are not going to be affected because that is their only income. Those who have income from private means or service pension or part service pension or whatever may be tipped over threshold level in terms of a new tax liability.

Mr Campbell—Can I just make one point, Senator, about something you have said twice. A person who is in receipt of the service pension will not get DFISA, by the very definition of DFISA.

Senator MARK BISHOP—Yes, I am sorry. The Minister for Family and Community Services has been reported as saying that \$45.7 million will be spent reviewing assets of pensioners held in trust. There was a report to that effect in the *Age* newspaper of 12 May. Does this apply also to veterans? If the answer is yes, what is the process, time line and estimated cost?

Ms Ricketts—The Department of Veterans' Affairs has exactly the same trusts and private company legislation operating now as that which operates under the Social Security Act. It is my understanding that the additional funding for FaCS was in relation to the increase in the number of claims they were receiving from people who had trusts and private companies in their assessment. You will recall that the changes that were introduced for the treatment of trusts and private companies was a budget measure from several years ago. The funding for that was estimated on the number of claims that were anticipated to come under social security and veterans' affairs legislation for service pension or age or other pensions, based on projections about the number of people in the future who would have those sorts of structures within their personal affairs. It is my understanding that that budget proposal from FaCS is an extension to accommodate an increase in the estimated numbers.

Senator MARK BISHOP—My office had assumed that was the case. So it will have some application to veterans, but overwhelmingly the application will be to people in receipt of payments made from Centrelink?

Ms Ricketts—No, DVA is not included in that proposal. We have not gained additional funds to deal with our trusts and company cases at this point.

Senator MARK BISHOP—Why is that?

Mr Campbell—As Ms Ricketts pointed out earlier, we apply the same trusts and company rules and regulations under our legislation that Family and Community Services and Centrelink do under the Social Security Act. We apply the same rules—the legislative rules are the same. What Ms Ricketts is saying is that the extra amount of money announced by Senator Patterson is to apply to work being undertaken within the Family and Community Services portfolio, not in our portfolio.

Senator MARK BISHOP—All right. So you are not going to be doing any extra work.

Mr Campbell—No, we will continue to undertake the work that we have been doing on that. As Ms Ricketts pointed out, it was a budget initiative several years ago. We are just continuing doing—

Senator MARK BISHOP—You are just continuing the current level of work in terms of veterans who have trusts and other arrangements?

Ms Ricketts—That is correct.

Senator MARK BISHOP—Understood. Can we talk about bursaries now. What was the closing date for applications for the Long Tan bursaries this year?

Mr Douglas—The closing date was 31 October. Applications opened on 18 August and closed on 31 October.

Senator MARK BISHOP—How many applications were received and how many bursaries were granted?

Ms Witkowski—I actually do not have with me the number of applications, but I can tell you that there are 30 bursaries provided and awarded each year.

Senator MARK BISHOP—Do you have a ballpark figure on how many applications we received?

Ms Witkowski—No, at this stage I do not.

Mr Douglas—We will have to take that on notice.

Senator MARK BISHOP—Were there hundreds or thousands?

Mr Douglas—We will take it on notice, but certainly we are not talking about thousands. Given that there were 30 bursaries granted, my guess is that we might have had a hundred applications, or maybe a few in excess of that, but not thousands. The order of magnitude would be around a 100, 150 or 200—not thousands.

Senator MARK BISHOP—What was the total value of bursaries awarded in this round?

Ms Witkowski—They will receive \$6,000 per bursary per year.

Senator MARK BISHOP—So that is \$180,000 in total?

Ms Witkowski—Yes, there are 30 bursaries of \$6,000 each.

Senator MARK BISHOP—When did the process of assessment finish—that is, when was the decision made?

Ms Witkowski—I am not sure when the decision was made. I can certainly take that on notice.

Mr Douglas—The department does not administer the application scheme. The scheme is managed by the Australian Veterans' Childrens Assistance Trust. We would have to liaise with them to get the precise dates behind your question.

Senator MARK BISHOP—But doesn't the department provide some form of administrative support to the trust?

Mr Douglas—The department does, but the trust is the decision maker here. It advises us of the selections. I do not have the information with me about when we were given that advice. We would have to take that on notice.

Senator MARK BISHOP—Do you know when the applicants were informed of their success or failure?

Ms Witkowski—No, I do not.

Senator MARK BISHOP—Who prepared the press release making the announcement of those who were successful?

Mr Douglas—Those media releases were issued by the minister's office.

Senator MARK BISHOP—And who wrote those press releases?

Mr Douglas—I would imagine that we did some initial drafting and then there would be some amendments made within the minister's office.

Senator MARK BISHOP—Do you know that or do you just think that?

Mr Douglas—I cannot comment on this specific one, but that is the standard process for the issue of media releases by ministers.

Senator MARK BISHOP—Who would have been responsible for drafting the press releases at first instance prior to them going to the minister's office?

Mr Douglas—That process would have had a number of drafters. The initial process for that would have commenced within my division.

Senator MARK BISHOP—So would you have done that job yourself, Mr Douglas, or would it have been one of your officers reporting to you?

Mr Douglas—One of the officers within my division.

Senator MARK BISHOP—Who did that?

Mr Douglas—I do not have that information here with me. In any case, with the number of different hands on the draft over the course of the period, I do not know that giving that information would actually yield anything. There are a number of different hands it passes through. Ultimately the minister issues the media releases.

Senator MARK BISHOP—When did the draft press release leave your section or department and go to the minister's office?

Mr Douglas—I will take that on notice.

Senator MARK BISHOP—You do not recall?

Mr Douglas—No.

Senator MARK BISHOP—Can you find out for us tonight?

Mr Douglas—I said I would take it on notice.

Senator MARK BISHOP—I know that.

Mr Douglas—I cannot find out tonight.

Senator MARK BISHOP—Why is that?

Mr Douglas—It is after normal business hours. I do not have access to people back in the workplace to be able to search the files to find the records.

Senator MARK BISHOP—When do you think it would have been done?

Mr Douglas—I have taken the question on notice. I do not propose to extemporise on information that I do not have available.

Senator MARK BISHOP—Are none of your junior officers available that would be able to answer those questions?

Mr Douglas—I believe I have answered your question.

Senator MARK BISHOP—With due respect, you have not been able to give me any information at all apart from information that is in the public domain. I knew there were 30 bursaries of \$6,000 at \$180,000. Last Friday the minister made a big deal about how well the trust was doing and how well the department was doing. She had full files. You are telling me you are unable to give me the information as to when the close date was, the number of applications, when people were advised and when press releases were prepared.

Mr Douglas—That is not correct. I have given you advice about when the applications opened and closed. We have given you ballpark information about the expected number of applicants. We will need to get precise figures to confirm that for you. We have given you an indication of the drafting process that underpins the release of the media releases. But you are asking now for more precise detail about information we do not have to hand.

Senator MARK BISHOP—Did the minister write letters to the applicants advising them that they were fortunate to have received a bursary?

Mr Douglas—I will have to check that. I have a recollection that she did but I would not want to swear on a stack of bibles at this point. I would like to check my facts.

Senator MARK BISHOP—Do you know when she would have written those letters?

Mr Douglas—Not off the top of my head.

Senator MARK BISHOP—Do you know whether press releases were also prepared by DVA for government members and senators with respect to the successful applicants?

Mr Douglas—I am stretching my memory. I have a recollection that perhaps they were, but I would like to check.

Senator MARK BISHOP—They were.

Mr Douglas—I am giving a qualified answer on that basis.

Senator MARK BISHOP—I am giving an authoritative answer.

Senator Minchin—Why are you asking the question if you know the answer?

Senator MARK BISHOP—Because I want it on the record that the press releases were prepared by the department for government members and senators.

Senator Minchin—The official cannot answer that for certain. You can assert that it is the case but it is no good trying to trap witnesses in the way you are trying to when they do not have that information to hand. That is quite an unfair way to treat the officials.

Senator MARK BISHOP—I am asking him whether press releases were prepared for government members and senators.

Senator Minchin—Apparently you already know the answer to that.

Senator MARK BISHOP—I want him to say that. It is no good me saying it.

Senator Minchin—Do not play games with him. It is quite unfair.

Senator MARK BISHOP—Were similar press releases prepared for opposition members and senators?

Mr Douglas—I do not recall. I will have to check the facts.

Senator MARK BISHOP—So you think they were prepared for government members and senators but you do not recall that they were prepared for opposition members and senators. It that your evidence?

Mr Douglas—That is what I have said.

Senator MARK BISHOP—Why would there be that distinction?

Senator Minchin—You are asking him a question pursuant to information he has not been able to confirm, which again I think is improper. If you want the official to go back and confirm the information, that is fine, but it is unfair to pursue a line of questioning which presupposes an answer he has not been able to confirm.

Senator MARK BISHOP—The official said that he had no recollection of preparing similar press releases for opposition members and senators but he does have a recollection of doing that for government members and senators. My question is: why is there a different approach?

Senator Minchin—My reading of the answer was that it was not definitive. It was based on recollections and ‘maybe this, maybe that’. It is not proper to be pursuing a line of questioning that is based on an answer that is not confirming what you are putting to the witness.

Senator MARK BISHOP—Let me ask the question a different way. Did you receive any instruction or advice to prepare press releases for opposition members and senators?

Mr Douglas—I will take that on notice.

Senator MARK BISHOP—You do not recall?

Mr Douglas—I will take that on notice.

Senator MARK BISHOP—Why can’t you answer that question? That is a yes or no question.

Mr Douglas—I will take that on notice.

Senator MARK BISHOP—You can answer that now. Either you received advice to do so—

Mr Douglas—With respect, Senator Bishop, I do not propose to give you an answer that I do not have full recollection of. I do not propose to lie to the committee.

Senator MARK BISHOP—Are there other persons here from your section or division who would be able to answer that question?

Mr Douglas—I do not believe so.

Mr Campbell—The branch head who was in charge of those issues has this week gone on two months leave to have some medical treatment.

Senator MARK BISHOP—Who is that?

Mr Campbell—Wes Kilham. You know him.

Senator MARK BISHOP—I know Mr Kilham, yes.

Mr Campbell—Unfortunately he is not here to answer those questions and Ms Witkowski only commenced acting in that position yesterday. As Mr Douglas says, being one step removed from the detail, his recollection is variable—he cannot remember all the issues. So I think the best way to handle this is for us to take these issues on notice and respond within the time frame.

Senator MARK BISHOP—Thank you for that advice. What I find odd is that the closing date was 31 October. The academic year generally starts at the beginning of February in nearly all states. That is when students have costs to pay that the bursaries are awarded for. The minister only announced publicly, or awarded, the bursaries in very late May—last week, in fact. I wonder what could possibly have occasioned this lengthy process of delay when people have bills to be paid from February but do not receive their cheque until late May. It seems to me to defeat the purpose of awarding a bursary to assist people with their start-up costs.

Mr Campbell—I understand the direction of your questioning. We will go back and see if we can, in the written answers, give you an understanding of the processes undertaken. I remind you that, as Mr Douglas pointed out at the very beginning, this is a process that goes through the trust and then through the department and through to the minister. Care has to be taken in these decisions, because there are a limited number and so we are choosing between some young people getting a bursary and others not getting a bursary. So I suggest to you that taking time to ensure that the right decision is taken, while it might be difficult from some perspectives, is an appropriate way for us to manage the process.

Senator MARK BISHOP—Has the department given the minister any advice about the apolitical nature of bursaries and their manipulation for the glory of the minister?

Mr Campbell—Earlier tonight you and I had an exchange about advice from departments to ministers. The advice that I give to my minister is not something that I will publicly put about. I leave it there.

Senator MARK BISHOP—Okay. Can we turn now to the widows pension. I refer you to an article that was published in the Adelaide *Advertiser* on 13 April this year. It concerns a young woman who was convicted of stabbing her Vietnam veteran husband to death. She was 24. He was 59. She has served 12 months of a five-year sentence. Is it correct to assert that she continues to receive the widows pension whilst she is inside, having been found guilty of the manslaughter of her husband?

Mr Campbell—I will ask Mr Johnson to answer the question, but I think any questions and answers we have on this might be better if it is on a hypothetical basis rather than on a particular individual's case.

Senator MARK BISHOP—I do not propose to mention any names, although the names have been publicly reported in the press.

Mr Campbell—But you have mentioned the article. I think if we talk about the legislative background to this issue that might be a better way of handling it.

Senator MARK BISHOP—That is fine. We will talk generally about people who become widows after the manslaughter of their veteran husbands. When they are doing time for that, do they continue to receive the widows pension whilst in jail?

Mr Johnson—The answer to that is yes, though the commission has recently considered a submission looking at using the forfeiture rules and we got advice from Attorney-General's. But the legislation per se says that the war widows pension continues.

Senator MARK BISHOP—To be paid.

Mr Johnson—To be paid. As I said, the commission has looked at using the forfeiture rules. We are getting advice from Attorney-General's on review mechanisms if we were to use the forfeiture rules.

Senator MARK BISHOP—What occasioned that review?

Mr Maxwell—That is straying dangerously close to the problem that Mr Campbell outlined a moment ago, so I would crave your indulgence. I might just amplify Mr Johnson's response as well. The advice from Attorney-General's on the statutory provisions of the Veterans Entitlements Act rather go to the heart of what the act does not say. The act does not say that the pension is extinguished by incarceration for any event.

Senator MARK BISHOP—Even if it was a first-degree murder?

Mr Maxwell—There is no statutory bar within the Veterans Entitlements Act to extinguish the pension.

Senator MARK BISHOP—If I am in receipt of Newstart or Jobstart or one of the other allowances paid by Centrelink and I engage in some form of fraud or whatever, my payments can be suspended.

Mr Maxwell—You are also talking about income support type payments rather than compensatory payments for the death of a spouse.

Senator MARK BISHOP—A review has been conducted of the case, of this particular fact situation?

Mr Maxwell—We have had a look at the general situation.

Senator MARK BISHOP—Has advice gone to government yet?

Mr Maxwell—We are still pursuing the fine points with our legal advisers.

Senator MARK BISHOP—Are other cases of this known as well?

Mr Maxwell—Part of the problem, of course, is that a verdict of guilty to a charge of manslaughter could cover a whole range of particular circumstances of death, from car accidents to anything. I will not say that it is absolutely unique, but I have not in 38 years encountered very many.

Senator MARK BISHOP—So you are aware of the problem, you are doing the review and advice will go to government in due course.

Mr Maxwell—That is essentially correct, yes.

Senator MARK BISHOP—I notice, when reading the PBSs, the huge increases in expenditure on external legal advice to the Commonwealth, particularly in Defence, and there has been some press reporting on other departments to that effect. You might recall, Mr Maxwell, that during the hearings last year on the admin review inquiry considerable concern was expressed that millions of dollars were being spent by MCRS in obtaining legal advice from law firms on individual applications. The accusation was made that law firms were being asked to actually write decisions for claims assessors. The matter we are about to discuss is not a matter of reconsideration, as I understand it, but primary claims. The department, in that finance and public admin inquiry, denied the allegations that were made by various witnesses from ESOs and protested most strongly to me that that did not occur. That was the clear position of the department, and the *Hansard* records that at pages 9 to 17. The view was put by witnesses that, as most applicants represented themselves, the wide use of professional legal advice was not just unfair but an improper delegation of authority under the act. There were references to section 72, to fairness and good faith. Do you have a memory of the general discussion we had? I think you are there, Mr Maxwell.

Mr Maxwell—I do recall the discussion quite clearly. I also vaguely recall, though, that we came back at a subsequent hearing and reported that in fact the references might have been to a particular backlog of cases that had accumulated. I might ask Mr Johnson whether he can recall that as well.

Mr Johnson—My recollection is that what we were saying was that the final decision is the decision of the delegate. The delegate might approach a legal firm for advice but the legal firm cannot take the decision; the delegate has to take the decision.

Senator MARK BISHOP—That is right. And the accusation that was being made by various representatives was that the final decision of the delegate in substance, and indeed almost to the final wordings of the decision, was being prepared by the legal firm upon request by DVA, or its officer, or the delegate and when that advice was received it was simply transposed and issued as the decision of the delegate. That was the discussion, and that was the complaint that we were—

Mr Maxwell—That was the nub of the assertion made at the time, as I recall.

Senator MARK BISHOP—I have now received a copy of an advice sent by a firm of solicitors in Brisbane, which makes clear reference to an MCRS request in writing. It says:

I refer to your instructions to draft a decision denying liability in respect of a claim for—
whoever the person is. From this it is pretty clear to me that there is indeed a practice in MCRS of having law firms prepare decisions which delegates then simply cut and paste into their rejection advice. Can you advise what investigation, if any, DVA has undertaken into this matter since last year?

Mr Johnson—In that particular case the delegate has been counselled on the correct use of legal advice, and the decision was subsequently overturned by his superior.

Senator MARK BISHOP—It was?

Mr Johnson—Yes.

Senator MARK BISHOP—It was overturned at the review stage.

Mr Johnson—And the delegate who used the legal advice the way he did has been counselled and told that that is not an appropriate way to use legal advice or to seek legal advice.

Senator MARK BISHOP—What was his explanation for requesting instructions from the law firm to draft a decision denying liability? That is a fairly clear expression, isn't it?

Mr Johnson—It was the delegate's view that liability should be denied and he wanted assistance in drafting the decision.

Senator MARK BISHOP—What was incorrect, in your view, in what he did?

Mr Johnson—He should have sought more general legal advice if he had some questions about the decision, and not got the legal firm to draft his decision for him.

Senator MARK BISHOP—So did that indicate a lack of preparation on his part, or a lack of thinking, or a lack of familiarity with the material?

Mr Johnston—Probably all of the above.

Senator MARK BISHOP—Is he still carrying out those duties?

Mr Johnston—He is, but he has been counselled on the proper use of seeking legal advice and using it.

Mr Maxwell—Senator, I do not say this to in any way excuse the delegate concerned, but it is also true that, at the time we inherited the administration of the MCRS from Defence, there was a sizeable backlog of claims outstanding in most offices. It may well have been part of the pressure to reduce that backlog that caused those sorts of shortcuts to be taken. But I would have to say that, on the face of what you have read out and what Mr Johnson has said, I would form the view that the delegate had formed the view—in other words, had taken the decision—and was simply seeking to have an easy or ready means of having that translated into fact.

Senator MARK BISHOP—I think it is clear that the delegate had made a decision that the application should be—

Mr Maxwell—It is a little akin to Senate committee's reports that are drafted by the secretariat.

Senator MARK BISHOP—I do not know if that is right. I think the delegate made a decision that the claim should be rejected. He then wrote to the legal firm asking them to write the reasons to support his decision.

Mr Maxwell—Mr Holmes is smiling.

Senator MARK BISHOP—Mr Holmes might smile, but that is a completely different situation.

Mr Maxwell—With respect, what I am suggesting is that in both cases the decision maker or the decision making body has formed a conclusion and simply seeks assistance in translating that into a document.

Senator MARK BISHOP—But the correspondence goes on to say—this is from the legal firm:

I advise that I have serious concerns regarding the sustainability of this decision without seeking clarification from Dr ...

That is, the lawyer that was asked to write a decision rejecting the claim—

Mr Maxwell—Was not comfortable.

Senator MARK BISHOP—Was not comfortable in doing so because the evidence did not support it. But he was requested by a delegate of the department to write a decision contrary to the evidence. I do not think Mr Holmes ever does that.

Mr Maxwell—Both Mr Johnson and I have indicated that we are not happy or comfortable with that situation, and appropriate action was taken to remedy it with that individual.

Senator MARK BISHOP—Appropriate action was taken to counsel that individual in respect of the case you and I are discussing. What about all of the other cases he carried? Was a review of them conducted?

Mr Johnson—I am not aware that a review was conducted of all the cases. He was fairly new doing that job at the time.

Senator MARK BISHOP—But it was not the only case he had, was it?

Mr Johnson—It is very unlikely that that was the only case.

Senator MARK BISHOP—Was a review conducted of other cases carried by other delegates in the same office?

Mr Johnson—No, but the advice went to the state office about the use of legal advice—proper use of legal advice and seeking legal advice. That would have gone to other people—other delegates in the office.

Senator MARK BISHOP—So written advice has gone from the national office to the state offices—to all state office or just the Queensland state office?

Mr Johnson—We raised it with the Queensland office in this instance.

Senator MARK BISHOP—So advice has gone from Canberra to the Queensland state office—as to what?

Mr Johnson—That the arrangement that this delegate undertook was not appropriate.

Senator MARK BISHOP—In this case only?

Mr Johnson—We raised it in the light of this case, but we would hope that they took it as being more general than that.

Senator MARK BISHOP—But you cannot assure me that they reviewed his other cases? You cannot assure me that the Queensland office has reviewed his other cases to see that the same sin has not occurred and that other delegates in the Queensland office are not carrying out their duties incorrectly?

Mr Johnson—No, I cannot give that undertaking.

Senator MARK BISHOP—Why not?

Mr Johnson—As I said, this was something that I did not think happened. When it came to our attention, we raised it with his manager and indicated that it was not to happen.

Senator MARK BISHOP—Did his manager indicate that he knew that he was doing it?

Mr Johnson—That is not my recollection. In fact, when the manager reviewed the case, he overturned the decision.

Senator MARK BISHOP—The reason I am pursuing this is that we had a lengthy discussion less than 12 months ago on this exact issue—that a range of ex-service organisations made specific complaints that the Queensland office and others were acting improperly, if not illegally, in the issuing of decisions. A number of recommendations arose from that Senate committee as to how those sins might be avoided in the future. Let me ask you this question: what action has been specifically taken on the Senate committee recommendation for an audit to be conducted?

Mr Johnson—We are still looking at those recommendations, because on a couple of the other recommendations we have had to seek wider advice. We are still waiting on that advice—getting it back.

Senator MARK BISHOP—That recommendation was this:

The Committee recommends that the ANAO conduct an audit of the reported practice of the Military Compensation and Rehabilitation Scheme using private law firms for the purpose of the entire reconsideration of the original decision. It also recommends that DVA, in consultation with the ANAO, establish guidelines for private law firms in providing advice to ensure that the authority of delegated decision-makers is not being bypassed.

So the first recommendation—and it was a unanimous all-party recommendation—had two parts. Have you approached ANAO to conduct that audit?

Mr Johnson—Not at this stage, no.

Mr Maxwell—We are currently in discussions with the ANAO about the audit program for the coming financial year—and indeed our own internal audit procedures.

Senator MARK BISHOP—But ANAO have those discussions about their audit program with all departments every year, don't they?

Mr Maxwell—Yes.

Senator MARK BISHOP—So that is not unusual.

Mr Maxwell—What I am suggesting is that it is timely to inject the exercise into that process now.

Senator MARK BISHOP—Why didn't you do it last year? That Senate committee report came down in October or November 2003. It is now June 2004.

Mr Maxwell—It is the same year.

Senator MARK BISHOP—No, it was the previous year.

Mr Maxwell—It is the same financial year, isn't it?

Senator MARK BISHOP—When I said 2003, I was wrong; it was 2002. The Senate committee—

Mr Johnson—No, it was 2003.

Senator MARK BISHOP—You are right. Sorry.

Mr Johnson—I think it was handed down in December.

Senator MARK BISHOP—You are right. Sorry. I just checked the *Hansard*, and you are right. Mr Maxwell, apart from the generality of the audit program that ANAO might be discussing with DVA as part of its routine work, are you currently engaged in discussions concerning the particular recommendation from the Senate Finance and Public Administration Committee report?

Mr Maxwell—I would need to refresh my memory, if I may, before I could answer as to what specific items are being put on the current program.

Senator MARK BISHOP—Do you mind taking that on notice?

Mr Maxwell—I will certainly do that.

Senator MARK BISHOP—And providing us with the detail as to when those negotiations commenced, who attended those negotiations and the requests, if any, that have been made by DVA to ANAO to implement that particular recommendation from the Senate committee report.

Mr Maxwell—Yes.

Senator MARK BISHOP—The second part of the recommendation is that DVA, in consultation with the ANAO, establish guidelines for private law firms in providing advice et cetera. Where are we at on part 2 of the recommendation?

Mr Maxwell—I think that followed from part 1.

Senator MARK BISHOP—So it is something that might be considered in the future?

Mr Maxwell—Yes.

Senator MARK BISHOP—Do any guidelines exist for delegates as to how they should conduct their inquiries and write their decisions?

Mr Maxwell—That is a fairly wide question.

Senator MARK BISHOP—What I find remarkable is that you have this delegate in the Queensland office who has presumed to seek legal advice requesting—he has written to the law firm retained by the department requesting them to draft a decision denying liability. Mr Johnson essentially says that that is a one-off—that it has not occurred within authority—and that the officer has been counselled to make sure that it does not occur again. My question is this: in that context, does the department have any guidelines for how delegates should conduct themselves in making decisions and the limits of advice they can receive?

Mr Maxwell—We have manuals that cover initial liability, reconsiderations and incapacity payments which we have developed since we took over the function from the Department of Defence. They are out with our staff now. That is the MCRS staff. I take it that your question was specific to the MCRS?

Senator MARK BISHOP—Yes. How many individual requests to law firms have been made in the last three years by MCRS, and in how many of those were explicit requests made to draft decisions?

Mr Johnson—I do not have that information, and I am not sure that we could actually get that sort of detail from the accounts system. We have records of what we have paid to various legal firms but, as to the purpose of the advice and whether it was for a decision on a reconsideration, a legal opinion, an AAT matter or a Federal Court matter, I do not think we could get that from our system.

Senator MARK BISHOP—Off the top of your head, how many of those cases would have been decided by delegates in the last three years? Can you give me a ballpark figure?

Mr Johnson—Sorry, reconsiderations?

Senator MARK BISHOP—And decisions at first instance.

Mr Johnson—I can give you some detail on numbers of decisions. For the last financial year, there were 6,249 initial liability decisions taken and there were 5,383 permanent impairment decisions. There were 3,343 people receiving incapacity payments during the year. Some of those were ongoing; some were one-offs; some were intermittent. There were 1,615 reconsiderations. And there were 1,207 rehabilitation cases closed. Decisions are taken across a number of different compensation claims.

Senator MARK BISHOP—That is about 18,000 cases all up, ballpark figure. How many of those involved requesting legal advice?

Mr Johnson—I do not know.

Senator MARK BISHOP—One in 10? What does your experience tell you?

Mr Johnson—I would not have thought it was as high as that, but I have no real basis to guess at a figure.

Mr Maxwell—I would think that it would be very rare for a rehabilitation decision to entail a set of instructions to a legal firm anywhere.

Mr Johnson—And the same with incapacity payments.

Mr Maxwell—Essentially initial liability and reconsiderations will be the area in which it may have happened.

Mr Johnson—And sometimes permanent impairment as well.

Senator MARK BISHOP—So you are probably talking about 14,000 or 15,000 or a bit less. Can you take on notice who the law firms are, by state; how many cases have been referred for any advice over the last two years; and how much has been paid out—in aggregate, state by state and in respect of each case—in seeking legal advice?

Mr Maxwell—We will take it on notice and see what we can provide.

Mr Campbell—I think Mr Johnson indicated that certainly we will be able to provide the amount and the law firms, but we may not be able to provide the detail on the individual number of cases. We will see what we can do for you.

Senator MARK BISHOP—Are there any existing instructions to delegates about seeking legal advice? Are they contained in the manuals you refer to?

Mr Johnson—There would be some. I am just trying to recall. The manuals are quite thick. I do not know. I would prefer to take that on notice and get back to you.

Senator MARK BISHOP—All right. Could you take on notice whether there is a pro forma, either in the manual or elsewhere, as to the type of advice and the form of letter that they can send to the legal firm requesting assistance? What authority is required before requests are made? Does the delegate have an absolute permission or responsibility in that or does he have to refer it up the chain somewhere?

Mr Johnson—No, a delegate could seek legal advice.

Senator MARK BISHOP—What overview is maintained by the department of delegates seeking that advice?

Mr Johnson—We keep an eye on expenditure, but beyond that, at national level, we do not.

Senator MARK BISHOP—What about at state level?

Mr Johnson—I am not sure whether there are arrangements that are in place across different offices.

Senator MARK BISHOP—Would you know that, Mr Campbell?

Mr Campbell—No. I think nobody in the room here would know what was happening on a day-to-day basis in the running of a state office on a matter like this.

Senator MARK BISHOP—Is that because the states have developed their own practices over a long time as to how they conduct themselves? What is the reason for that?

Mr Campbell—No, I do not think it is that. I think it is that, whilst it is an important issue, you are talking about something that is very much to do with the day-to-day running of our client delivery at the coalface. We can ask the states. We can take that on notice and ask our states what they do, but I think it is a bit unfair to expect anybody in this room, this

environment, to be able to answer that particular question about detailed activity at the state level.

Mr Maxwell—I might add that it reflects practice that was in essence inherited from the previous administration of the scheme. I can tell you—I think I did at the committee stage in the other inquiry—that within the Veterans' Entitlements Act jurisdiction, it is not our practice to seek external legal advice except through the national office legal services branch.

Senator MARK BISHOP—That is right.

Mr Maxwell—That was not the practice or the culture of the MCRS.

Senator MARK BISHOP—Correct. I understand that. My question is this: when are you going to impose upon the MCRS the culture and practice of the DVA in this respect?

Mr Maxwell—Imposing culture is a slow process. It is very hard to mandate a cultural change. But we are attempting to do it. We have to have an eye, too, to the fact that the new act—the Military Rehabilitation and Compensation Act—will require a whole suite of guidance and protocols to accompany its introduction, and Mr Johnson and I will be looking, wherever possible, to see that they also flow over to cover any gaps that might still be in the MCRS process.

Senator MARK BISHOP—Those funds that are expended by those delegates in making those decisions to seek legal advice—is there any oversight of those funds by Defence?

Mr Johnson—It is Defence's money that we are spending.

Senator MARK BISHOP—Do you just bill Defence?

Mr Maxwell—At the end of the day, Defence would need to be satisfied that the money was being spent appropriately and that they could afford it, I guess.

Senator MARK BISHOP—So you just bill Defence?

Mr Maxwell—We have a whole series of operational understandings and letters and things, but at the end of the day we certainly do bill Defence for what we outlay.

Senator MARK BISHOP—So the delegate up in the Queensland office writes off to the law firm seeking legal advice, the advice is received, the bill is sent to—Queensland DVA?

Mr Johnson—Yes.

Senator MARK BISHOP—Queensland DVA pays the bill and in due course either Queensland DVA or national DVA recovers same from Defence. Is that the way it works.

Mr Maxwell—In essence that is how it works. The Queensland office has an operating budget for running the MCRS and the expenses would need to be paid from within that budget. So there is some cap on it.

Mr Campbell—I probably should add something here, because, if I do not, at the next estimates hearing you will remind us of this. Of course, with the new legislation and the new statutory responsibility for the administration of the current military scheme, that responsibility does move to the new commission from 1 July. The funding for that, as you point out, is in the yellow book.

Senator MARK BISHOP—Yes. So it will be attended to.

Mr Campbell—I am sure the new commission will be looking at the issues that you have been raising.

Senator MARK BISHOP—Mr Johnson, what proportion of MCRS claims are referred to an MCRS doctor for a second opinion under section 57?

Mr Johnson—I do not have that information. It depends on whether the opinion from the treating specialist is sufficient to be able to consider the claim either for initial liability or for permanent impairment. We go and seek independent specialist advice only if the opinion from the treating specialist is not sufficient.

Senator MARK BISHOP—What is the equivalent practice under the VEA?

Mr Maxwell—There is quite a different onus under the VEA. The Veterans' Entitlements Act does not place an onus on the claimant to demonstrate or prove their claim. As we have discussed before, the act does not place the onus on any party, but in reality the Commonwealth has to investigate the claim, and it is part and parcel of the process. Under the MCRS, the claimant needs to make their own claim. In that situation, you might well end up with a situation where a piece of medical opinion, in the view of the determining party, requires testing.

Senator MARK BISHOP—All right. I think we have done this to death. Can we turn to atomic veterans? I noticed that in the Prime Minister's release of the package of benefits to veterans there was a reference to atomic veterans' claims. In the light of that, when is it likely that the mortality study will be completed?

Dr Horsley—The study we are now envisaging will be broken up into four sections. The first section will be a reconstruction of the dosimetry—the amount of dose that the people received. We have started to receive early drafts of that. I am hoping that that volume will be out within some months. The next volume will be a study of the cancer incidence of the military participants in the British tests. We are envisaging that that will be only a couple of months after that. The third volume—it might be the other way round, but the third or the fourth—will be a study of the overall mortality of all of the participants. The final volume will be a study of cancer incidence in all of the participants, including a case reference study. As to our envisaged projection for the completion of all of that work, at this stage we think that early in the new year most of that work will be done.

I have to add a caveat and some reservations here. We have had some difficulties with the registrars of births, deaths and marriages. Let me say from the beginning that they have been wonderful in their cooperation, but each of the registrars has had additional responsibilities placed on them in recent years, which has stretched their resources very thin. We have had to take our place in a queue with their resources, and other priorities have been higher than our studies—particularly increased documentation needs driven by the deteriorating security situation, particularly with passports. There is a great need for birth certificates to be verified by the passport issuing authorities; these are all issued by registrars of births, deaths and marriages, and they have been much more diligent in ensuring that the person is in fact not dead. That has put additional responsibility on the registrars of births, deaths and marriages. In addition, some states have tightened up the procedures—which I do not fully understand—for the granting of a drivers licence. That has also put additional responsibilities on the

registrars of births, deaths and marriages. These additional workloads have meant that things like our sorts of studies have not been given the priority that we would have hoped for.

Senator MARK BISHOP—But you think volumes 1 and 2, in terms of military, will be out within the next four or so months?

Dr Horsley—Four for the first one and maybe five or six for the second one.

Senator MARK BISHOP—So both of them by the end of the year?

Dr Horsley—Yes.

Senator MARK BISHOP—And volumes 3 and 4, the general application, in the first three months of next year?

Dr Horsley—Yes. That is our intention. Should there be some unforeseen circumstance, there might be further delay. It might be possible that we would achieve some breakthrough that might lead us to accelerate that. But that is our current plan.

Senator MARK BISHOP—I want to turn to the allegations of phoney medical discharges of ADF personnel. With reference to the recent publicity that medical discharge has been a device to get rid of unwanted personnel, has DVA had any discussions with Defence on this matter?

Dr Horsley—Perhaps I could hazard an answer here. We have been aware of that issue. I am not sure that we have sat down and said, 'Let's have a meeting about this.' But we are aware that there have been allegations along those lines. I am not certain that we have actually sat down and discussed that particular point.

Mr Maxwell—The discussions that we have been having with Defence relate more to things such as the transition management program, the TMS, and the new pilot that we have under way in Townsville. We are looking at easing the transition from defence service to civilian life for people leaving the Defence Force for any reason—in the case of the pilot—and for medical reasons in the case of TMS. We certainly have not had discussions with Defence about the press assertions that discharges have been engineered.

Senator MARK BISHOP—That is the allegation—that Defence has got rid of people, for whatever reason.

Mr Maxwell—It is certainly true to say that, over the years, we have been aware of individual cases, because they have actually at times sought—

Senator MARK BISHOP—They turn up on your books, don't they?

Mr Maxwell—They have sought our assistance to go and have their actual discharge status changed—mainly for superannuation purposes. But there is nothing we can do about that, as it transpires, anyway. I am certainly aware of the allegations.

Senator MARK BISHOP—Those who are discharged for medical reasons in due course turn up in your jurisdiction?

Mr Maxwell—They may or they may not. Some medical discharges are occasioned by sporting accidents in the middle of their annual leave. Others are car accidents. There is a whole range of things. Not every medical discharge results in a compensation claim, but

generally speaking, where a medical discharge results from an incident in service, it will result in a claim, and we end up having to look at those.

Senator MARK BISHOP—How many cases is DVA aware of where medical discharge has been contrived and where the VEA eligibility was claimed? Are you aware of any of those cases?

Mr Maxwell—I am not aware of any, personally, but I cannot categorically rule them out.

Senator MARK BISHOP—Thank you. I now want to turn to the VCES, the Veterans' Children Education Scheme. I have had representation from a non-custodial veteran father whose daughter receives VCES by virtue of his service—who is eligible because he is a non-custodial veteran father. He is denied any information about her payments or academic progress, allegedly on the basis of privacy. How can this be—if it is the case—when her entitlement derives from his service?

Mr Maxwell—In general terms, her entitlement derives from his service, but it is her entitlement and her eligibility, not his. Odd though it may sound, I suspect that, if that is the situation, it is in fact explicable.

Senator MARK BISHOP—Does this also apply to bursaries where the eligible serviceman is not the custodial parent?

Mr Maxwell—Bursaries as in Long Tan bursaries?

Senator MARK BISHOP—Yes.

Mr Maxwell—Again, I think Mr Douglas's answer would obtain there. They are not matters that would come within my purview—if, indeed, they came within the purview of the department.

Senator MARK BISHOP—Why is a father denied information about his daughter's progress when she receives an allowance that derives from his service? How is that a privacy matter?

Mr Maxwell—It may be as simple as the custodial parent and the child expressing the desire that that information not be transmitted. I think the individual child's right to privacy is as significant as anybody else's. Without knowing the circumstances, I really cannot go further. I am happy to have a closer look if you would like to give me the case details.

Senator MARK BISHOP—Can we turn now to the F111 fuel tank deseal and reseal issue. I have had a number of quite distressed representations from people affected by their exposure to hazardous substances in their work on the fuel tanks. What is the current position with respect to this project—when will it be completed?

Dr Horsley—The current situation is that the first three volumes of the report have been published. There is volume 1, 2 and 3, a literature review, an interim cancer analysis and mortality study and a report of some small group work that was done with individuals. The fourth report is currently at the printers. I am hopeful that within the next fortnight the chief will be able to release that report. He has a standing commitment that he prefers to send a copy of the reports to the people involved in the deseal and reseal issue before he makes a public announcement so that they get the copy of the report at the same time. There are

certain logistical arrangements associated with mailing out that number of reports, which we are currently doing.

To turn to the main part of the health study, chapters are being written now. My recollection is that some 20-odd chapters have been written and they are all being reviewed by the independent scientific advisory committee. There is a continuing flow of emails back from the relevant subject matter experts within the scientific advisory committee to the research team suggesting improvements in wording and so on. We have a formal meeting of the scientific advisory committee, I believe, set down for next Friday and we are hopeful that the committee might be able to see its way clear to, in broad terms, signing off maybe as many as a dozen chapters. There are another 10 or so chapters to come. At this stage our plan is that the study will be finishing roughly where we had planned it sometime this year in terms of time although you can never quite tell with these things. When we get a scientific advisory committee together sometimes one of them will say, 'I think we should do a different form of analysis.' Discussion leads off and eventually the committee comes back and says, 'We appreciate the work you've done now, but we do think a slightly different analysis would be more appropriate.' If that were to occur, it may result in a delay of some weeks. We are envisaging that the study will be, in broad terms, completed later this year.

Senator MARK BISHOP—You referred to volume 4, which is at the printers now; how many volumes are there after that?

Dr Horsley—We are not quite certain but there are three volumes out and a fourth volume is impending. The next body of work will need to be split up into, I think, at least three, perhaps four, and maybe five volumes.

Senator MARK BISHOP—That is the 20-odd chapters you were talking about.

Dr Horsley—Yes. They are each quite substantial documents. One, I think, ran to 80 pages by itself; some are much shorter. It does depend upon whether or not the particular battery of tests being looked at in that chapter did turn out to be abnormal. If it turns out to be abnormal, there is a need for more lengthy discussion and analysis.

Senator MARK BISHOP—How many personnel is it estimated have already died as a result of working in the F111 fuel tanks?

Mr Maxwell—That is a loaded question, if I might put it that way. We do not know, for sure, that the deaths that have occurred were due to working in the tanks. We can arrive, I think, at a figure for you for the number of deaths amongst the population that we know were exposed.

Senator MARK BISHOP—Okay. I understand the point that you are making. Can you answer that question?

Dr Horsley—I should just point out that the initial mortality study that we released showed a borderline significant decrease in overall mortality. But we think that that was an artefact. What happened was that we constructed the list of people who were involved by asking people to stick up their hands and say who was involved. Obviously those people who had previously died—

Senator MARK BISHOP—Did not put up their hands!

Dr Horsley—did not put up their hands. So we are missing a handful, maybe six desealers, who died in the late 1980s or early 1990s. We would like to perhaps go back at some point and see if we can locate their names.

Senator MARK BISHOP—Are the population sample who have died who were working in the reseal tanks statistically different at this stage from the population you would compare them to?

Dr Horsley—Sorry?

Senator MARK BISHOP—Is the population of those men who were working in the reseal tanks who have died statistically different to the population you would normally compare it to? Is there a heightened death rate?

Dr Horsley—No, we do not have evidence of a heightened death rate at this stage. The first study showed what we believe to be an artefactually lowered death rate because of the problem I just referred to.

Senator MARK BISHOP—How many claims for compensation are currently pending the outcome of the study?

Dr Horsley—There are people who have claims for compensation under both the MCRS and the VEA. I note my colleague Mr Johnson has the figures in front of him, which he will read out.

Mr Johnson—These figures are as at 24 May this year: 401 members and former members have lodged claims for compensation benefits. Of the 401, 259 have submitted claims under both the VEA and the SRCA, 71 have lodged claims under the SRCA and 64 have lodged claims under the VEA only.

Senator MARK BISHOP—Have any personnel taken legal action beyond claim lodgment?

Mr Maxwell—That is a question that you would really need to address to Defence, since they would be the respondent in a claim for action outside our statutory compensation schemes, but I am aware that some have.

Senator MARK BISHOP—When is it likely that those affected will have their claims determined fully?

Mr Maxwell—We have taken the slightly extraordinary step of offering this population the chance to have consideration of their claims suspended until such time as the health study findings are to hand. Clearly, where the evidence is already sufficient to establish a claim, we have gone ahead and determined it. Equally, if someone is determined to have their claim determined now, we will acquiesce to that.

Senator MARK BISHOP—Have the bulk of those 400-odd claimants taken advantage of your—

Mr Maxwell—Very few have insisted on their claims being determined now. I could not give you a figure, but it would be small.

Senator MARK BISHOP—Has the government at this stage admitted any liability?

Mr Maxwell—Again, that is really a question you need to put to Defence, because they would be the respondent.

Senator MARK BISHOP—That is fair enough. Are you aware of whether Defence has admitted liability at all as yet?

Mr Maxwell—The Defence board of inquiry's findings—oddly, in my view, but that is my personal opinion—were that some 400 had their health injured by their exposures. I do not know quite what the status of that is in terms of—

Senator MARK BISHOP—That was their finding?

Mr Maxwell—As I recall.

Senator MARK BISHOP—Are any of those 400-odd people eligible for TPI?

Mr Maxwell—Some are already in receipt of TPI.

Senator MARK BISHOP—How many of those are there? Do you know?

Mr Maxwell—No, I cannot tell you off the top of my head. Mr Johnson might have a better angle on that than I have. In the main, they are all eligible under both the Veterans' Entitlements Act and the MCRS, but not in every case.

Mr Johnson—Of that number, there have been 89 pension variations, but I do not have information on exactly what that resulted in, whether it was a special rate or a lower rate.

Senator MARK BISHOP—What do you mean by 'pension variation'?

Mr Maxwell—They have gone from having either no pension or some pension to some greater amount of pension. I am personally aware of one former desaler who is in receipt of the TPI.

Senator MARK BISHOP—Thank you.

[9.36 p.m.]

CHAIR—We now turn to outcome 2.

Senator MARK BISHOP—In the lead-up to the budget announcement with regard to specialists, what consultation was there with the AMA and specific colleges?

Mr Douglas—For some considerable period of time, I am advised, there have been a number of meetings, in particular with the AMA, where the AMA has pushed its case for that kind of rise. The position has also been communicated to the government in writing and the matter has been raised at the department's Local Medical Officer Advisory Committee meetings.

Senator MARK BISHOP—I was aware that you had had a series of meetings with the AMA on this issue. Were there also a series of meetings with the various colleges to which specialists belong, or did you do a deal exclusively with the AMA?

Mr Douglas—I am not aware that we had meetings with any of the colleges specifically on this matter. Notwithstanding that, we may have had meetings with the colleges on a range of issues, in which case remuneration would undoubtedly have been one of the issues they raised.

Mr Campbell—If I could add to that, not this but last year in several meetings with the AMA they had representatives of the four or five main colleges that we deal with. A number of the meetings that Mr Douglas has referred to were not solely with the AMA national office but they had representatives of the various colleges.

Senator MARK BISHOP—Understood. When the decision was brought down by government to increase the consultation fee and the procedures fee, had the figure that, from memory, was announced by the minister been agreed with the AMA?

Mr Douglas—That was a decision taken by government in a budget process. At my level there was certainly no discussion with the AMA about what the rate ought or ought not to be. The AMA had put a position, naturally enough, that the government ought to pay the AMA schedule fee, but this increase is not to the AMA schedule fee.

Senator MARK BISHOP—No, it is a 15 per cent increase for the consultation fee above the schedule fee of 20 per cent for procedures, isn't it?

Mr Douglas—That is correct.

Senator MARK BISHOP—You were involved in a series of negotiations with the AMA. Did they indicate to you—

Mr Douglas—No, we were involved in a series of consultative discussions with the AMA. We were hardly in a position to negotiate anything with the AMA. That was a decision of government.

Senator MARK BISHOP—Mr Douglas, Dr Johnston told me at an earlier set of estimates, at which you were in attendance, that when he went into either consultative discussions or negotiations with the AMA he received instructions on the guidelines for the ambit of the claim and where he could move and where he could not move. He was required by government to enter into negotiations on that basis and then report back to his minister as head of department. That is the practice in DVA as Dr Johnston explained it to me. Is that not the case, Mr Campbell?

Mr Campbell—I was not here when Dr Johnston made that comment so I cannot confirm it.

Senator MARK BISHOP—Notwithstanding that, is that the practice?

Mr Campbell—I think Mr Douglas is pointing out that we have over a series of years been discussing with the AMA and AMA members both LMO rates and rates for specialists. At no time, however, did we enter into what you might have called a negotiation process with the AMA where one side put X number of dollars on the table and the other side put Y and then have an attempt to marry X and Y. That did not occur in this case.

Senator MARK BISHOP—What did happen in this case?

Mr Campbell—There was a series of discussions with the AMA. We talked about market rates. Mr Douglas spoke to the AMA. We talked about market rates, we pointed out that we believe that doctors had been for many years, in partnership with the veteran community, providing a discounted fee to the veterans because of the arrangement we had. Whatever fee was struck we pointed out that we believed they should still provide a discount on market. So

there were some discussions about what market rates were, but at no point in time was there a negotiation process in the way you are talking about that led to the government decision announced in the budget.

Senator MARK BISHOP—Did you come to an agreement as to what the parties regarded as market rates? Was there an equilibrium level reached on the market rate?

Mr Campbell—No, I do not think we sat down and exchanged figures about what people considered to be the market rate. We talked about the general directions and general magnitude but we did not talk about specific figures. Of course, a number of the figures you are talking about that construct the market rate are confidential to the funds and to the hospitals and doctors that they sign contracts with.

Senator MARK BISHOP—So there was no specific amount referred to and there was no formal acceptance or rejection?

Mr Campbell—No, there certainly was not. The government made their announcement on budget night.

Senator MARK BISHOP—Since the announcement was made on budget night, what have been the indications from the AMA or the individual colleges as to whether members are likely to accept the government decision?

Mr Douglas—We have written to the AMA and each of the colleges offering to sit down and discuss the implementation arrangements with them. We have had one discussion with the AMA. Mr Winzenberg, Dr Killer and myself met with them briefly last week and they were, inasmuch as the AMA could be, fairly positive in their reception. Dr Killer also attended the AMA conference in Queensland at the end of last week and the discussion that he reported back from the conference was that they welcomed the government's action in the remuneration process but were not, at least at a formal level, prepared to indicate happiness. They said it was something in the order of a useful step.

Senator MARK BISHOP—A useful step?

Mr Douglas—I am paraphrasing here, Senator.

Senator MARK BISHOP—So 15 and 20 per cent is characterised as an useful step. Have you any indications that the bulk of disaffected specialists in those particular specialties are likely to return to the scheme?

Mr Douglas—Not yet.

Senator MARK BISHOP—Is it too early to ask that question?

Mr Douglas—I think so. The date of effect of this decision is for procedures and consultations which occur on or after 1 January next year. That is lead time necessary for the Health Insurance Commission to make their changes. I would not realistically expect to see changes of the order you are talking about until that stage.

Senator MARK BISHOP—I will come back to that in November. Shifting now from specialists to GPs, do you have the total number of GPs who have resigned from the LMO scheme since the government announced a new package some time ago?

Mr Winzenberg—On 1 July 2003 we had 13,500 LMOs signed up with the department. We ran the numbers just this week and the total we now have is 15,700. So we have an increase of 2,200 on 1 July last year. I think the last time we reported to you the figure was about 15,200, so we have had a steady increase since July last year.

Senator MARK BISHOP—Are you receiving letters of withdrawal or resignations from LMOs?

Mr Douglas—Not that we are aware of.

Senator MARK BISHOP—Is that issue now effectively bedded down in your mind?

Mr Douglas—Certainly the AMA has indicated its disquiet about the interrelationship of the veteran access payment—the \$3 which is now \$3.05 following indexation—and the government's announcement of the \$5 payment that is tabled under MedicarePlus.

Senator MARK BISHOP—What is their concern?

Mr Douglas—They believe that the \$5 should have been extended to veteran patients, as well.

Senator MARK BISHOP—So they want the \$5 on top of the \$3?

Mr Douglas—It would be another \$1.95 on top of the \$3.05.

Senator MARK BISHOP—Wouldn't they want the full \$5 on top of the full \$3.05?

Mr Douglas—I suspect if we offered that to them they would take it, but my understanding is what they want is a flow-on of the \$5, in effect making the \$3.05 up to \$5.

Senator MARK BISHOP—I now turn to the issue of the old repatriation hospital at Daw Park in South Australia. I have received a letter expressing concern at a move to change the management structure of Daw Park—an allegation that this is in contravention of the existing agreement with the Commonwealth. For the record, can DVA say exactly what is going on, whether veterans have been consulted and when the change is likely to take place?

Mr Douglas—The Department of Human Services in South Australia had put forward a discussion proposal which would see the regionalisation of health services delivery in South Australia. In recognition of the special status of Daw Park with the veteran community, it postulated two alternatives: one was that Daw Park move within the southern region and be encompassed within the total health care solutions offered in the southern region; the other was that it stand alone. The department then undertook to have a fairly extensive consultation process with the veteran community about that. The initial response of the veteran community was quite firmly that Daw Park was indeed unique and should remain as a separate entity. Our understanding is that the South Australian government clearly reached a point where it thought that further consultation on the issue was not productive and, consequently, its announcement was that Daw Park would in fact stand alone.

Senator MARK BISHOP—It would remain as a separate specialist veterans hospital?

Mr Douglas—Correct.

Senator MARK BISHOP—Have they made that announcement?

Mr Douglas—Yes, they have. I believe the South Australian minister put out a media release to that effect.

Mr Campbell—It was made three or four weeks ago.

Senator MARK BISHOP—My correspondence is dated 24 May, and I am informed that meetings were still going on on 6 May. Are you aware of the allegation that veterans are being turned away because of a waiting list, especially for psychiatric care in ward 17? Has that been brought to your attention?

Mr Harding—I think there has been reform by the hospital in its practices and protocols for admission to the psychiatric area, particularly, to address certain practices. Inappropriate practices had been developed. But it is something being handled within the hospital; it is being reviewed on a clinical needs basis. It is something that is being handled through the arrangements between the Department of Human Services and the hospital, specifically the admission arrangements.

Senator MARK BISHOP—When you say that there has been a shift to a needs basis, what does that mean?

Mr Harding—In the past there have been some practices, the type of care, which probably have not been properly linked to a proper clinical assessment of the need for veterans to attend that facility for that type of care—the delivery of certain programs. There has been an emphasis by the practitioners within that hospital to review the type of treatment that veterans should be receiving at that hospital, or to be better integrated back into the community for the delivery of the care that is most appropriate to their needs.

Senator MARK BISHOP—Does that mean that veterans are being offered the option of having their treatment by other service providers or in other areas?

Mr Harding—That is one alternative. The other alternative is to look through with a patient exactly what they really need to improve their lifestyle.

Senator MARK BISHOP—Was it the practice there to reserve X number of beds in ward 17 for the exclusive use of veterans?

Mr Harding—No, it was more about clearly providing a service that is really needed. What had happened through the arrangement was to have a designated unit for special veterans services for psychiatric care, along with an age and extended care department. We were paying that on the basis of the actual utilisation of the bed days for veterans. It is very much dependent on the clinical needs of veterans requiring treatment at that hospital.

Senator MARK BISHOP—So it is not true that veterans are being turned away because of a waiting list in ward 17?

Mr Harding—We are not aware of that. It has never been brought to our attention that veterans had been denied access, that there is a waiting list at that hospital. A lot of emphasis had been put into reviewing the care being delivered in non in-patient services—in other words, outpatient services—as distinct from in-patient services in the psychiatric area.

Senator MARK BISHOP—So that had been the previous practice or that is the new practice?

Mr Harding—The emphasis of reviewing the treatment has been in the non in-patient area, not in the in-patient area. The observation that you are bringing to our attention has not been drawn to the South Australian state office's attention, nor to ours.

Senator MARK BISHOP—Is it true that veterans are now being treated with psych cases that come from the general public and not in a different or distinct way?

Mr Harding—The psychiatric ward had admissions other than veterans going to it prior to recent times. It has always had a mixture of community as well as veterans.

Senator MARK BISHOP—And that mixture now continues?

Mr Harding—Correct.

Senator MARK BISHOP—Prior to the current arrangements, was there any reservation of a particular nature or number reserved particularly for veterans?

Mr Harding—We never wanted anything reserved. We wanted to make sure veterans had full access based on clinical needs, regardless of where they came from in South Australia. Veterans always had the access to Daw Park, regardless of where they resided.

Senator MARK BISHOP—Are you satisfied that veterans in South Australia now have sufficient access to psych treatment in Daw Park?

Mr Harding—We are led to believe, through the state treatment monitoring and through the advisory committee at the hospital, that this issue has never been raised—to our knowledge.

Senator MARK BISHOP—Thank you, Mr Harding. Turning now to hearing services in Tasmania, can DVA confirm that the number of hearing service providers in northern Tasmania has been reduced? There was a press report to that effect.

Mr Winzenberg—I believe there was an issue to do with Devonport and Burnie. There was a hearing centre in Devonport which was closed down and consolidated into Burnie, and the hearing centre in Burnie was going to run a visiting service to Devonport, I think from memory, twice a week. That is the only issue I am aware of.

Senator MARK BISHOP—And that is the issue I am raising.

Mr Winzenberg—In terms of the impact on veterans, we are not aware that that has presented any specific problems to date. The local office is monitoring the situation, but we have not had—

Senator MARK BISHOP—The local office has not referred any problems to you?

Mr Winzenberg—Not to date.

Senator MARK BISHOP—And you are not aware of any complaints down there from veterans expressing inconvenience resulting from these changes?

Mr Winzenberg—Nothing has come across my desk to date.

Senator MARK BISHOP—I now turn to home care and page 66 of the PBS. Halfway down table 2.2.1 you will see that the budget for veterans home care has been reduced from almost \$76 million to a bit over \$72 million, so the ballpark figure is a reduction of \$4 million. What is the reason for this cut?

Mr Douglas—The change in the allocation comes about for three reasons. Firstly, there is a slight increase for indexation parameter adjustments of around \$1.2 million. The main change is a decrease of the order of \$4 million, which comes about because of the decline in the size of the treatment population.

Senator MARK BISHOP—\$4.2 million?

Mr Douglas—Of the order of \$4 million. There is also a very small amount, which is a plus, which is the flow-on impact of the Clarke decisions.

Senator MARK BISHOP—What do you mean by ‘the decline in the size of the treatment population’?

Mr Douglas—The number of gold card and white card holders as time moves on is declining. The bulk of them—two-thirds of them—are World War II veterans and war widows who have an average age of 81, and each year there are fewer of them. The resourcing for this program was always predicated on a gradual increase as the program built up to its scale of operation, then it would decline or move with changes in the size of the treatment population, which is the main basis of resourcing.

Senator MARK BISHOP—Do your figures already reflect a decline in the number of gold card and white card holders? The reason I ask is that I find that surprising.

Mr Campbell—The number of gold card and white card holders has now fallen I think for the last two or three years. As Mr Douglas says, it is because of the age of the World War II veterans and the age of the World War II war widows.

Senator MARK BISHOP—I would not normally have been surprised by that comment, except that in the Clarke report one of the volumes was devoted to likely increases in DVA population over the next eight to 10 years in the context of expected budget outlays and my recollection of his figures was that there would be an increase in the general population until about 2010, and only then would it start to decline.

Mr Campbell—The population has been projected to decline for some years. With the extension of the gold card to all World War II veterans with qualifying service, from 1 January 1999, there was an increase. There was a slight increase again with the Moore report in 2000. But you will find that the number of gold card holders in particular has fallen on a very steady basis over the last two or three years and is projected to continue to fall, because the vast bulk of our numbers are World War II veterans and the war widows of World War II veterans.

Senator MARK BISHOP—All of those who were in World War II would now be in receipt of the gold card.

Mr Campbell—Yes, those who have qualifying service.

Senator MARK BISHOP—Those with qualifying service and, by definition, some are going to die. So the major reason for that reduction in budget outlays is the declining number of treatment population?

Mr Campbell—That is right.

Senator MARK BISHOP—What is the order of magnitude of people affected by this, Mr Douglas?

Mr Douglas—I do not have the information in my area of expertise as to what the change in the number of the treatment population is.

Senator MARK BISHOP—I am asking for the change in numbers.

Mr Campbell—We would have to take on it on notice in terms of the numbers that are in our projections, but it is several per cent, I think. We will have to take the actual figure on notice.

Senator MARK BISHOP—And you expect that to continue?

Mr Campbell—Unfortunately but most certainly.

Senator MARK BISHOP—I understand. Can you tell me what proportion of people who receive assistance under the program have had their level of services reviewed since the program's inception?

Mr Douglas—I would hope that just about all of them have, because one of the primary tenets of the program is a regular course of review to ensure that the assistance being provided remains relevant. That general period of review is of the order of every six to 12 months or when the circumstances of the veteran change.

Senator MARK BISHOP—Are you saying that every person who receives assistance under the scheme gets reviewed every six months?

Mr Douglas—It is of the order of every six to 12 months or when their circumstances change. For example, a veteran may have sought home care, been granted it and then, some several months later, has attended a hospital for an acute care episode. Part of the discharge process is that either the discharge planner or the veteran or their carer would contact the assessment agency and, in general terms, the veteran would get a higher level of assistance, possibly in conjunction with community nursing assistance. Once that postrelease process is settled, there is further assessment and review back down to the previous level.

Senator MARK BISHOP—How many people are receiving assistance under the program around Australia?

Mr Douglas—At any given point in time it is of the order of 44,000 to 45,000.

Senator MARK BISHOP—Going down by some per cent each year?

Mr Douglas—No, the total treatment population is around the 330,000 mark but not all of that treatment population is accessing or requires access to home care.

Senator MARK BISHOP—So what does the figure of 330,000 represent?

Mr Douglas—That 330,000 is roughly the number of gold and white card holders.

Senator MARK BISHOP—And of that 330,000 somewhere of the order of 40,000 to 45,000 per year—

Mr Douglas—No, of that 330,000 at any given point in time there are about 44,000 to 45,000 in receipt of home care. Some will not need it because they are in an aged care facility or accessing a community aged care package. Others will not need it because they are aged under 60, 65 or 70. Others will not need it because they are fit. Others will not need it because they have other care arrangements et cetera.

Senator MARK BISHOP—So you have 40,000 to 45,000 clients at any one stage with people coming on and people going off?

Mr Douglas—Correct.

Senator MARK BISHOP—Is that figure of 40,000 to 45,000 reasonably static?

Mr Douglas—Yes.

Senator MARK BISHOP—So that figure of 40,000 to 45,000 is not yet declining?

Mr Douglas—No.

Senator MARK BISHOP—Although the overall treatment population is declining by several per cent per year?

Mr Douglas—Correct.

Senator MARK BISHOP—Can you tell me what proportion of those receiving services have had their service reduced? Do you keep those figures?

Mr Douglas—No, as I said, the circumstances of individual home care recipients change on a regular basis and the level of assistance they receive would move in accord with that arrangement. What I can say is that, for example, in New South Wales some 30 per cent of people are in receipt of assistance at above what we call the benchmark level of domestic assistance. That varies across different regions of course.

Senator MARK BISHOP—Do you keep figures on the numbers of people who leave the home care program and go back to HACC?

Mr Douglas—No, we do not have accurate evidence of that. We have anecdotal evidence but not hard and fast figures. We know that there are people who no longer access the program, but we do not necessarily know the reason.

Senator MARK BISHOP—So they just stop accessing the program—you do not do an exit analysis or anything like that?

Mr Douglas—Not on those kinds of numbers, no.

Senator MARK BISHOP—I turn now to aids and appliances. Has the new tender been let for the supply of aids and appliances to veterans in each state?

Mr Douglas—There is a major review of our tendering arrangements going on in relation to rehabilitation aids and appliances where, rather than having a mass of individual contracts in each state, we are moving progressively to national contracts for a number of elements and state based contracts for some others. So we are progressively working through those as we go. The main sort of day-to-day items—the category of which just escapes my memory at the moment—will be state based, but things like continence products, oxygen, continuous airway pressure devices and diabetic products will be done on a national basis. Personal response systems is the other national category.

Senator MARK BISHOP—What is a personal response system?

Mr Douglas—An alarm back to base.

Senator MARK BISHOP—What about motor scooters and the like?

Mr Douglas—They would be state based.

Senator MARK BISHOP—So some appliances and aids are going national and others are going to be state based but in essence you are actively reducing the number of suppliers in all categories.

Mr Douglas—We are actively reducing the number of contracts. It is entirely possible that some of the prime contractors could lead to subcontracting arrangements which may or may not then eventually lead to a reduction in the number of suppliers. In essence we are trying to move from about 230 different contractors at the moment to around about the 70 to 80 mark.

Senator MARK BISHOP—That does mean that some existing suppliers stand to lose business in the future.

Mr Douglas—Not necessarily. They may not be a contractor but they may still be a supplier. That is a matter that is still yet to be worked through with the contractors.

Senator MARK BISHOP—So, for example, in terms of motor scooters, you might have gained national contract with firm A—

Mr Douglas—But for scooters we will definitely not have a national contract.

Senator MARK BISHOP—What will you definitely have a national contract with?

Mr Douglas—Oxygen.

Senator MARK BISHOP—You have got a contract with a national firm to supply oxygen in each state and that national firm may subcontract the suppliers.

Mr Douglas—It may indeed do that. We are trying to have a contract or contracts for the national supply of oxygen products. In some cases that may mean that we end up with two or three different contractors because someone will provide products in some states but not in others, but we are looking to arrange a competitive supply in each state.

Mr Winzenberg—One of our principles is to have more than one national contractor where we can so that we do not have a situation where we have all our eggs in one basket.

Senator MARK BISHOP—A bit of competition still. What are the estimated savings from this process?

Mr Winzenberg—We are still in the finalisation of the contracting arrangements so we have not run our—

Senator MARK BISHOP—Is it fair to say that you do anticipate, when the new system is bedded down, that there will be ongoing savings as compared to a maintenance of the old system?

Mr Winzenberg—We do have some estimates in relation to some of our product groups. For example, without giving you the absolute numbers, in relation to our personal response systems we anticipate substantial savings there in the millions of dollars.

Mr Douglas—I hope you appreciate, Senator, that for us to disclose at this stage the amount of savings that we expect to get from a particular product category could in fact jeopardise our ability to successfully negotiate highly effective prices with those providers who are successful in the tendering.

Senator MARK BISHOP—I take the point.

Mr Campbell—Perhaps I should add here, just in case somebody reads the transcript after the event, that any savings we make will come about from more efficient and effective contract management, not from cuts to any services or provision of aids and appliances.

Senator MARK BISHOP—No, and I was not alleging that.

Mr Campbell—I know that you were not. I made it quite clear that it was in case somebody read the transcript and got the wrong impression. I certainly was not trying to say that you were saying that.

Senator MARK BISHOP—I am just trying to find out what is driving this process because I am getting letters on it.

Mr Campbell—Some current provider suppliers have not tendered, and also letters sometimes come in under these circumstances while we are working through the process of setting up the new arrangements.

Senator MARK BISHOP—Some suppliers have lost, or are fearful that they are going to lose, business so they are complaining. I understand that. Are Paraquad and AdMed two companies that have been given contracts?

Mr Winzenberg—We have not finalised the contracts, Senator.

Senator MARK BISHOP—You are still in negotiations. Why was the company Walk on Wheels excluded? Do you know why they were excluded?

Mr Winzenberg—We are still finalising the contracts so at this point in time nobody has been formally ruled in or ruled out.

Senator MARK BISHOP—They think they have been. Why would they think that?

Mr Winzenberg—I would have to take that on notice.

Senator MARK BISHOP—But you say they have not yet been excluded because no-one has been excluded.

Mr Winzenberg—We still have not finalised the product groups.

Senator MARK BISHOP—Let us now turn to the VVCS. I want to talk about the review that is going on. Can you tell me the purpose of the review and where it is up to?

Mr Douglas—Certainly, Senator. The review is intended to look at the extent of administrative support that is provided to the VVCS. The VVCS consists predominantly of a team of professional counsellors who are psychologists and social workers. They are supported in the VVCS by the outlet office managers and in the national office by a team of administrative staff who provide a range of management support functions while the VVCS is ongoing. We expect to see some significant adjustments to staffing over the course of the rest of this year with some possible departures of some key players. We want to take advantage of the fact that they are still around, having had some time in that job, to have a look at the level of and ongoing need for the appropriate management support.

In addition we have, as I think you know, combined the role of Branch Head, Younger Veterans and VVCS with that of the national director of VVCS. So the review is essentially

looking at what future management or administrative support arrangements we should have in place for the VVCS to help it support the job that the government expects it to continue to do.

Senator MARK BISHOP—What caused you to do that admin review?

Mr Douglas—As I indicated to you, we have possible departures of some longstanding staff undertaking this particular work and I felt it useful to take advantage of capturing their knowledge before they left.

Senator MARK BISHOP—I understand that, but behind that there is the unanswered question. You have senior people leaving the counselling service, so you are doing a review of the functions they have carried out. Why did you think it necessary to do that review as opposed to either replacing them with other people as retirements occur or abolishing or merging the positions?

Mr Douglas—I do not know what else I can say. The question was—

Senator MARK BISHOP—What is the connection between people leaving—

Mr Douglas—whether they were getting enough support or whether the workload was being shared by too few people. In particular, the person occupying the position of Branch Head, Younger Veterans and VVCS, who is also the national director, Mr Kilham, has been working with VVCS for the past 10 years. It was a matter of having a formal process of observing how that was working in practice to give us some advice and some options on whether that should continue to be the process in the future or whether we should be considering putting a proposition to the commission that those positions be separated. We were looking also at the level of effective administrative support that is provided to, for example, the national advisory committee of the VVCS. I thought it was appropriate to do that in a formal sense, consulting across the operational structures of the VVCS and giving a formal position for people to put a view, rather than sitting back and thinking about it ourselves and doing it without being seen to be doing it.

Senator MARK BISHOP—I understand that better. Who is heading up the review?

Mr Douglas—The review is being done by Ms Witkowski, working to terms of reference which have been endorsed by the commission and overseen by a steering committee which comprises Mr Kilham, me, one of the directors of the VVCS regions and a deputy commissioner from South Australia.

Senator MARK BISHOP—So it is a high-powered review. Are the terms of reference publicly available or are they private?

Mr Douglas—I do not see any difficulties, subject to Mr Campbell's agreement, in providing you with a copy of them.

Mr Campbell—We can provide those to you.

Senator MARK BISHOP—That would be appreciated. Does the review include the provision of psychiatric and counselling services as well?

Mr Douglas—Definitely not.

Senator MARK BISHOP—How long has the review been going?

Mr Douglas—Of the order of two to three months.

Senator MARK BISHOP—When is the likely finalisation date?

Mr Douglas—Within the next three to four weeks.

Senator MARK BISHOP—Has Ms Witkowski concluded her review and begun the drafting stage?

Mr Douglas—That is pretty close to the mark.

Senator MARK BISHOP—Why were you so definite in saying there is no review of psych and counselling services occurring? Are you satisfied with the current way business is done?

Mr Douglas—I do not think that is the consideration. At all stages the review was only ever going to be about the administrative arrangements. In my view, as a division head responsible for providing the administrative support, any consideration of the counselling services is a much broader issue that I know to be very sensitive in the veteran community and would probably only occur at the instigation of the veteran community, the commission or the government.

Senator MARK BISHOP—Fair enough. Is DVA aware of complaints being made about ward 17 at Heidelberg going to issues of the condition of the facilities, the quality of food and cleanliness?

Mr Douglas—I am not aware of it. I will check with Mr Harding.

Mr Harding—As I understand it, that issue was raised this morning at the Victorian treatment monitoring committee directly with the Victorian Department of Human Services representatives and action was being taken immediately to consult with the veteran community about those particular complaints.

Senator MARK BISHOP—It was only raised this morning?

Mr Harding—It was only raised this morning at the Victorian treatment monitoring committee in Victoria. The deputy commissioner immediately spoke with the representative from the Department of Human Services at that meeting.

Senator MARK BISHOP—The deputy commissioner of DVA?

Mr Harding—Yes, Bob Solly. He spoke to the representative from the Department of Human Services in Victoria who was at that meeting. Action is being taken to work with the veteran community about what should be done about those concerns.

Senator MARK BISHOP—Okay.

Mr Harding—That is the first time that the issue of the conditions at that facility has been raised by the veteran community.

Senator MARK BISHOP—That is fine. I was not offering any criticism, Mr Harding. How much is paid by the Commonwealth for psych services at Heidelberg at present? Do we have those sorts of figures?

Mr Harding—No, we do not have that figure. It is broken up between paying directly for PTSD treatment as well as normal acute psychiatric services at the hospital. We will take that on notice.

Senator MARK BISHOP—Are any audits being done of the quality of care available at Heidelberg?

Mr Harding—The hospital itself has a number of practices in place for quality control as well as what they call clinical audits, which are done on a regular basis.

Senator MARK BISHOP—Do those reports go to the committee in Victoria you referred to earlier?

Mr Harding—No, they do not. We would look for the hospital to raise those through the contract management committee reporting.

Senator MARK BISHOP—They have not done so?

Mr Harding—They have not.

Senator MARK BISHOP—You have not had any cause to require information from them on the quality of care available there?

Mr Harding—We rely on veteran feedback as much as from the hospital itself. We look at it from both aspects ourselves.

Senator MARK BISHOP—You have not had any complaints?

Mr Douglas—We have a further source of advice. As you would probably be aware, the Australian Centre for Posttraumatic Mental Health, part of the University of Melbourne, happens to be based at Heidelberg hospital.

Senator MARK BISHOP—Okay, that is fine. Mr Campbell, is DVA aware of the work being done in Ballarat to pull together the local police and health care agencies to more promptly respond to veterans in distress in that particular city?

Mr Campbell—Personally I am not aware of it. I do not know whether anybody in the health division is aware of it.

Senator MARK BISHOP—Is anyone aware of what is going on down there at Ballarat?

Mr Campbell—No.

Senator MARK BISHOP—Can I take it from that that there is no DVA involvement in that?

Mr Campbell—Not necessarily. It is possible. We have quite a large number of locations around the country. It is possible that there is a local initiative going on there that nobody in this room is aware of. If you like, in the spirit of being helpful, we will find out what it is and our involvement in it.

Senator MARK BISHOP—Could you take on notice whether the local office of DVA or VVCS is involved in the community work being done to help veterans in distress in Ballarat, the level of their involvement and their activities?

Mr Douglas—Yes.

Senator MARK BISHOP—At the last estimates round I had a discussion with Dr Johnston on some problems in the Brisbane office. Since that time, I have had some further correspondence from people up there expressing concerns. Have there been any more complaints or investigations under way about the Brisbane office.

Mr Campbell—You are talking about the very particular case that was raised at the last estimates.

Senator MARK BISHOP—I thought Dr Johnston had put that to bed.

Mr Campbell—I think Dr Johnston made the offer to you that we could meet with you separately and talk through some of these issues. That offer is still on the table if you would like it. To come to the general part of your question—

Senator MARK BISHOP—My recollection is that Dr Johnston had caused some discussions or investigations to occur up there arising out of the complaints and he was satisfied that—

Mr Campbell—That is the case. I think there was an offer if you wanted to talk through more particular cases or issues—and if you had the authority of the individuals concerned, which is a very important issue here. As to the cases of complaints and concerns that were raised, as Dr Johnston pointed out, we have investigated as best we could, given the time that has elapsed with some of those complaints. We continue to have some correspondence from several individuals in Queensland; we are not undertaking any new investigations but we are handling some—

Senator MARK BISHOP—Existing cases?

Mr Campbell—No, FOI requests. There are no further investigations proceeding on those complaints of previous years.

Senator MARK BISHOP—That is fine. In the budget, the government made some announcements about extra places in terms of nursing homes. How many extra places for veterans and widows is it expected will apply.

Mr Douglas—As you know, there are not specific places allocated for veterans. Veterans are classified in a special needs category, and the aged care planning advisory committees in each state consider the allocation of additional places and indicate how many of those might be indicatively allocated for veterans as part of that planning process. So they would get their share of places through that process.

Senator MARK BISHOP—That indicates that a number of places in the special needs category are reserved for veterans and widows. Is that a correct statement or not?

Mr Douglas—Generally, yes, but it is a process that varies from state to state. Some will say this number of places should only be approved for veterans. Some may say this number of places should be reserved for people in special need categories, including veterans. It is not a specific number; it could be a floating number within that total.

Senator MARK BISHOP—So it is done differently in the different states, is it?

Mr Douglas—Yes.

Senator MARK BISHOP—Are there state based committees that make these decisions?

Mr Douglas—Yes. They are called ACPACs—aged care planning advisory committees.

Senator MARK BISHOP—Does DVA have a state representative on those?

Mr Douglas—In most cases, yes, but I would have to take on notice whether it is on every one of them. In general, veterans occupy in the order of 15 per cent of residential aged care places.

Senator MARK BISHOP—Of the order of 15 per cent?

Mr Douglas—Of the order of 15 per cent. We would expect that the additional places would be roughly 15 per cent plus or minus.

[10.29 p.m.]

Senator MARK BISHOP—I want to turn to outcome 3, relating to people missing in action. What is the current position with respect to discussions with the government of Vietnam and the US forces about the six missing Australians? Are you involved in those?

Air Vice Marshal Beck—No, not directly. The defence attache in Hanoi is dealing with this issue. It is an ongoing issue for the six. There is no information available on any of the six, except for the possibility that a recent report on a helicopter may be a 9 Squadron helicopter and, if that is so, it could include the remains—if there are any remaining—of Lance Corporal Gillespie. At the moment it is only a report that has not been fully investigated, but the latest information from the American authorities is that they think there is a probability that it is a 9 Squadron helicopter.

Senator MARK BISHOP—When you refer to the defence attache, is that the Australian defence attache?

Air Vice Marshal Beck—The Australian defence attache dealing with the joint task force.

Senator MARK BISHOP—So he is engaged in discussions with the government of Vietnam and the Americans on this issue?

Air Vice Marshal Beck—I am not sure that there are discussions but he is the contact for our Department of Defence. It really is a Defence issue at this stage. We would only become involved if there were any remains recovered.

Senator MARK BISHOP—And you have not received that advice as yet?

Air Vice Marshal Beck—No, we are expecting something though. We would certainly like to see an on-site investigation conducted, and I am sure that will be the next step.

Senator MARK BISHOP—Who makes that decision? He does?

Air Vice Marshal Beck—No, the Americans do. But because there is an Australian interest in it, they are keeping our defence attache informed.

Senator MARK BISHOP—So if I want to pursue this again, is it best done here or in relation to Defence next time round?

Air Vice Marshal Beck—We are across the issue and will keep you abreast of any developments.

Senator MARK BISHOP—I have had a number of representations from former RAAF people who allege that many names have been omitted from the nominal roll for World War II people. They write to me and say it has been raised with the minister but it is not clear what is being done about it. What is the process when people raise the issue that names are omitted from the nominal roll?

Ms Stevenson—The process now that the roll has been in place for some time is that we give priority to errors on the roll. So, if we have published any detail that we know is wrong, we give priority to fixing that because it causes distress to the family. Where we are given exact information about missing names or missing details we verify that information and we publish the information on the roll. If we are given a more general statement that John Smith and Joe Bloggs are missing from the roll and they served in the RAAF, that is a much more complicated process of establishing exactly who that person is and what their details are. Because that is a much more complicated and time-consuming process, we get to those as we can in servicing the more important issues.

Senator MARK BISHOP—But in terms of the priorities that you have identified, that is down at the bottom?

Ms Stevenson—Yes.

Senator MARK BISHOP—The specific complaint I have received is that officers' names have been added but non-commissioned officers' names were not. Could that be correct?

Ms Stevenson—I suspect that comment comes from the fact that we have certain individuals who are very actively assisting us in making sure that their colleagues' details are put on the roll. Where we do not have that active encouragement and drive from other individuals, then we just do not know what we do not know.

Senator MARK BISHOP—Is the bulk of the active involved individuals who are assisting you former officers in the RAAF?

Ms Stevenson—Yes, there are one or two who are quite active in trying to help, and we have done the best we can in providing them with ideas of where they might source their information. But you will appreciate that there are certain names that are very hard to match—with initials, nicknames, full names, full name/part name, it can be very hard to match those things together.

Senator MARK BISHOP—But if you received advice of a name in one of the higher areas of your priority list, you would not have regard to whether the person was an officer or not an officer in doing your investigation and putting them on the roll, would you?

Ms Stevenson—No, that makes no difference at all. Their rank is irrelevant for our purposes. What makes it possible for us to process some things more quickly, as I have said, is the level of detail that we have available to us.

Mr Campbell—For the record, we should probably say that it is not really prioritising; it is just that some cases are far easier for us to verify by quickly getting hold of the service record. What Ms Stevenson is saying is that there are a number of cases that are—I think the term you used was 'lower priority'. They just take more time and more resources; they are sometimes far harder to verify any service details for. That is probably a better way of putting

it. I would not want to imply that, because we are having difficulty finding people, it is a lower priority for us in actually ascertaining their background. The fact is that in some cases it is a lot easier for us to correct the record very quickly.

Senator MARK BISHOP—That is fine. I just wanted to get on the record that you do not distinguish between officers and non-officers in terms of putting them on the record.

Ms Stevenson—No, we do not at all. We do have people who go for days at a time over to research Defence records or records in archives. Where we know that we have to place someone in a repository for a couple of days, we will do a couple of investigations at the same time.

Senator MARK BISHOP—I turn to the POW memorial in Ballarat. Has the government received an application from the Ballarat City Council for financial assistance for the completion and maintenance of the POW memorial?

Ms Blackburn—I understand that the minister has met with the mayor of Ballarat. A proposal has been received and it is currently under consideration.

Senator MARK BISHOP—When do you anticipate that a decision will be made on that request?

Ms Blackburn—I cannot give a time frame.

Senator MARK BISHOP—So the request has been made and it is being considered by the minister. Under which program is it being looked at?

Ms Blackburn—It would be looked at under the commemorations program.

Senator MARK BISHOP—And the minister has not yet made a decision?

Ms Blackburn—No, she has not.

Senator MARK BISHOP—Can we turn now to the film project? Can DVA confirm that there is a film project under way at present, interviewing veterans on their war experiences?

Ms Blackburn—Yes, the Australians at War Film Archive commenced early last year. It is due for completion, according to the contract, early next year, but it will in fact be finished late this year. It is a matter of some 2,000 interviews of veterans, people who served on the home front and in some cases allied veterans or former enemies from each of the conflicts from World War I onwards. There will be between 12,000 and 15,000 hours of film and an associated web site, which has gone public with the first verbatim interviews on that web site.

Senator MARK BISHOP—The transcript of the interviews?

Ms Blackburn—Sorry?

Senator MARK BISHOP—Is it just the transcript of the interviews or is it—

Ms Blackburn—A full transcript of the interviews, yes.

Senator MARK BISHOP—What has been the cost of that contract?

Ms Blackburn—There have been two years of payments. I would have to get you the exact figures, but it is in the order of about \$4.5 million. It will be a world first—the most comprehensive film and recorded transcript of veterans' memories and experiences.

Senator MARK BISHOP—So you have paid out about \$4½ million so far?

Ms Blackburn—Yes. I would have to verify the exact amount.

Senator MARK BISHOP—How much do you anticipate paying until the end of the year?

Ms Blackburn—I think it is in the order of \$1 million. The total cost will be in the order of \$5 million.

Senator MARK BISHOP—Who got the contract?

Ms Blackburn—Mullion Creek Productions.

Senator MARK BISHOP—Have they done the work themselves or have they effectively subbed it out?

Ms Blackburn—No, they have done the work themselves. Michael Caulfield was the supervising producer for the *Australians at War* documentary series in 2001. He and his partner have completely controlled the whole exercise in terms of recruiting a number of interviewers and film-makers. There has been a very comprehensive training program. They have developed the project plan and very closely monitored and become directly involved throughout. There has been very tight control throughout the whole process.

Senator MARK BISHOP—Was the original contract let pursuant to a public tender or was it just an extension of an existing contract?

Ms Blackburn—There was no public tender. Given the experience with *Australians at War*—and the proposal was initiated by Mr Caulfield—we looked at who else in Australia might be able to do it. There was clearly a lot of material that was there from the *Australians at War* documentary series and he had a very strong knowledge of the entire veteran community and the Australian wartime history. Given the contacts that Mr Caulfield had within the film-making industry, his own record as a film-maker, his extensive contacts in the veteran community and his awareness of what was required to establish such an archive, we negotiated a contract with him.

Senator MARK BISHOP—Who initiated the film project? Did you approach him on the basis of his expertise or did he approach you with a proposal?

Ms Blackburn—He came to the minister and the department following the success of the documentary series.

Senator MARK BISHOP—So he came with a proposal, you examined it, found it of merit and entered into negotiations?

Ms Blackburn—Yes. We looked at it very closely, consulted with the leadership of the veteran community and in the end were satisfied that the proposal was a very substantial one and would benefit the community for decades to come.

Senator MARK BISHOP—What has been the feedback from the *Australians at War* film?

Ms Blackburn—The documentary series was very well received. It won something like seven awards, including a Logie for the best documentary series of that year. We received

some additional funding for a number of recordings to be used by schools as an educational tool, and it has been very well received in the broader community.

Senator MARK BISHOP—What was the original contract price for that?

Ms Blackburn—There was \$5 million allocated under Centenary of Federation funding. There was some additional funding because of the network agreement with the ABC, but that allowed for a web site and an education resource kit to all Australian schools as part of that \$5 million documentary series.

Senator MARK BISHOP—Apart from extra services that were not in the original contract, there were not any extra amounts paid for the original contract?

Ms Blackburn—No. The Centenary of Federation funding was fully expended. From memory, there were no additional funds paid.

Senator MARK BISHOP—Are you aware of any planning for repeat screenings?

Ms Blackburn—Yes, the ABC is considering it, and there may be screenings later this year or early next year.

Senator MARK BISHOP—We do not have anyone here from the War Memorial any longer, do we?

Mr Campbell—No, I think they have gone home.

Senator MARK BISHOP—Ms Blackburn, are you aware whether the Australian War Memorial objected to the quality of the product and sought to have their endorsement removed?

Ms Blackburn—For the *Australians at War* series?

Senator MARK BISHOP—Yes.

Ms Blackburn—No, I am not. In fact Major General Gower was on the documentary steering group. They provided a substantial amount of the footage and their principal historian was also one of the key advisers.

Senator MARK BISHOP—Are you, Air Vice Marshal Beck?

Air Vice Marshal Beck—No, I have never heard of that suggestion.

Senator MARK BISHOP—Do you have current plans to make any more of these movies—another round?

Ms Blackburn—Documentaries are always within the minister's purview for commemorations funding. The issue is that they are normally quite expensive to make. You would need a network agreement to ensure that they would be filmed, but from time to time proposals are brought to the minister's attention. I think in the PBS there is some broad provision for documentaries that may relate directly to the 60th anniversary of World War II.

Senator MARK BISHOP—Where is that?

Ms Blackburn—Under outcome 3, on page 74. Under the one-off funding for significant anniversaries there is just a general statement that there may be the opportunity to contribute to the production of specific documentaries. In which case it would not be the department

commissioning but it may be that, if there are any worthwhile proposals, recommendations could be made on those.

Senator MARK BISHOP—You list likely significant anniversaries in that paragraph. Have you entered into any discussions or negotiations with film houses or the like to put together any documentaries or series relating to these matters?

Ms Blackburn—There are a couple of proposals at the moment which are under consideration, but there is no decision taken on any of them.

Senator MARK BISHOP—What are those proposals—or is that confidential?

Ms Blackburn—One would relate to Anzac and Gallipoli and one or two others would relate to World War II.

Senator MARK BISHOP—Particular battles in World War II?

Ms Blackburn—Campaigns or themes that come out of World War II.

Senator MARK BISHOP—When do we anticipate the minister is going to make a decision on those? Is that a ministerial decision?

Mr Campbell—For a program of this magnitude it would be taken by ministers rather than by bureaucrats. I think it is too early to say when ministers will be in a position to take decisions as to how the program will be finally configured. I would not want to hazard a guess. I can say that it certainly will not be in the next few weeks.

Senator MARK BISHOP—Has it left bureaucratic or departmental level?

Mr Campbell—No. It is still being worked through by officers.

Senator MARK BISHOP—So you are in discussions with one or more companies or individuals who have put some proposals to you in relation to specific projects relating to the matters in that final paragraph.

Mr Campbell—There are also discussions within government, at the officer level, talking about the various issues there and what sort of program might be appropriate. As you can imagine, it will be an interactive process between officials and ministers, and I would not envisage a decision being taken in the very near future.

Senator MARK BISHOP—I understand. Air Vice Marshal Beck, I want to talk about Anzac Day at Gallipoli. Firstly, I want to thank you and your officers for the organisation, the support and all of the work that went into Anzac Day this year in Canakkale. In particular, the organisation was fine, the level of support was without question, and the cooperation of your staff and others from Defence and DVA was much appreciated by me and others who were invited there. I want to put that on the record.

Air Vice Marshal Beck—Thank you, Senator.

Senator MARK BISHOP—I want to ask about something that I have had some correspondence about, and there has also been some press reporting about it. Was there in fact some sort of concert after the ceremonies or was it just music that came through the PA system?

Air Vice Marshal Beck—It has been reported that it was a drunken rock concert. I can assure you that it was not that.

Senator MARK BISHOP—I did not see any evidence of that, but we left early.

Air Vice Marshal Beck—Yes, there was a concert, if you could call it that. The band continued to play music after—

Senator MARK BISHOP—What sort of band was it?

Air Vice Marshal Beck—The Royal Australian Navy Band.

Senator MARK BISHOP—I just want to get this on record. So there was a military band who played music after the formalities were concluded. Is that what you are telling me?

Air Vice Marshal Beck—That is correct. And I am just hoping they have not read the reports.

Senator MARK BISHOP—So there was no rock band or similar such music put through the PA system to your knowledge?

Air Vice Marshal Beck—No, certainly not. The only change this year is that we conducted a small concert after the service rather than before the Lone Pine service. The intention was to try and limit the numbers going up to the New Zealand service, at their request, to try to contain the numbers at Chunuk Bair.

Senator MARK BISHOP—So the New Zealanders requested that the military band play music after the ceremonies were concluded.

Air Vice Marshal Beck—No, we suggested it. We thought it would help them, and the ambassador agreed.

Senator MARK BISHOP—Did you have any reports made to you that alcohol was being consumed?

Air Vice Marshal Beck—Yes, certainly. There was plenty of alcohol consumed, but I would make the comment that I do not really view it as a major problem. The difficulty we have is in trying to ban it when we do not have that level of responsibility or accountability. For instance, the Turkish national parks organisation agreed with us that alcohol should be banned, but the gendarmes do not carry out that instruction. Perhaps, in a way, they choose not to take anything from the Australians, New Zealanders and other visitors there. We have never had that level of contact between the visitors and the Turkish authorities. It is a bit of an issue. We do not quite know how to address it, but I would emphasise that I do not believe it is a serious problem.

Senator MARK BISHOP—Did you have any complaints made to you about, firstly, the use of alcohol and, secondly, the abuse of alcohol?

Air Vice Marshal Beck—I think that wherever there is use there is abuse and, yes, we have received some ministerial correspondence on it. We have answered that. Again, I emphasise that we are really not in a position—in the absence of our authority—to control it at the moment. We are working on it.

Senator MARK BISHOP—Is that properly a matter for the Turkish police?

Air Vice Marshal Beck—Yes, it is. The difficulty is getting the Turkish police to implement what the Turkish national parks would like to achieve.

Senator MARK BISHOP—Why is that? Do they just not want to be involved in arresting Europeans for drinking?

Air Vice Marshal Beck—It is not a question of arresting. If we were to implement it, and forcefully implement it, we would want the alcohol confiscated at the entry points. At the moment, they are not prepared to do that.

Senator MARK BISHOP—Why is that?

Air Vice Marshal Beck—I am not sure. I would imagine it is just that they do not like the idea of having to take alcohol off the foreign visitors.

Senator MARK BISHOP—I turn now to Iraqi war graves. Can you advise the extent of damage done recently to the graves of Australians in Iraq?

Air Vice Marshal Beck—What do you mean when you say recently? Damage has been done since the Iran-Iraq war in the eighties, the Gulf War in the nineties and in the more recent war.

Senator MARK BISHOP—I think we had a discussion and I put some questions on notice at the last estimates about this. Has further damage been brought to your attention in the last three months?

Air Vice Marshal Beck—No, there has been no further damage. Our focus is on the repairs. The focus has been on what we do about the damage that is evident. There have been 500 new headstones delivered and another 600 are awaiting delivery. The Commonwealth War Graves Commission met in March and decided that until the interim government is in place there was not much they could do. In terms of their priority and restoring the infrastructure, I am afraid from the Iraqi point of view that the graves probably have a very low priority in terms of concrete, electricity, water and labour. The commission is meeting again in September to try and review this. I suppose the point to be made is that there has been no disturbance of the burial remains. The records the commission has on all the graves are very accurate so it is just a question of replacing the headstones in time.

Senator MARK BISHOP—I understand what you are saying. Can you give an update on the current status of repairs to the graves of Australians in South Africa which were recently defaced?

Air Vice Marshal Beck—I recently communicated with the commission, trying to find out the current status. They attended meetings in Johannesburg in late May, but I have not heard back from them. The commission was representing the Ministry of Defence there in discussions with the South African government. By way of background, I would like to emphasise that all the Boer War graves—and, in fact, the British graves dating back to 1795—are now accepted as the responsibility of the British government. The maintenance of them is supposed to have been undertaken by the South African Heritage Resources Agency, which used to be the National Monuments Council, but in the last 12 months—and it really has only been in the last 12 months—the destruction of those graves has been ongoing.

Senator MARK BISHOP—Is it just vandalism or is there more to it?

Air Vice Marshal Beck—It is a bit more than vandalism. They are actually taking the headstones and other paraphernalia as building materials. The solution, I think—and they will solve it—will be to involve the local people in the maintenance of these cemeteries so that they actually protect them. The Ministry of Defence has asked the Commonwealth War Graves Commission, which has no responsibility for Boer War graves, to take on that maintenance as an agency service, and that is what they are currently attempting to do.

Senator MARK BISHOP—Why does the British government have responsibility for the war graves of Australians who died in the Boer War?

Air Vice Marshal Beck—Because it predates 1901, and they were really colonial and state units. I would just like to emphasise that we have equal interest in Australian war graves, whether they are the Boer War, the First World War or the Second World War, but the responsibility does not formally rest with the Australian government. As a result of that, we have contributed, in a sense, an annual donation to emphasise our interest to the South African Heritage Resources Agency, but we terminated that in 2002-03 because we knew there had been no action. We have been trying to get something done about it since then.

Senator MARK BISHOP—I turn to the D-Day 2004 commemoration. How many Australians were funded by the French government to travel to France for the commemoration?

Ms Blackburn—No Australians were funded by the French government to travel. Their fares have been paid under the commemorations program. However, the French government made an offer for accommodation assistance in Paris and, on the advice of the Australian embassy, we have taken up that offer.

Senator MARK BISHOP—How many veterans did the Australian government fund to attend the D-Day ceremonies in France?

Ms Blackburn—Four veterans.

Senator MARK BISHOP—How many applications did you receive?

Ms Blackburn—There were no applications as such. We did not follow the usual nomination process for previous commemorative visits, because the people selected were four of the 10 who will be awarded the Legion of Honour by the French government. There have been, I think, about five or six ministerials—people who have expressed an interest in going—but the four selected are Legion of Honour recipients.

Senator MARK BISHOP—So the French government has awarded them this honour, and we are funding their travel there to receive the honour?

Ms Blackburn—Yes, those four will represent all Australian veterans who served on D-Day in the Normandy campaign.

Senator MARK BISHOP—What about the other half-dozen?

Ms Blackburn—The other six were invited to Canberra to receive their awards on Sunday, 6 June at the Australian War Memorial ceremony. Five are fit enough to travel and have accepted that offer, and they will be presented with their awards by the French ambassador. We are liaising with the French embassy for the ambassador to present the other award in WA.

Senator MARK BISHOP—Why were four invited to France and the other six to Canberra? Is there a reason for that?

Ms Blackburn—They were not all fit to travel overseas. There was a preliminary look at the medical records. Also, a decision was taken to send just a small group representing the three services. Two were Air Force representatives, because of the predominance of the Air Force in the D-Day operations, and there was one representative from the Army and one from the Navy.

Senator MARK BISHOP—The Prime Minister is attending that, isn't he?

Ms Blackburn—Yes, he is.

Senator MARK BISHOP—Are any other ministers attending?

Ms Blackburn—I am not aware of any.

Mr Campbell—Not that I am aware of.

Senator MARK BISHOP—And you would be aware, wouldn't you?

Mr Campbell—If that question is whether the Minister for Veterans' Affairs is attending, the answer is, no, the Minister for Veterans' Affairs is not attending.

Senator MARK BISHOP—No, it was not. The question was whether you were aware of other ministers accompanying—

Mr Campbell—In all probability—just to cover ourselves in case there is a minister over there on other activities—but we are not aware of any other ministers attending.

CHAIR—Gentlemen, ladies and Minister, thank you very much for your attendance this evening.

Committee adjourned at 11.00 p.m.