



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE  
LEGISLATION COMMITTEE

**Estimates**

MONDAY, 30 MAY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE**  
**Monday, 30 May 2011**

**Senators in attendance:** Senators Bishop, Faulkner, Ferguson, Forshaw, Humphries, Hutchins, Johnston, Kroger, Macdonald, Parry, Stephens and Trood



## **DEFENCE PORTFOLIO**

### **In Attendance**

Senator Feeney, Parliamentary Secretary for Defence

### **Department of Defence**

Dr Ian Watt AO, Secretary of Defence,

Air Chief Marshal Angus Houston AC, AFC, Chief of the Defence Force

### **Portfolio Overview and Budget Summary**

Mr Philip Prior, Chief Finance Officer

Mr Michael Gibson, First Assistant Secretary Resources and Analysis

Mr Peter Jennings, Deputy Secretary Strategy

Mr Brendan Sargeant, Deputy Secretary Strategic Reform and Governance

Major General Paul Alexander AO, Commander Joint Health

Air Commodore Bill Hayden OAM, Acting Commander Joint Logistics

Mr Neil Orme, Principal Advisor Afghanistan and Pakistan

Mr Lachlan Colquhoun, Acting First Assistant Secretary, International Policy

Dr David Lloyd, Defence General Counsel

### **Outcome 1—The protection and advancement of Australia's national interests through the provision of military capabilities and promotion of security and stability**

#### **1.1 Office of the Secretary and Chief of the Defence Force**

Mr Geoff Earley AM, Inspector General ADF

Mr Geoffrey Brown, Chief Audit Executive

Mr Ray Bromwich, Inspector General

#### **1.9—Vice-Chief of the Defence Force**

Lieutenant General David Hurley AC, DSC, Vice Chief of the Defence Force

Air Vice Marshal Kevin Paule, Head Military Strategic Commitments

Major General Michael Crane, Chair, Defence Cultural Review Secretariat

#### **1.10—Joint Operations Command**

#### **1.12—Chief Finance Officer**

### **Outcome 2—The advancement of Australia's strategic interests through the conduct of military operations and other tasks directed by Government**

#### **2.1—Operations contributing to the security of the immediate neighbourhood**

#### **2.2—Operations supporting wider interests**

### **Outcome 3—Support to the Australian community and civilian authorities as requested by Government**

#### **3.1—Defence Contribution to National Support Tasks in Australia**

#### **Defence Funding and Financial Statements**

#### **Outcome 1**

**1.11—Capability development—general topics****1.11—Capability development—specific topics**

Air Marshal John Harvey AM, Chief of Capability Development Group

Major General Steve Day, Head Joint Capability Coordination

Rear Admiral Rowan Moffitt AO, RAN, Head Future Submarine Program

Air Vice Marshal Kym Osley AM, CSC, Program Manager New Air Combat Capability

**Defence Materiel Organisation****Outcome 1—Contributing to the preparedness of Australia Defence Organisation through acquisition and through-life support of military equipment and supplies**

Dr Stephen Gumley AO, Chief Executive Officer, Defence Materiel Organisation

Mr Warren King, Deputy Chief Executive Officer, Defence Materiel Organisation

Mr Harry Dunstall, General Manager Commercial

Ms Jane Wolfe, General Manager Reform and Special Projects

Ms Shireane McKinnie PSM, General Manager Systems

Mr Phil Brown, Program Manager, Amphibious Deployment and Sustainment

Mr Andrew Cawley, Program Manager, Air Warfare Destroyer

Air Vice Marshal Chris Deeble AM, CSC, Program Manager Collins and Wedgetail

Mr Steve Wearn, Chief Finance Officer, Defence Materiel Organisation

Air Vice Marshal Colin Thorne AM, Head Aerospace Systems

Mr Ian Donoghue, Acting Head Acquisition and Sustainment Reform Division

Ms Michelle Kelly, Acting Head Commercial Enabling Services

Mr Mark Reynolds, Head Commercial and Industry Programs

Mr Anthony Klenthis, Head Explosive Ordnance Division

Mr Michael Aylward, Head Electronic Systems Division

Mr Peter Lambert, Head Human Resources and Corporate Services, Defence Materiel Organisation

Major General Grant Cavenagh AM, Head Land Systems Division

Rear Admiral Peter Marshall AM, RAN, Head Maritime Systems Division

Ms Liesl O'Meara, Acting Special Counsel to Chief Executive Officer, Defence Materiel Organisation

Commodore Tony Dalton, Director General Navy Aviation Systems

Brigadier Andrew Mathewson, Director General Army Aviation Systems

Brigadier David Shields, Director General Land Manoeuvre Systems

Brigadier Greg Downing, Director General Land Vehicle Systems

Brigadier Mike Phelps, Director General Integrated Soldier Systems

**1.1—Management of capability acquisition****1.2—Management of capability sustainment**

**1.3—Provision of policy advice and management services****Capital Facilities and Defence Support****Outcome 1****1.6—Defence support**

Mr Simon Lewis, Deputy Secretary Defence Support

Mr Mark Jenkin, Head Defence Support Operations

Mr Mark Cunliffe, Head Defence Legal

Mr John Owens, Head Defence Infrastructure Division

Ms Chris Bee, Acting Chief Operating Officer, Defence Support Group

**1.14—Defence Force superannuation benefits****1.15—Defence Force superannuation nominal interest****Outcome 1****1.13—People strategies and policy—general topics****1.13—People strategies and policy—specific topics**

Mr Phil Minns, Deputy Secretary People Strategies and Policy Group

Mr Steve Grzeskowiak, Head People Policy

Major General Craig Orme AM, CSC, Head People Capability

Mr Craig Pandy, Head Workforce and Shared Services

Brigadier Bill Sowry, Deputy Head Cadet, Reserve and Employer Support Division

Rear Admiral James Goldrick RAN, Commander Australian Defence College

**Remaining Defence programs****1.2—Navy capabilities**

Vice Admiral Russel Crane AO, CSM, RAN, Chief of Navy

**1.3—Army capabilities**

Lieutenant General Ken Gillespie AC, DSC, CSM, Chief of Army

**1.4—Air Force capabilities**

Air Marshal Mark Binskin AO, Chief of Air Force

**1.5—Intelligence capabilities**

Mr Stephen Merchant, Deputy Secretary, Intelligence and Security

**1.7—Defence science and technology**

Professor Robert Clark, Chief Defence Scientist

**1.8—Chief Information Officer**

Mr Greg Farr, Chief Information Officer

Mr Matt Yannopoulos, Chief Technology Officer

Mr Clive Lines, First Assistant Secretary ICT Reform

Major General Michael Milford, Head ICT Operations

Mrs Anne Brown, First Assistant Secretary ICT Development

**1.16—Housing assistance**

**1.17—Other administered**

**Defence Housing Australia**

**Outcome—To deliver total housing and relocation services that meet Defence operational and client needs through a strong customer and business focus.**

Mr Peter Howman, Chief Operating Officer

Mr Jon Brocklehurst, Chief Financial Officer

Mr Brett Jorgensen, General Manager, Property and Tenancy Services

**Department of Veterans' Affairs**

Mr Ian Campbell PSM, Secretary

**Department of Veterans' Affairs**

**Portfolio Overview**

**Corporate and general Matters**

Mr Ian Campbell PSM, Secretary

Mr Shane Carmody, Deputy President

Dr Graeme Killer AO, Principal Medical Adviser

Mr Wayne Penniall, National Manager, Veterans and Veterans Families Counselling Service

Mr John Sadeik, Acting Deputy Commissioner QLD

Mr Sean Farrelly, Acting General Manager, Support

Mr Adam Luckhurst, National Manager, Rehabilitation and Entitlements Policy Group

Mr Neil Bayles, National Manager, F111 Implementation/MRCA Review

Ms Sandy Bell, National Manager, Rehabilitation Compensation and Systems Support Group

Ms Peta Stevenson, National Manager, Research, Grants and Consultation Co-ordination Group

Mr Grant McCorry, Acting National Manager, Income Support Group

Ms Judy Daniel, Acting General Manager, Services

Ms Narelle Dotta, General Manager, Corporate

Mr Graeme Rochow, National Manager/Chief Finance Officer, Resources Group

Mr Roger Winzenberg, National Manager, People Services Group

Mr Shane McLeod, National Manager, Chief Information Officer

Mr Richard Magor, National Manager, Parliamentary and Communication Group

Major General Liz Cosson AM, CSC (Rtd), Executive Division

Ms Carolyn Spiers, National Manager/Principal Legal Advisor, Business Integrity and Legal Services Group



Mr Mark Harrigan, Acting National Manager, Organisational Change Group

Mr Doug Humphreys, Principal Member, Veterans' Review Board

**Outcome 1—Maintain and enhance the financial wellbeing and self-sufficiency of eligible persons and their dependants through access to income support, compensation, and other support services, including advice and information about entitlements**

**1.1—Veterans' income support and allowances**

**1.2—Veterans' disability support**

**1.3—Assistance to Defence widow/ers and dependants**

**1.4—Assistance and other compensation for veterans and dependants**

**1.5—Veterans' Children Education Scheme**

**1.6—Military rehabilitation and compensation acts—income support and compensation**

**1.7—Adjustments to military rehabilitation and compensation acts liability provision—income support and compensation**

Mr Ian Campbell PSM, Secretary

Mr Shane Carmody, Deputy President

Mr Sean Farrelly, Acting General Manager, Support

Mr Neil Bayles, National Manager, F111 Implementation/MRCA Review

Ms Sandy Bell, National Manager, Rehabilitation Compensation and Systems Support Group

Mr Grant McCorry, Acting National Manager, Income Support Group

Ms Peta Stevenson, National Manager, Research, Grants and Consultation Co-ordination Group

Ms Judy Daniel, Acting General Manager, Services

Mr John Fely, National Manager, Defence Support Services

Ms Carolyn Spiers, National Manager/Principal Legal Advisor, Business Integrity and Legal Services Group

**Outcome 2—Maintain and enhance the physical wellbeing and quality of life of eligible persons and their dependants through health and other care services that promote early intervention, prevention and treatment, including advice and information about health service entitlements**

**2.1—General medical consultations and services**

**2.2—Veterans' hospital services**

**2.3—Veterans' pharmaceutical benefits**

**2.4—Veterans' community care and support**

**2.5—Veterans' counselling and other health services**

**2.6—Military rehabilitation and compensation acts—health and other care services**

**2.7—Adjustments to military rehabilitation and compensation acts liability provision—health and other care services**

Mr Ian Campbell PSM, Secretary

Mr Shane Carmody, Deputy President

Dr Graeme Killer AO, Principal Medical Adviser

Mr Wayne Penniall, National Manager, Veterans and Veterans Families Counselling Service

Ms Judy Daniel, Acting General Manager, Services

Ms Kym Connolly, Acting National Manager, Primary Care Policy Group

Ms Gail Yapp, National Manager, Community and Aged Care Policy Group

Ms Letitia Hope, National Manager, Primary Health Group

Mr John Geary, National Manager Community Health Group

Mr Sean Farrelly, Acting General Manager, Support

Ms Peta Stevenson, National Manager, Research, Grants and Consultation Co-ordination Group

Ms Carolyn Spiers, National Manager/Principal Legal Advisor, Business Integrity and Legal Services Group

**Outcome 3—Acknowledgement and commemoration of those who served Australia and its allies in wars, conflicts and peace operations through promoting recognition of service and sacrifice, preservation of Australia's wartime heritage, and official commemorations****3.1—War graves and commemorations****3.2—Gallipoli related activities**

Mr Ian Campbell PSM, Secretary

Mr Shane Carmody, Deputy President

Major General Liz Cosson AM, CSC (Rtd), Executive Division

Mr Tim Evans, National Manager Commemorations Group

Brigadier Chris Appleton CSC (Rtd), Director, Office of Australian War Graves

Ms Carolyn Spiers, National Manager/Principal Legal Advisor, Business Integrity and Legal Services Group

**Australian War Memorial****Outcome 1—Australians remembering, interpreting and understanding the Australian experience of war and its enduring impact through maintaining and developing the National Memorial, its collection and exhibition of historical material, commemorative ceremonies and research.****1.1—Commemorative ceremonies****1.2—National memorial and grounds****1.3—National collection****1.4—Exhibitions**

**1.5—Interpretive services****1.6—Promotion and community services****1.7—Research and information dissemination****1.8—Visitor services**

Major-General Steve Gower AO, AO(Mil) (Rtd), Director

Ms Nola Anderson, Assistant Director, National Collection

Ms Rhonda Adler, Assistant Director, Corporate Services

Ms Linda Ferguson, Assistant Director, Public Programs

Ms Leanne Patterson, Chief Finance Officer

**Committee met at 09:09**

**CHAIR (Senator Mark Bishop):** I declare open this hearing of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome Senator Feeney, the Parliamentary Secretary for Defence; Air Chief Marshall Angus Houston, Chief of the Defence Force; Dr Ian Watt, Secretary of the Department of Defence; and officers of the Defence organisation.

The Senate has referred to the committee the particulars of the proposed budget expenditure for 2011-2012 and related documents for the Defence portfolio. The committee must report to the Senate on 21 June 2011. Friday, 29 July 2011 has been set as the date by which answers to questions on notice are to be returned. Senators should provide their written questions on notice to the secretariat by close of business Tuesday, 14 June 2011. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. I particularly draw the attention of witnesses to an order of the Senate or 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which I now incorporate into Hansard.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

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

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to

disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

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

Before we go to open the formal proceedings and questions by senators, I want to draw the attention of those interested to a couple of salient matters. Firstly I want to make a few remarks of appreciation to the Chief of the Defence Force, Angus Houston. On 2 November 2005 I had the privilege, on behalf of the then opposition, to welcome CDF to his first estimates as Chief of the Australian Defence Force. I note that this week will be his last appearance as CDF and I want to take the opportunity to place on the public record and acknowledge the outstanding contribution that you, Angus, have made to the work of the committee for well over five years. Whether it be the legislation committee or the references committee, in the many matters this committee has inquired into whilst you have been CDF, I can say that without fail you have made yourself available to the committee whenever it sought your assistance; indeed, despite the unbelievable demands on your time, you have of your own initiative offered to spend a lot of time with the committee in private briefings. Successive committee members and chairs have greatly benefited from and greatly appreciated your willingness to engage with the committee and the trust in a range of delicate matters that you have placed in successive chairs and members of this committee. The committee thanks you especially for the efforts you have taken to support its work and to keep

it informed through many, many difficult issues. Through your leadership Defence and the committee have established a very sound and constructive working relationship, and we hope that when your successor is appointed in due course that relationship will continue.

Finally, CDF, not only have you been of great assistance to the committee and most gracious in your deliberations, but that has also extended down through successive service chiefs and senior line officers whilst you have been CDF, and again the committee appreciates the willingness of your organisation and successive service chiefs to engage properly on a basis of trust with various members of this committee.

I do know that you want to make a few remarks later, so at this stage I will also draw to the attention of the general public and the wider community that four longstanding members and past chairs of this committee are also attending estimates for the last time. They are Senator Alan Ferguson from South Australia, Senator Steve Hutchins from New South Wales, Senator Michael Forshaw from New South Wales and Senator Russell Trood from Queensland. Each of those men has been the chairman of the references committee or the legislation committee or, in our respective times in opposition, has been the senior representative at deputy chair level on the legislation committee and references committee. It is fair to say that, in the 10 or 12 years from when Senator Ferguson first came to this committee as a member and latter chair and was followed by successive other senators, a constructive and bipartisan approach has developed between members of the government and members of the opposition. Neither side has been reluctant to pursue issues properly, thoroughly and to the nth degree, but it has always been done with a constructive and bipartisan approach. I cannot recall the last time that there was a minority or dissenting report in any of the matters this committee has attended to. I think that reflects the thoroughness and diligence with which past chairmen in particular have brought to the deliberations of the committee.

In that period of eight or 10 years, there have been a number of significant reports brought down by this committee under the chairmanship of Senator Ferguson, Senator Hutchins, Senator Forshaw or Senator Trood. They have dealt with major issues of public interest of the time, resulting in major and, one hopes, permanent change to various operations within Defence. I mention in passing matters relating to military justice, recruitment and retention within the ADF and procurement matters which are a constant feature of work within the DMO but a part of the wider Defence family.

Each of those chairmen have authored major reports of public note and public interest and each of those reports has been adopted by the government of the time. Almost without exception, dozens and dozens if not hundreds of recommendations have been accepted by the then government and the Defence organisation and then moved to implementation. The work of this committee under those successive chairs has been a major reform impetus for public policy within the Australian Defence Force and its work has been appreciated by both previous and current governments.

Those four men, Senator Ferguson, Senator Forshaw, Senator Hutchins and Senator Trood, have been active in this committee and, similarly, in other joint committees relating to matters of defence and they have all made a significant contribution to the work of the wider Defence Force. I thank them for their cooperation, assistance and hard work over many years.

**Senator TROOD:** I do not have anything to say to the members of the committee except, as far as I am concerned, thank you very much for your very generous remarks. However, I

want to say something on behalf of the opposition about the distinguished service of Air Chief Marshal Houston. I acknowledge and fully support the remarks of the chair in the distinguished service you, CDF, have provided to the Australian Defence Force over the last period of time. You have been a distinguished CDF at a time of great challenge for the Australian defence forces. It is true to say that throughout the period you have been CDF Australians have been deployed overseas defending the national interest and that is always an immense responsibility, a grievous responsibility and a great challenge. You have done that with great distinction. I acknowledge that period of service; it has been a very difficult period.

I also acknowledge and fully endorse the remarks of the chair with regard to the assistance that you have provided to this committee over a long time. You have always been willing and anxious to assist the committee in its work. You have been open with the committee, and that has been to the benefit of the Australian people. I particularly acknowledge the work you have done and the challenging work that still needs to be done with regard to military justice within the ADF. I know that has been a matter very close to your heart. I suspect you probably leave the post with that job incomplete. You have been of extraordinary assistance to the committee in trying to advance that particular agenda, which all members of this committee see as being very important. I simultaneously acknowledge the contribution of the work of the service chiefs. Although we do not know the fate of any of them and whether any of them will continue to be with us in the future in some way or other, it seems an opportune moment to acknowledge and perhaps recognise that in a month or so not many of them will be where they are now. It is an entirely appropriate occasion to recognise the contributions that they have made to managing the Australian Defence Forces in a very difficult period for each of their services. On behalf of the opposition, I acknowledge their significant contribution to Australia's national interest.

**CHAIR:** For the advice of members and the wider public who might be interested, there will be more formal remarks towards the close of business when Defence finishes estimates tomorrow night before we go on to the Department of Veterans' Affairs. Minister, do you or an officer wish to make an opening statement?

**Senator Feeney:** I will not, thank you, but as is our custom the Secretary of the Department of Defence, Dr Watt, will make an opening statement followed by the CDF.

**Dr Watt:** I would like to address a range of issues with particular focus on the 2011-12 Defence budget. First, in 2011-12 Defence will receive departmental appropriation funding of \$26.4 billion compared with \$24.9 billion in 2010-11. This funding includes new measures and adjustments, including supplementation of \$1.1 billion for the net additional cost of operations, savings measures of \$175 million to be returned to government and a net return of some \$185 million for other budget adjustments which includes a foreign exchange hand back of \$210 million. Further, the committee may also be aware that for 2010 Defence will reduce its call on the budget by \$1.6 billion and by \$2.7 billion over the 2011-12 to 2014-15 forward estimates period.

There are four savings measures that will deliver \$2.7 billion in savings from 2011-12 to 2014-15. These include increased efficiencies of \$1.2 billion, a temporary increase in the rate of the efficiency dividend of \$139 million—and this applies to all public service departments—cancellation of two additional C 130 aircraft which are not required as a result

of the purchase of an additional C 17 saving \$111 million and capital investment reprogramming to future years of \$1.3 billion.

I turn to increased efficiencies of \$1.2 billion. On 6 May 2011, the Minister for Defence and the Minister for Defence Materiel announced additional initiatives as follows: firstly, the reduction of 1,000 public service positions across the next three years through reforms to shared services and other efficiency measures. Secondly, there is a reduction in the cost of the investment needed to implement the strategic reform program by \$60 million or 2½ per cent of the total cost of the program. Thirdly, there is a reduction of \$250 million in net personal operating cost expenditure as a result of capital project slippage. Finally, there are reductions in general supplier expenses in the light of the 2010-11 underspend and the success of the SRP in reducing general expenditure. The externally led review of shared services announced by the minister will be completed by July 2011 and implemented from August 2011. The review, which is to be conducted by McKinsey and Co., will examine ways of improving the delivery of services across Defence and eliminating overlap and duplication. McKinsey commenced their work today.

In 2011, Defence underspent by an estimated \$1.6 billion of which \$1.1 billion related to slippage in the approved major capital investment program, or AMCIP as we call it, and the major capital facilities program. This underspend has been reprogrammed into future years. Some \$399 million of the projected AMCIP underspend of \$815 million reflects project milestones slipping by a month or so in relation to key projects. That is always difficult to forecast when project milestones slip between financial years. However, Defence had also anticipated, on the basis of recent industry performance, that we would be able to spend an increased capital allocation in 2010-11 and, late in 2009, we brought forward \$2.5 billion for the AMCIP over the period 2009-10 to 2015-16, including \$969 million into 2010-11. This has turned out to be only partly correct, as industry has struggled to live up to its commitments and to Defence's forecasts.

It is disappointing that Defence did not adequately forecast its expenditure for 2010-11 and that we underspent our allocation. We have therefore directed the Defence CFO, in consultation with relevant areas, to rigorously review Defence's budget estimation practices and processes, including, particularly, capital programs and running costs. First, there will be a bottom-up, project based assessment of the major capital spending programs, including the Defence capability plan, the AMCIP, the Major Capital Facilities Program and the ICT program. The review will consider the cash-flow risks of projects, both individually and in aggregate. It will also consider how we can better incorporate into our budget estimates the forecasting risks of delays and uncertainties that come from internal processes and limited industry capacity.

In relation to our operating expenditure, the CFO will also review key expenditures such as employee costs, suppliers' payments and net personnel and operating costs for new platforms. This review will baseline the underlying assumptions of each budget area to assess their robustness. In addition to these reviews, we have instituted a formal, quarterly, centralised budget review process. This will be based on year-to-date expenditure and forward commitments, and will inform ongoing adjustments to groups and service operating budgets. This will provide an earlier indication of possible expenditure variations and help us to

reallocate funds between priorities. In undertaking this review, we will also be mindful of the ability of industry to support us delivering on our plans.

Let me turn to the impact on the white paper. The committee will be aware that, in his recent *ASPI Defence budget brief*, Mark Thomson suggested that, while Force 2030 might still be achievable, Defence's plans over the next few years in moving forward to Force 2030 are unrealistic. In considering this concern, we need to be clear that the adjustments to Defence in this budget are \$2.7 billion or 2.6 per cent of the \$105.1 billion that Defence has been allocated over the forward estimates—this of course excludes future supplementation for operations beyond 2011-12—and only 0.85 per cent of the \$317 billion allocated over the decade.

Further, in 2009-10, 28 major Defence capability projects were approved, and we are tracking towards 26 capability projects to be approved in 2011. That is about the historic average and, while less than planned at the time of the Defence white paper, 2010-11 needs to be seen in a context of the election, the extended caretaker period and the complete change of Defence's ministers following the election. Nevertheless, as we have said before, the 2009 white paper is an ambitious plan for Defence out to 2030.

As I have also previously said, we have not been able to fully meet the expectations of the white paper framers in terms of initially progressing some capability projects. That does not, however, mean that the white paper either is unachievable or should be torn up. It is wrong to look at the 2009 Defence white paper—or any other white paper, for that matter—as simply a shopping list and one whose policy and program objectives can only be achieved if a rigid time line is met absolutely and in every respect. We have always managed and will always manage our forward capability, readiness, personnel, logistics, enabling and financial plans to match the policy objectives and financial parameters we are provided with by government. Our acquisitions since the white paper show we are continuing to build Force 2030 and that we can take action to meet emergent capability gaps. I do agree with Mr Thomson that Defence needs to look carefully at its implementation plans for Force 2030 for the forward estimates period and for the few years beyond—and we are doing that. As part of the strategic reform plan, a review and re-engineering of our major capability development and acquisition process will be undertaken. This covers the process from idea to delivery. An internal review of processes and time lines is nearing completion. It aims to install greater discipline to the project approval process. In addition, as outlined, we are reviewing our current and future budget estimating processes and forecasts. Finally, actions are already underway to start the next force structure review in 2013, as required by the 2009 white paper, in order to inform the next Defence white paper, which is due in 2014.

As I noted earlier, we have struggled to match our capability aspirations with our capacity to deliver. There are numerous reasons for this, but broadly they fall into three categories. First, we need to identify problems in the development and acquisition of major capabilities earlier. As the minister recently announced, we are instigating a series of tiered measures focused on improving project management, minimising risk at project start and identifying problems early. These include the early indicators and warning system we are implementing, the expansion of the existing Gate review processes and the introduction of a quarterly accountability report to ministers, the secretary and the CDF. Second, Defence has expressed difficulty in attracting and retaining an appropriate number of skilled staff to progress our



projects. Partly for this reason, we have taken recent efforts to increase resources and improve skilling in the capability development group, which is also exempt from the additional reductions to the forecast APS workforce. Third, major Defence projects are technically complex, and some have taken more time than was originally anticipated in order to mitigate technical risks ahead of government consideration. This is a plus as well as a minus, because a rushed project often becomes a failing project.

Notwithstanding these challenges, Defence can seize opportunities to deliver rapid outcomes. Our acquisition of Largs Bay shows that we can develop a compelling business case for government and put an internationally-competitive bid together in the space of three months, including an extensive range of due-diligence inspections of the vessel. We remain on track to have Largs Bay arrive in Australia by the end of 2011. We have also achieved the rapid acquisition of an additional C-17, bringing forward an enhanced capability and saving \$111 million by removing the need for a project in later years.

I turn now to gifts, hospitality and sponsorship. We have recently initiated a review of Defence's gifts and hospitality policy in order to address any potential conflicts of interest and reputational issues that Defence might face. The revised policy was implemented on 1 May 2011, and that is being circulated for the information of the senators. This policy is more prescriptive than the previous one, increases transparency and raises the necessary level for approvals and decisions for such activity. The policy applies to all defence officials, including APS employees and members of the ADF of all ranks. Contractors and consultants acting in an official capacity on behalf of defence must also comply.

I now turn to the strategic reform program. As advised at the February additional estimates and as reported to government, Defence is on track to achieve the more than \$1 billion in cost reductions programmed for 2010-11. Contrary to some public discussion, including in the ASPI defence budget brief, SRP cost reductions are real. They represent a material reduction to Defence's cost of doing business. SRP cost reductions are based on the extensive work done by George Pappas and McKinsey during the defence budget audit in 2008. They are subject to sign off by the defence audit committees and to close scrutiny by the central agencies and the Defence Strategic Reform Advisory Board. Finally, they are agreed by government. It is true that Defence's budget has increased since commencement of SRP. This is due to the injection of funds required to accommodate increased activity resulting in the delivery of Force 2030, Howard government decisions that are still being implemented, the funding of additional SRP investments and the operations in the MYEO. Without the SRP cost reductions of \$20.6 billion over the decade, the Defence budget would have grown even faster. SRP means that Defence is producing expanded outcomes with a smaller budget than it otherwise would have required.

The government is counting on Defence's reinvestment in Force 2030 to SRP. If Defence fails to meet its commitment, there will be fewer funds available for investment in new capability. In the current fiscal environment it is highly unlikely that the government could or would meet any shortfall. Contrary to claims made in the ASPI budget briefing, reinvestment in SRP of cost reductions in Force 2030 is not a rhetorical claim; it is a necessity. Further, we are seeing the SRP really start to drive change in Defence. I am sure that Deputy Secretary Defence Strategic Reform, Mr Sargeant, will be happy to expand on that during the day. To date we have delivered our commitments but, as I have said previously, we are facing a

substantial ramp up in cost reductions and reinvestments over the next two years. We need our reform activity to meet that trajectory.

I want to talk about the APS workforce reductions. As indicated, there will be a reduction to planned growth of Defence's APS workforce, and a second phase of shared service reform and other efficiencies will help allow us to achieve Force 2030 despite a smaller than planned APS workforce. The second phase of reform will be done in a careful and considered manner. The design and implementation of this reform will help Defence achieve measured workforce reductions in corporate overhead functions. There is still a projected growth in the average number of APS staff from 2010-11 till 2013-14. This growth primarily allows the continuation of key strategic reform initiatives, particularly saving money through the civilianisation of military positions and the conversion of contractor positions to APS positions.

I want to turn to the allegations of inappropriate vetting practices. The minister commented publicly last week on the allegations of inappropriate vetting practices in the Defence Security Authority vetting centre in Brisbane. I do not propose to repeat what the minister has said. On advice from Defence, the matter is being referred to the Inspector General of Intelligence and Security. The IGIS is a statutory office and the legislation that IGIS works under provides for the protection of witnesses, which addresses one of the concerns of the former contractors who appeared on *Lateline*. We hope that now that protection is fully available the individuals will engage constructively with the IGIS inquiry. As part of that investigation an audit of relevant security clearances from that period will be done. This has already started and should indicate whether the integrity of the process has been compromised.

I, however, caution against jumping to worst-case conclusions. There are many parts in the security-vetting process and it is important to understand that the allegations relate to the initial data entry phase only. That is simply the start of a lengthy assessment process that includes a series of checks and rechecks. These need to be completed before a decision to grant or withhold a clearance is made. The IGIS inquiry will allow these to be properly tested. Separate to the investigation there are a number of management actions that Defence is currently implementing. These include reviewing the instructions that are provided to staff who are completing soft copies of the clearance packs and bringing forward the latest set of upgrades and improvements to the e-vetting pack that is currently in use.

Finally I want to turn to the Defence-ASC relationship. Submarine availability was disappointing during 2009 to 2010, particularly between July 2009 and December 2009. Defence is concerned about this and a reform program has been initiated to help address the causes. This included the establishment of the Australian Submarine Program Office in Adelaide by the then Minister for Defence Personnel, Materiel and Science in February 2010. Further, a new government ASC steering committee has been effective in progressing whole-of-government issues to resolution, resulting in a clear pathway to the in-service support contract signature by the fourth quarter of 2011.

DMO and the ASC have been working together to review maintenance practices and achieve greater efficiencies aligned to the Navy's continuous improvement efforts. Additionally, Defence, Finance and the ASC have agreed to conduct a benchmarking review to help establish best practice for the business of submarine sustainment, including the best commercial framework for submarine sustainment, performance targets based on best practice

efficiency and effectiveness metrics and the subsequent priorities for ASC and Defence reform. The review will commence in mid-2011 and take approximately six months. Once the benchmarking recommendations are received the steering committee will make further recommendations to the Minister for Finance and Deregulation, the Minister for Defence and the Minister for Defence Materiel for joint acknowledgement and decision.

**CHAIR:** Thank you. CDF do you have an opening statement?

**Air Chief Marshal Houston:** Yes, and good morning. I start by thanking both you and Senator Trood for your very generous words. I will respond in full at about 17:55 tomorrow, at the conclusion of the hearing. I guess what I say depends on what happens between now and then.

**CHAIR:** We have a date for 17:55 tomorrow.

**Air Chief Marshal Houston:** I begin by giving you an update on Afghanistan, with broad ISAF progress, before commenting on ADF progress, the way ahead for the coalition and the upcoming commencement of the transition process. At the outset, on behalf of the entire Australian Defence Force, I offer my condolences to the wife, Mrs Elvi Wood, and the parents of Sergeant Brett Wood who was killed by an improvised explosive device in Afghanistan last week. Brett was a magnificent commando, and a very experienced and highly-respected member of 2nd Commando Regiment. This afternoon a ramp ceremony will mark the end of the final journey home from battle for this courageous warrior. We will honour Sergeant Brett Wood and recognise his outstanding service to our nation. I also thank the committee for excusing Chief of Army and me from this hearing this afternoon to allow us to attend the ramp ceremony for Sergeant Wood. The VCDF and the Deputy Chief of Army will be our respective representatives during the time we are absent.

Turning to ISAF progress in Afghanistan, I can report to the committee that ISAF and the Afghan National Security Forces have had a good winter campaign. Due to sustained offensive operations, the Taliban's momentum has been halted and its access to support infrastructure, such as safe houses, caches, medical support and IED-making facilities has been significantly impeded. However, we still face a very tough fighting season this year. Additionally, over the past year there has been a significant surge in the number of Afghan National Security Forces. Last year, the Afghan National Security Forces grew by 79,000 to a total of 270,000. ISAF remains ahead of schedule for its next target of 305,600 by October this year. ISAF is now widening its focus from growing the size of the Afghan National Army to improving the quality and the specialist capabilities of the Afghan forces. A key example is the combined arms artillery school in Kabul, which I visited in April, where Australia is leading the training effort.

Australia continues to make a substantial and enduring contribution to Afghanistan. I am pleased to report that my United States, United Kingdom and NATO counterparts remain very complimentary of Australia's commitment to the coalition effort in Afghanistan. We make a much appreciated contribution in Oruzgan as well as the broader ISAF campaign across the south. We have made solid progress in training the Afghan National Army 4th Brigade to a level where it will be able to take over the security lead in Oruzgan—our primary military focus. The 4th Brigade is increasingly capable of conducting operations and is now maintaining patrol bases without Australian support. With our support the Australian Army has continued to build new patrol bases to consolidate gains and its presence in Oruzgan, from

the Tarin Kowt bowl to the Mirabad Valley in the east, Khas Uruzgan in the north and Deh Rahwod in the west and north through the Balochi Valley in Chicora. The work of our special forces complements our Mentoring Task Force. Special Forces operations maintain pressure on Taliban leaders and facilitators in and around Oruzgan, thereby enhancing the security environment in which the MTF and its ANA colleagues operate.

As for the way ahead more broadly, the ISAF military leadership remains cautiously optimistic about prospects in Afghanistan. The 2011 fighting season is underway and we expect the insurgency will seek to regain the lost initiative. We can therefore expect violence levels to increase as we pressure the insurgency and restrict its activity. We can also anticipate high-profile attacks such as the one that occurred over the weekend with another police chief assassinated by a suicide bomb. The Taliban will seek to gain quick propaganda victories aimed at undermining Afghan and international commitment. But the insurgents face a more imposing battlefield than they have faced before, with greater numbers of Afghan and coalition forces in the field and their safe havens in Afghanistan continually under pressure. The 2011 summer fighting season will be tough but ISAF and its Afghan partners are well postured to implement its campaign plan.

The committee would be aware that the first tranche of provinces is scheduled to begin the transition process in July this year. This process sees our Afghan partners progressively take the lead security role across Afghanistan, with full transition set to occur by the end of 2014. In Oruzgan we assess the conditions will be right to transition lead security responsibility to the ANSF in the 2012-2014 time frame and our mentoring efforts with the 4th Brigade are building the capacity and capability to achieve this.

Important progress has been made, but I stress that this progress remains fragile and reversible. The minister has made it clear that he does not expect any significant draw-down of Australia's contribution prior to transition occurring, although resources may be reprioritised or reinvested as required. Afghan and ISAF forces have not let up over the winter, continuing to take the fight to the Taliban, and we expect the momentum gained from these successful operations will be maintained.

Since we last convened in February, Defence initiated Operation Pacific Assist on 11 March in response to the magnitude 9 earthquake in the vicinity of Honshu, Japan and the resulting tsunami. Three C17 Globemasters and 38 ADF men and women were deployed over the course of the 19-day operation. The ADF provided strategic airlift into Japan of an Australian civilian urban search and rescue team, two search dogs, eight pallets of equipment and a water cannon system—I might add a huge water cannon system. And, significantly, once the initial airlifts were completed a C17 remained in country transporting Japanese self-defence force personnel, humanitarian provisions and disaster response equipment around Japan. Significantly, along with the United States, we were one of the only two foreign nations to provide military airlift assistance internally within Japan in direct support to the crisis response. The performance of our people on this short-notice task was magnificent and I know their responsiveness, professionalism and adaptability were widely appreciated. In fact, both the Japanese Ambassador to Australia and my counterpart in the Japan Ground Self Defence Force, General Oriki, have expressed to me their gratitude for the contribution made by Australia during the immediate aftermath of the disaster.

I will now update the committee on progress with the decision of the Director of Military Prosecutions to prosecute three members of the ADF in relation to a civilian casualty incident on 12 February 2009. Since I last updated the committee, the Registrar of Military Justice convened a general court martial to hear the charges against two of the soldiers. Two pre-trial directions hearings were held in Sydney during the weeks of 28 March and 16 May. At the conclusion of these hearings, the Chief Judge Advocate issued a ruling upholding the soldiers' applications that the charges should be dismissed or permanently stayed. The applications were upheld on the grounds that the charges did not disclose a service offence and were not otherwise wrong at law. The judge advocate adjourned the pre-trial directions hearings to allow the DMP time to consider his ruling and action that may be open to her. The judge advocate indicated that he would refer the charges back to the DMP unless the DMP initiates further action, which could include seeking a review of the judge advocate's rulings in a superior civilian court, the reframing of the charges or the preferring of new charges. However, if the DMP does not seek to initiate further action, the current trial proceedings would be dissolved. There will be no further developments until the DMP has reviewed the proceedings and provided advice to the judge advocate.

Today I must stress that the ruling of the judge advocate regarding the charges against the two soldiers has no effect on the general court martial to hear the charges against the third member. The status of this case is as follows: the Registrar of Military Justice is currently working through his case management process; formal court martial proceedings will follow and will include the appointment of the judge advocate, the president and members of the court martial panel, and the date and location of the trial. Senators, as I have indicated to you previously, my highest priorities with this matter are: firstly, to ensure that the members receive a fair trial; secondly, to ensure that the accused members are in no doubt about the application of the presumption of innocence to them, and that they receive all the necessary support that they require; and thirdly, to ensure that the integrity, independence and process of the military justice system are preserved. I believe each of these three priorities has been met thus far and they will continue to be our focus as matters progress.

I want to make the committee aware of a significant transition that is about to occur with Army's airborne insertion capability. For those not familiar with this capability, the primary task of this unit is to go into an area first and either seize or assist in seizing military access points for follow-on forces. Through various initiatives, such as the Hardened and Networked Army, Enhanced Land Force and Adaptive Army, Army has been looking at how this capability can be employed more efficiently and flexibly. A key judgment of all reviews was that this can best be achieved by transferring the capability from the 3rd Battalion, the Royal Australian Regiment, to Special Operations Command. Earlier this month this decision was endorsed by the Chiefs of Service Committee, and Army is now developing a detailed transition plan for special operations command to undertake a phased assumption of the airborne insertion capability, probably over the course of 2012. Members of the committee will be interested to know that, although this was not a decision driven by budget constraints, it will generate savings estimated at approximately \$600,000 in the first year followed by \$1.45 million per annum thereafter. However, most importantly, this transition will provide the ADF with greater flexibility in terms of rotations for current operations, force availability for contingencies and the development of the future ADF joint amphibious capability.

Senators, as it was a topic of great interest to you at the last estimates hearing, I will highlight the progress that has been made in regard to the HMAS *Success* commission of inquiry since February. The implementation team headed by Rear Admiral du Toit has over recent weeks completed a very extensive engagement program throughout the Navy, conducting feedback sessions at the tactical leadership level—predominantly with petty officers, chief petty officers, lieutenants and lieutenant commanders. More than 1,000 people, which is about 25 per cent of the total number of all Navy's people at these rank levels, have participated in feedback sessions to discuss Mr Gyles's report and Navy's implementation of the recommendations. Importantly, the feedback provided by these people is significantly influencing how we can best approach the implementation of the recommendations as well as shaping how we can best achieve the outcomes we seek.

A striking feature of the feedback received from these sessions has been the consistently very high level of traction the New Generation Navy cultural reform program is achieving among Navy people at the working leadership level. There is widespread and strong support for what New Generation Navy is achieving and the vast majority of Navy's people are clearly and actively applying these values and signature behaviours on a day-to-day basis. I stress the support of New Generation Navy this morning because it provides Navy with a strong foundation for the best possible results from the implementation of Mr Gyles's recommendations. We remain unequivocally committed to eradicating the unacceptable and inappropriate behaviours identified in Mr Gyles's report. Rear Admiral du Toit is present today and looks forward to the opportunity to provide more detail on this matter should you wish to raise the issue during proceedings.

Mr Gyles has advised me that he intends to later this week deliver part 2 of his report, dealing with the subsequent management of the allegations and the personnel involved post the Asian deployment, which was the focus of part 1 of his report. This will leave the third part of the report, which is expected to be provided in the second half of 2011. That part will include consideration of how we conduct administrative inquiries within the Australian Defence Force and possible improvements to our inquiry and related processes as an outcome of what general lessons can be learnt from the HMAS *Success* commission. I understand that Senator Bishop wrote recently to Mr Gyles, drawing his attention to concerns about the effectiveness of reforms to Australia's military justice system, and that Mr Gyles will include consideration of the matters raised by the senator's letter within part 3 of his report.

Finally, I want to touch briefly on the suite of reviews that the minister announced into aspects of the culture of Defence and the ADF. I believe we have made considerable progress in recent years in improving ADF culture, but we cannot afford to lose focus as we seek to constantly improve. The reviews will address a number of areas, including the treatment of women and the use of alcohol. The review of the use and misuse of social media will be a significant contribution. We need to better understand social media and also develop policies and other responses to assist our people's appreciation of the significant issues involved in the use of social media. The separate, independent review of allegations of sexual and other forms of abuse that have emerged since the Skype incident at the Australian Defence Force Academy is particularly important. We have a duty to respond to any such allegations; and, if we have not got some cases right, we need to know that and act to make them right.

So I strongly support these reviews and I have committed the ADF to cooperating closely to ensure that the review teams get the access they need to produce the best result. I have also sent a clear message to all ranks that inappropriate and unlawful behaviour towards anyone, including each other, has no place in the ADF. We need to live our values and make the defence workplace safe and equitable for everybody.

That said, there is no question in my mind that, despite recent events and the adverse public commentary that followed, the ADF is a first-class organisation. Our achievements on operations around the world and here in Australia speak for themselves, and the overwhelming majority of sailors, soldiers, airmen and airwomen consistently do the right thing. I believe our workforce of approximately 79,000—that is both regular and reserve—is committed to stamping out this inappropriate and unacceptable behaviour that taints us all.

These reviews will demonstrate to the Australian community that we take our values and our reputation very seriously. We will take an open, honest look at what the review teams have to say and we will work hard to incorporate their recommendations into a holistic response to the issues that they raise. I believe we have made some good progress in improving our culture in recent years, but this is not something that you can draw a line under and say, 'There, that's done.' We need to keep working at it to get to world's best practice and stay there. The review teams are very experienced, very capable people who bring great depth and breadth of expertise to this work. I am deeply appreciative of the fact that they have dedicated their time, effort and expertise to assisting us. With their help, we look forward to further strengthening the ADF's reputation as a principled, fair-minded organisation. Thank you.

**CHAIR:** Thank you, CDF, and thank you, Secretary Watt, for those opening statements. We now turn to questions arising from those opening statements within the portfolio overview and budget summary program. Senator Trood.

**Senator TROOD:** Secretary and CDF, you have both raised matters of great importance to the portfolio in your opening statements, and we will get to those in a moment. But I just wanted to begin by drawing your attention, Secretary, to the portfolio's absolutely woeful performance in relation to the provision of answers to questions on notice from the last estimates. The date by which the answers were due was 21 April. Not a single response, not a single answer, to any question was provided until last Friday; and, as we sit here this morning, there remain nine answers to questions which have yet to be provided. The answers to six questions were provided following the close of business last Friday. This, in my view, is a gross discourtesy to this committee, and I suspect—and I believe—that it is an indication of a high degree of incompetence within the portfolio. Can you give me an explanation, please.

**Senator Feeney:** Senator Trood—

**Senator TROOD:** Secretary, I think this is in your province, is it not?

**Senator Feeney:** I will make some opening remarks, Senator Trood, and the secretary can also address himself to your question. Firstly, I think it is appropriate to say that, by our reckoning, there are some 10 outstanding questions and the remaining answers were provided on Thursday or Friday of last week. I think it is plain that your unhappiness is justified, that we have failed in our responsibility to get those answers to this committee on time, and frankly I think we have no choice other than to take that on the chin. On behalf of the

ministerial team I can assure you that we will make every endeavour to make sure that this circumstance is not repeated for the next estimates.

**Senator TROOD:** Minister, it is no good you taking it on the chin. I think we members of the committee want answers to the nine questions that remain at this moment unanswered.

**Dr Watt:** They have been tabled now, Senator.

**Senator TROOD:** They have been tabled this morning, have they?

**Dr Watt:** They are being tabled as we speak or have been tabled.

**Senator TROOD:** I am glad to hear that, but I still have not had an explanation as to why it took so long. There were only 75 questions.

**Dr Watt:** No, Senator. That is where we have got to start on a slightly different tack. Most of those questions were multiple questions. There were in fact 317 questions—that is a few more than 75—and many of the answers are well over a page. It is a substantial body of work. Arguably we should have answered them more quickly and we will endeavour to do better. But there were 317, not 75.

**Senator TROOD:** Secretary, you are not without resources to respond to questions.

**Dr Watt:** No, Senator, I am not without resources.

**Senator TROOD:** Whether we gave you 75 questions or 575 questions, you are one of the largest departments in the Commonwealth. You are not without the resources to provide responses to these questions. Why has it taken so long for these answers to be provided?

**Dr Watt:** You are quite right, Senator; we are not without resources. However, we also do more than most other parts of the Commonwealth, but we will just leave that aside—

**Senator TROOD:** And you are appropriately resourced for that purpose.

**Dr Watt:** That is an interesting point, Senator, and you and I might differ on that. As you said, we had 317 questions. I am pleased it was not 500—thank goodness. That would have made life even harder. We have taken longer than we should have; we are aware of that. We did put additional resources into answering questions this time; nevertheless we have been unable to get them tabled any earlier than Thursday and Friday of last week. As the parliamentary secretary said, the ministerial team, the CDF and I will have a look at what we can do to get them in faster, and I am sure we will do that next time.

**Senator TROOD:** When were the answers sent from the department to the minister's office?

**Dr Watt:** I would have to check that, Senator.

**Senator TROOD:** You should take that on notice and please do not take it on notice for the next period of estimates. Please take it on notice and provide me with an answer by the close of business today—and earlier if possible.

**Dr Watt:** I will see what I can do, Senator.

**Senator TROOD:** In relation to all of these questions. Minister, can you give me an answer to that question?

**Senator Feeney:** No, unfortunately I am not able to.

**Senator TROOD:** Do you know when the answers were received by the minister's office?



**Senator Feeney:** Isn't that the same question?

**Senator TROOD:** Yes. None of the answers went to your office, did they?

**Senator Feeney:** No, they did not.

**Senator TROOD:** That is fortunate. I would like an answer to that question.

**Dr Watt:** We will provide you with an answer, Senator.

**Senator TROOD:** Absolutely as soon as possible. As I say, it is a gross discourtesy to the committee, it is an absolutely woeful performance, and frankly it is a disgrace that you are in this position.

**Dr Watt:** I appreciate your concern, Senator.

**Senator Feeney:** Senator, your point is well made and acknowledged.

**Senator JOHNSTON:** Secretary, if I could follow on with respect to that broad theme. Dr Thomson, as you indicated in our very broad opening statement—and I thank you for that—says in his executive summary:

... the steps taken in this year's budget are symptoms of serious problems with Defence's financial management and capability development planning.

The problem I have with that is that for as long as I have been doing this there have been those problems. Your background is one of finance, and one of the things we discussed when you were appointed as secretary was that there would be a fabulous new focus on financial management in Defence. For Dr Thomson to say Defence's financial management and capability development planning has serious problems, how have we come to this? Do you accept that or not?

**Dr Watt:** No, I do not accept that. I do accept that we have some issues we have to address on both the financial management and accountability management arrangements. I would like the CFO to join me because I think he can give you some relevant material. If we take financial management first. Firstly, there has been a substantial underspend this year. We do not resile from that. It does reflect a number of factors. The first is, as you know, the world slowed down in government terms for a period of time this financial year, and a rather unusually long period of time. That did not help our case in relation to spending our allocation. That is not the only problem we had.

Secondly, particularly in relation to the approved major capital program, we found we overestimated the ability of defence industry generally to deliver for us. That was unfortunate. We need to look at our financial estimates processes. It was particularly unfortunate as we had rearranged our priorities and we brought a large amount of money forward to cover what we thought was additional expenditure defence industry could meet. That did not happen. That is despite, incidentally, a good performance by defence industry in 2009-10, when bringing money forward paid off. This year it did not. We are having a look at the reasons for that. Some of it, as I said in my opening statement, is that we had some 399 million that has probably fallen out of May-June payment dates because of delays on milestones into July-August. You lose a payment by a month at the end of the financial year, it makes quite a difference to your accounts but it does not make that much difference to the delivery of capability. We do have to do better, that is why Mr Prior is conducting a wide-ranging review.

Last year, in 2009-10, a point to make: the Defence underspend was relatively small. Mr Prior can give you those numbers—certainly relatively small by past standards.

**Senator JOHNSTON:** I think it was 700 million.

**Dr Watt:** And that is not large by the standards of past Defence underspends. We do have a tendency to underspend, partly because people take their budget as caps not targets.

**Senator JOHNSTON:** We will come to capability development and what goes on and how the first and second past process has virtually stalled—

**Dr Watt:** Again, Senator, you and I might disagree on that. It has slowed.

**Senator JOHNSTON:** Yes, but why would Dr Thomson say Defence's financial management are having serious problems?

**Dr Watt:** I do not think we are. We had an underspend this year, a large underspend. That was extremely regrettable. We will be working very hard to make sure we do not have a large underspend next year. We have our problems; Dr Thomson's choice of words are Dr Thomson's, not mine.

**Senator JOHNSTON:** You know that the committee is not going to sit here and read this very excellent report from ASPI, which is funded by Defence and of which you have had a preliminary copy, and just let this wash under the bridge.

**Dr Watt:** I am not suggesting you should.

**Senator JOHNSTON:** Now we spend an awful lot of money trying to plan budget by budget with the defence capability plan, with a legion of people working on where we are going to be next year, the year after, and indeed out to 2030. How is it you get it so wrong?

**Dr Watt:** As I said, firstly, this was an unusual year. Secondly—

**Senator JOHNSTON:** Why is it an unusual year?

**Dr Watt:** We had a significant period of time this year when we had an election, an extended caretaker period and new ministers.

**Senator JOHNSTON:** But that is predictable, surely?

**Dr Watt:** No, it is not.

**Senator JOHNSTON:** So election cycles completely muck up your planning is what you are saying?

**Dr Watt:** They can; they affect every agency's and department's planning.

**Senator JOHNSTON:** How?

**Dr Watt:** Ministerial approval for matters is hard to get during an election.

**Senator JOHNSTON:** You had two ministers working on it in caretaker mode—myself and Senator Faulkner.

**Dr Watt:** Yes, Senator.

**Senator JOHNSTON:** How does it muck your program up, as you are trying to have us believe?

**Dr Watt:** The answer is this: you do not have the ability to get throughput and cabinet consideration that you would get during a normal period of time.

**Senator JOHNSTON:** Can you tell me how many approaches to cabinet you have made in the period 2009-10 and 2010-11? How many have been deferred? How many starts you wanted but did not get? Tell us all about those, if you will?

**Dr Watt:** I can give you those in due course, but what I cannot tell you—

**Senator JOHNSTON:** Are you going to take those on notice?

**Dr Watt:** I will take those on notice, but what I cannot tell you is the hypothetical—how many we would have had forward if we had had normal government through the second half of last year. That is the much harder question to answer. What you are saying is, 'You did not go to cabinet and therefore there was no problem,' but what I am saying is that there was no cabinet to go to.

**Senator JOHNSTON:** No; I am talking about how many times you went to cabinet and did not get a start or were told there was no room for you in cabinet or the NSC for an approval.

**Dr Watt:** And, again, Senator, I would be happy to give you that information, but the point I am making is that it is not the right question.

**Senator JOHNSTON:** What is the right question?

**Dr Watt:** The right question, Senator, is: were there occasions when we did not progress things because of the run-up to the caretaker period?

**Senator JOHNSTON:** What were those projects?

**Dr Watt:** We will give you that information, Senator.

**Senator JOHNSTON:** So, off the top of your head, you do not know the projects but you are telling us to take this on faith and you are going to give us the answers on notice?

**Dr Watt:** We will take that on notice; that is correct.

**Senator FAULKNER:** I intend to follow this through a bit later, Dr Watt, but it is true to say, of course, that the caretaker period was—due to the circumstances in relation to the close election result—I think it is fair to say, much longer than anyone could possibly have anticipated. I intend to chase up one or two of these matters a little later in the hearing, but you might have for us the dates of the caretaker period. If you do not have them, I want to follow through at a later stage one of the issues that was raised during that period. But I think we can at least say that the caretaker period was not only the period from the issue writs through the campaign until what ordinarily occurs a week or so later, the swearing in of a ministry, but of course there was also quite a long period of time, the extended caretaker period, while negotiations were undertaken in relation to the formation of a government. I think that is a fair statement to make, don't you?

**Dr Watt:** I think that is a fair statement to make. We will get those dates for you.

**Senator FAULKNER:** This has some relevance, I suppose, to what Senator Johnston is asking, but I also want to raise other issues which are to some extent dependent on the caretaker period. Anyway, that is something that can be done over the break. It is not hard to find.

**Senator JOHNSTON:** Secretary, what is the amount of the significant underspend?

**Dr Watt:** The estimated underspend in 2010-11 is \$1.6 billion.

**Senator JOHNSTON:** How many weeks were tied up in the election campaign? Was it seven or nine?

**Dr Watt:** I think we would say of the order of eight weeks.

**Senator JOHNSTON:** So eight weeks costs you—

**Dr Watt:** I did not say that it cost me the whole lot; I said it was a contributing factor.

**Senator JOHNSTON:** What other contributing factors were there?

**Dr Watt:** Again, we have talked about the fact that the Australian industry did not deliver as fast as we had forecast in relation to a major capital improvements program.

**Senator JOHNSTON:** On which one?

**Dr Watt:** I can get you that information.

**Senator JOHNSTON:** This is quite sizeable. So none of these projects spring to mind as being the ones that the industry is responsible for?

**Dr Watt:** We can certainly give you that information; in fact, I am sure Dr Gumley can come forward and give you that information now, if you would like it.

**Senator JOHNSTON:** I would like to know which projects we are talking about. So we have got the election and we have got—

**Dr Watt:** We can help you, Senator. Dr Gumley will be in shortly.

**Senator JOHNSTON:** Right.

**Dr Watt:** The slippage relates to slippage which is primarily due to the—

**Senator JOHNSTON:** It is major capital programs.

**Dr Watt:** Yes. The major projects slippage includes a multirail tanker and transport aircraft, multirail helicopters, the armed reconnaissance helicopter project, the high-capacity communications satellite project.

**Senator JOHNSTON:** Why has that slipped?

**Dr Watt:** I will get you that information. I do not have the information sitting here, but I will get it for you. The airborne early warning and control aircraft project—

**Senator JOHNSTON:** That was virtually completed, wasn't it?

**Dr Watt:** That does not mean all the payments were made. The project, as you say, is close to completion.

**Senator JOHNSTON:** But the payments were not made.

**Dr Watt:** There are always payments around the completion period. Finally, there is the air warfare destroyer, where a payment slipped. Then there is minor slippage across—

**Senator JOHNSTON:** When did that payment slip?

**Dr Watt:** I would have to find you that information.

**Senator JOHNSTON:** Yes, I would like to know that, please.

**Dr Watt:** Then we have minor slippage across a further 25 projects. So that is what we are talking about.

**Senator JOHNSTON:** Can you take on notice the previous year's slippage—

**Dr Watt:** I can do that.

**Senator JOHNSTON:** so we can work out whether there was a slippage of extraordinary proportions, as you would have us believe.

**Dr Watt:** I think we can do that. We might be able to give you that. Mr Prior will check for you.

**Senator JOHNSTON:** Good. That is the second of the categories that you say have caused the underspend. What is the third?

**Dr Watt:** We also had a bad year weather-wise in terms of our major facilities projects. This is the facilities projects, not the capital projects. Again, Mr Lewis can speak to that any time you like.

**Senator JOHNSTON:** What do you mean by bad weather?

**Dr Watt:** We tended to have lots of floods.

**Senator JOHNSTON:** So the Queensland floods and the cyclone in North Queensland caused you a problem.

**Dr Watt:** They did in some of our projects. We also found it very hard, again—because the construction industry was disrupted during much of those periods of time—to get industry to do some of the things we would have liked them to do. Mr Prior, do you want to add a few things?

**Mr Prior:** As the secretary said, the three main areas of impact were, as we have stated, the various weather interruptions around the country, which impacted on the major capital facilities; the projects we have been through; and the caretaker period through the year. Part of it also relates to general operating costs. We indicated on budget night that there was some slippage in some of the operations-related capital—our force protection capital that we were planning to spend. There were some savings in our strategic reform costs; we did not need as much for our strategic reform process. There was also some GST revenue—some \$76 million in revenue that was expected to be earned in the year but that came the following year.

**Senator JOHNSTON:** Are you telling me that none of these things were anticipated—the election was not anticipated, the weather situation for facilities was not anticipated and slippage in projects was not anticipated at all?

**Dr Watt:** No, that is not correct. For example, we do anticipate project slippage; it is one of the things we build into our forecasts. It is the extent of a slippage.

**Dr Gumley:** In about January-February of each year, we prepare the estimates for the following financial year, and these get published in the May PBS, as you would be well aware. We estimate what we call a gross plan, which is adding up the 200 or so projects, and each manager gives their best idea or estimate, planning off detailed schedules, of how much money they expect. They plan for success, because they have to have enough money appropriated to be able to do the actual work that is required, so they get their schedule and make their risk adjustments. Then they plan that they are going to deliver to schedule. If they do not deliver to schedule then obviously there is going to be an underspend. Because this is a persistent pattern that goes on for decades—it applies to every country in the Western world that does military equipment—we then apply what we call a management margin to the top of those gross plans to estimate a slippage across everything that goes on. Slippage in a project is not an even—

**Senator JOHNSTON:** How big is the margin?

**Dr Gumley:** The typical margin we are using is 15 per cent.

**Senator JOHNSTON:** So for every project we plan to slip by 15 per cent every year.

**Dr Gumley:** No, on average across the portfolio of projects we assume that 15 per cent of the cash will not get away in that year.

**Senator JOHNSTON:** Right.

**Dr Gumley:** In some years figures have come out with 22 per cent and in other years 20 per cent. You would recall that we had two years in a row, 2008-09 and 2009-10, when we brought the acquisition program pretty much in on budget. We thought there was a persistent improvement in industry delivery and so for the year ahead we said we were going to go for a slippage of 15 per cent. As it turned out, that was too optimistic an assumption and delays entered some of the major projects.

**Senator JOHNSTON:** What did we end up with?

**Dr Gumley:** Because we have not finished the year yet—

**Senator JOHNSTON:** What are you anticipating?

**Dr Gumley:** There is a very big swing event that is going to happen this week or next week, which is the two tanker aircraft. That is about a \$250 million swing a one way or the other. If we assume that the tankers do not get accepted in June, which is what the secretary referred to earlier—and you have a slip across the financial year 30 June boundary—it looks like we are going to end up about the 20 per cent mark.

If you look at the cause, the attribution of it, around 45 per cent is domestic industry; about 25 to 30 per cent is international industry, for example, the tankers and Wedgetail; and about 20 per cent of it is our problem in that we have not got a tender away on time and we have had to go back to the market for more tender clarifications and we have not been able to form a contract in time. Contracts take two parties to sign and so when there is a big delay in forming a contract we attribute the blame fifty-fifty between government and companies, because either side can slow down contract formation. Then there is a few per cent of what I call 'goodness', which is cost savings where the project managers have genuinely done a great job in negotiating down costs. That is a form of goodness and they are the ones that we would be pleased to report more of to this committee.

**Senator JOHNSTON:** Have you read Mr Thomson's assessment of Defence financial management?

**Dr Watt:** I do not think it is appropriate for Dr Gumley to comment on Defence financial management, Senator.

**Senator JOHNSTON:** Have you read *The cost of defence: ASPI defence budget brief 2010-2011*?

**Dr Watt:** Yes, I have.

**Senator JOHNSTON:** Mr Prior, have you read it?

**Mr Prior:** Yes, I have.

**Senator JOHNSTON:** And obviously, Secretary, you have read it.

**Dr Watt:** I have read it.

**Senator JOHNSTON:** When did you each read that?

**Dr Gumley:** I read a draft of it about a week before Dr Thomson published it.

**Senator JOHNSTON:** Did you have any input into it?

**Dr Gumley:** Yes, I corrected a few numbers that Dr Thomson had. As you are aware, Dr Thomson has his own editorial style. We had no part of that—

**Senator JOHNSTON:** Sure.

**Dr Gumley:** but where there was a number or a piece of fact that was incorrect, we had an opportunity to correct it, and we thank ASPI for giving us that opportunity.

**Senator JOHNSTON:** Mr Prior, did you have any input into it?

**Mr Prior:** Similar to Dr Gumley, I reviewed a draft and any factual elements would have been passed through.

**Senator JOHNSTON:** Do you remember which factual elements you—

**Mr Prior:** If any. I do not recall any factual elements being passed through.

**Senator JOHNSTON:** Secretary, you obviously would have got it a week before.

**Dr Watt:** Actually, Senator, I had a few other things to do. I glanced at it before it was released, but it was only a glance. I did look at it over the weekend and I did read Mr Thomson's comments on and around release, and I saw him on telly.

We think that the ASPI process is on the whole a good one. We do not have anything to hide by way of our financial matters. I do disagree with some of Mr Thomson's broader judgments but I do not disagree that it is useful to have the Defence budget exposed to external scrutiny.

**Senator JOHNSTON:** How would you categorise this report?

**Dr Watt:** It is a useful report, parts of which I disagree with, as you know.

**Senator JOHNSTON:** You would not say damning?

**Dr Watt:** I would not say damning.

**Senator JOHNSTON:** You obviously do not accept any of the criticisms on that basis.

**Dr Watt:** I have acknowledged that we have some issues that we have to deal with on the financial side.

**Senator JOHNSTON:** Which bits of his report, in terms of criticism, do you accept?

**Dr Watt:** I accept that we will underspend in 2010-11 to an extent that is much more than comfortable, much more than is desirable, and that is highly regretted. But I do not agree with, let us say, some of the more editorial style of comments.

**Senator JOHNSTON:** Let us go to those, because I think we need to have your input into these given that this is a report that is useful. It is a report of considerable standing in the defence community and—

**Dr Watt:** It is a report of interest to Defence; we would say that.

**Senator JOHNSTON:** It is by someone who probably has the best handle on Defence accounting and budgeting management in Australia.

**Dr Watt:** I disagree with that, Senator; I think the CFO has the best handle on Defence budgeting management inside Australia—and a number of his staff.

**Senator JOHNSTON:** Well, the track record might suggest otherwise, may I say.

**Dr Watt:** Senator, you have an example of one year.

**Senator JOHNSTON:** Can I quote from this report—

**CHAIR:** Senator Johnston, you might quote from that report at 10.45.

**Senator JOHNSTON:** Sure.

**CHAIR:** The committee is suspended.

**Proceedings suspended from 10:30 to 10:47**

**CHAIR:** The committee will come to order. There are two housekeeping matters. Firstly, when we resume work after lunch, there will be an alteration to the agenda: after lunch we will move straight to the Defence Materiel Organisation and, Dr Gumley, you and Senator Johnston might have a private talk so you are aware of what—

**Senator JOHNSTON:** We have done so.

**CHAIR:** Okay then. So that is now public information. Secondly, CDF, in your opening statement, you referred to the work of Mr Giles, and therein you referred to three separate reports.

**Air Chief Marshal Houston:** Yes.

**CHAIR:** It was our understanding that there was part 1 and part 2; where does part 3 come from?

**Air Chief Marshal Houston:** I think, in the interests of expediting the management of the senior sailors issue, he has decided that it is important that that basically be reported upon.

**CHAIR:** Oh; right.

**Air Chief Marshal Houston:** And, secondly, he sees the work on the Defence inquiry as taking quite a while. So essentially it was split into three as opposed to two parts, and I think that is a very good decision.

**CHAIR:** So part 3 is going to concentrate on Defence inquiries?

**Air Chief Marshal Houston:** That is right.

**CHAIR:** Does Mr Giles think that might take until the end of the year?

**Air Chief Marshal Houston:** Well, into the second half of the year, certainly. He has done some work, but clearly the sharp focus has been on the management of the senior sailors issue. That is, I think, of concern to all of us, and the quicker that is dealt with the better.

**CHAIR:** I understand now.

**Air Chief Marshal Houston:** I really look forward to his report coming out—hopefully, later this week.

**CHAIR:** Thank you, CDF. We will now return to questions: Senator Johnston.

**Dr Watt:** Before you do—

**CHAIR:** Yes, Dr Watt?

**Dr Watt:** Mr Prior has a few numbers that might help Senator Johnston.



**Mr Prior:** Senator Johnston, you asked about the underspend in 2009-10. Overall, the underspend from the department was \$131 million in cash, and you can see that by comparing the number in the PBS published just before the end of the financial year with the number published at the end of the year. That is the best place to see where the underspend occurs. From the original PBS for that year, the department handed back \$1.36 billion in foreign exchange and no win, no loss. Some commentators often see the reduction in the appropriation and think it is an underspend from operating activities, but it is a combination of the no win, no loss operations and foreign exchange. Just for interest's sake, back in the previous year the cash situation was a slight overspend of \$25 million—again, from that PBS immediately before the end of the right to the end of the year.

**Senator JOHNSTON:** Okay.

**Mr Prior:** Additionally, and Dr Gumley would be able confirm this, the approved major capital program in the previous year was spent almost to the dollar; there was no significant underspend in the previous year. This year, as Dr Watt said, is a year in which it did not turn out the way that was planned, unfortunately. But we do try very diligently to meet our budget targets.

**Dr Watt:** We will be completely reviewing our budget estimates forecasts.

**Senator JOHNSTON:** Yes—I want to talk about that. Thomson says, 'They can change the goalposts all they want, but the fact remains that implementation of Force 2030 has fallen steadily behind schedule over the past two years.' Do you accept that?

**Dr Watt:** We accept that we have struggled in a few areas with Force 2030—a number of areas. We accept that we have not got our projects—the early stages of our project development—done as quickly as the time frame in the white paper would have anticipated. I said so in my opening remarks. We also—

**Senator JOHNSTON:** Sure, but—

**Dr Watt:** Perhaps I can answer the question my way. We have also said that this year we have not had the performance out of industry that we had hoped for and that we had forecast, and that is disappointing both because it meant that capability is by definition later and because it meant that our forecasts were wrong. We accept that, but I do not think that that says that Force 2030 is fundamentally compromised.

**Senator JOHNSTON:** Okay. Good.

**Dr Watt:** By the way, Mr Thomson said that himself.

**Senator JOHNSTON:** That is true.

**Dr Watt:** He had a wonderful analogy. He said that it is now 2011, and Force 2030 is out to 2030—you could send a man to the moon twice in that period. But we are not going to do that.

**Senator JOHNSTON:** That is exactly where I need to go in this line of questioning. He goes on to say, First-pass approvals—the lead indicators of future activity—are most telling. Over the past 24 months, a mere ten projects have been given the nod, whereas more than three times that number was planned.' Do you accept that?

**Dr Watt:** I am not familiar with those exact numbers. I would turn to Air Marshal Harvey to confirm those. I do accept that we have not got as many first-pass approvals as the framers of the white paper assumed.

**Senator JOHNSTON:** It is the Defence white paper, and we were intimately involved in its production.

**Dr Watt:** Sorry, Senator?

**Senator JOHNSTON:** We were intimately involved in its production—the white paper.

**Dr Watt:** Who is 'we'?

**Senator JOHNSTON:** Defence.

**Dr Watt:** I thought you meant you were intimately involved with production, Senator. I was having a bit of a problem.

**Senator JOHNSTON:** No, I mean Defence; Defence in the royal 'we' sense.

**Dr Watt:** Defence was, because of the white paper—that is right. But perhaps we might get Air Marshal Harvey's confirmation of the numbers.

**Senator JOHNSTON:** Would you like those numbers again, Air Marshal?

**Air Marshal Harvey:** If you wouldn't mind—thanks, Senator.

**Senator JOHNSTON:** 'Over the past 24 months, a mere ten projects have been given the nod, whereas more than three times that number was planned.'

**Air Marshal Harvey:** As the secretary said before, the numbers have been considerably lower than originally planned in the white paper process, but there have been a number of factors in that time: as the secretary said, the election period, the extended caretaker period—

**Senator JOHNSTON:** Sure, but did you have any input into this document of Mr Thomson's?

**Air Marshal Harvey:** No. Again, as other commentators have mentioned, we were asked for factual comments on the content of that and we provided comment against the facts in terms of numbers.

**Senator JOHNSTON:** So I can assume that, you having read the document, those numbers are correct.

**Air Marshal Harvey:** The actual approvals are on the public record. We announce approvals as they occur.

**Senator JOHNSTON:** If I can go on, Secretary, he says—

**Dr Watt:** Pardon me. I have not heard Air Marshal Harvey confirm, or otherwise deny, that we were planning to do 30 first pass approvals in this period. Is that correct?

**Air Marshal Harvey:** Foreshadowed in the PBS—

**Senator JOHNSTON:** Over 24 months?

**Air Marshal Harvey:** Certainly in the PBS for 2010-11 there were 31 first passes foreshadowed in that period.

**Senator JOHNSTON:** He goes on to say:

And it is set to get worse. According to the latest revision of the public DCP, around 58 first-pass approvals are going to be required over the next 25 months to meet the current schedule as updated in this year's budget.

Is that correct?

**Dr Watt:** That may well be correct. I will again check with Air Marshal Harvey that the numbers are right.

**Senator JOHNSTON:** It continues:

While the situation with second-pass approvals is not quite as bad, it is hardly more encouraging (especially given that a great many future second-pass approvals are contingent on the mounting backlog of first-pass approvals).

That is the situation, is it not?

**Air Marshal Harvey:** It is true that second pass is contingent on first pass. It typically takes about two years to get to a first pass from an entry in the DCP so now is the time when we have a large number of first passes to get through.

**Senator JOHNSTON:** Do we take any issue with the material I have just quoted from Dr Thomson?

**Air Marshal Harvey:** In general the numbers are true. As we have said before, Force 2030 is a large, ambitious project. We do have to get through a number of first passes before you get to a number of second passes. I believe there have been 24 approvals to date this year.

**CHAIR:** First passes or second passes?

**Air Marshal Harvey:** Total passes. Things that were through first we are working through second pass now as well. In that time as well there were a number of other activities: the force protection review and a number of projects associated with that, Largs Bay that the secretary mentioned and the additional C17. So, whilst we are trying to do the core business of the DCP, we are responsive to a number of pressures as well. I will note the 24 projects approved so far this financial year even in the limited time is about the historical average for that. We do hope to get a number of additional projects through before the end of the year and next year we are certainly looking to ramp up that approval rate as well, including through, as the secretary said, application of additional resources to Capability Development Group.

**Dr Watt:** To sum up: we do see that Dr Thomson—and, if I have been giving him the wrong title, I apologise—is correct in that the challenge is growing, the bar is getting higher. We acknowledge that we have not got through things as quickly as we should have, particularly in some of the earlier stages of projects. We are taking steps to accelerate the speed with which we develop projects. We are also trying to focus more on the key priority projects and are putting more of our resources into there rather than on some of the lower priority projects that do not matter quite as much initially. So we acknowledge the problem and we acknowledge we need to do better. We are taking steps to do better. We also acknowledge that it is a very ambitious task that has been set in the early stages of Force 2030. That does not mean, as we have discussed before, that the white paper is off the rails et cetera.

**Senator JOHNSTON:** So it is not a train wreck?

**Dr Watt:** Those are Dr Thomson's words, not mine. I would never use outrageous language like that.

**Senator JOHNSTON:** Dr Thomson is one of the most conservative commentators I think I have ever read and he uses the words 'train wreck'. You acknowledge that he uses those words. I have to tell you that the alarm bell is ringing for this committee very loudly.

**Dr Watt:** What I do not acknowledge is the thought that 'train wreck' is a conservative term or a conservative assessment.

**Senator JOHNSTON:** I have not heard him use it before.

**Dr Watt:** I have not heard many words used before, but that does not mean they are right.

**Senator JOHNSTON:** Did you draft the incoming government's brief after last year's election?

**Dr Watt:** I certainly had a hand in the drafting. I suspect that I may not have drafted that section. The brief was signed off by the CDF and me.

**Senator JOHNSTON:** You said then that Force 2030 is under pressure.

**Dr Watt:** Yes.

**Senator JOHNSTON:** How would you describe it today?

**Dr Watt:** I think it is still under pressure.

**Senator JOHNSTON:** Is the pressure any greater than it was back then?

**Dr Watt:** The pressure has grown, yes.

**Senator JOHNSTON:** In response to that pressure, in your opening statement you say:

... a review and re-engineering of our major capability development and acquisition process will be undertaken—

**Dr Watt:** That is correct.

**Senator JOHNSTON:** You go on:

This covers the process from idea to delivery.

**Dr Watt:** We are looking at ways that we can do the process faster without sacrificing the rigour and the quality we need in first and second parts consideration. There is a difficult issue here for people and projects. Government, quite rightly, says to us that we need to be more rigorous. Rigour usually adds to the time required—and so it should; otherwise it would not be more rigorous. So we are looking at ways of seeing whether we can introduce greater rigour, which we are doing, without slowing down the process. That is what the re-engineering will look at. We are looking at ways of making some of our processes more responsive. I am sure Air Marshal Harvey or Mr Sargeant could explain the re-engineering process we have in line.

**Senator JOHNSTON:** Who is doing the review?

**Dr Watt:** I might get Mr Sargeant to talk to that, along with Air Marshal Harvey.

**Senator JOHNSTON:** And what are its terms of reference and when does it start?

**Mr Sargeant:** As part of more general work on reforming Defence, we are going to have a look at the capability process, as discussed by Dr Watt. We are currently developing the terms of reference, which I am talking to various people in the organisation about. Essentially we want to have a look at the process as an organisation wide process that engages many different people and to ask the question: is it functioning as efficiently as it should? Are there

things that are creating confusion? Is there duplication? In other words, to try to look at ways of making it work better. This is something that is quite common in organisations, and it is quite common in Defence—

**Senator JOHNSTON:** It is very common in Defence?

**Mr Sargeant:** I have worked elsewhere, and many organisations do this because, over time, processes start to accumulate and people lose a sense of what the process was originally designed to do. Every now and then every organisation needs to take a stocktake of some of its big management processes and tidy them up. This is essentially what we will do here. The aim is to try to ensure that it is as effective in delivering its outputs as possible and as efficient in using organisational resources to do that.

**Senator JOHNSTON:** When did we decide to do this review?

**Mr Sargeant:** We look at all Defence processes all the time. I had a discussion with the secretary a month or so ago, and he said, 'Could you develop a proposal to do this' and to bring it back to him and the CDF and then we were to look at initiating work to do that.

**Senator JOHNSTON:** In April?

**Mr Sargeant:** Around April, yes. I have developed terms of reference, which are still in draft form. I am still working through them and, once I have finished, I will seek formal approval and then take it to the next step.

**Senator JOHNSTON:** Who is going to do the review?

**Mr Sargeant:** We would probably do it with a combination of an internal team and external help.

**Senator JOHNSTON:** Take me through what you propose. With regard to the internal aspect of it we have some issues with that.

**Mr Sargeant:** For something like this, you would normally have a look at what the process actually is; you describe it. In my experience of doing this sort of work before, you have a process that extends across a whole organisation or a range of organisations, and people, as they focus on their part of it, can lose sight of what other people are doing. So you describe the process so that everyone understands what it is and what its components are. So you describe the process so that everyone understands what it is and what its components are.

Then you look at how it is working in its different parts. You might look at parts of it which might have too many resources or parts of it which are underresourced. You might think, 'Okay, we're not putting enough work into the analytical work,' or 'We might not have sufficient quality assurance.' You then might look at policy, cultural or administrative impediments to its optimal functioning—things that get in the way of efficiency or effectiveness. You would look at how the process is managed as a whole. Then you would look at how you might improve that. What are doing in other parts of the SRP is looking at how we do things and saying: 'Can we do this better? Can we make it more efficient?'

**Senator JOHNSTON:** When is it going to be reporting?

**Mr Sargeant:** Something like this I would expect to take a couple of months, so probably towards the second half of this year.

**Dr Watt:** We will be looking to move it quickly. It is obviously important to us, and we are sure the committee will want to discuss it with us next time we appear at estimates.

**Senator JOHNSTON:** That is if you publish it to us.

**Dr Watt:** We would have to have a look at the review and I would have to ask the minister about his willingness to have it released, but subsequent to that we will see what we can do.

**Senator TROOD:** You are struggling to find that you would need these reviews when you get to a point of dysfunction. Anyway, let me move on. This review has not begun, has it?

**Mr Sargeant:** No.

**Senator TROOD:** And you do not have a starting date yet, have you?

**Mr Sargeant:** I think we do. It will start early.

**Senator TROOD:** But you have not scoped in detail the nature of the review, have you?

**Dr Watt:** I think that is what Mr Sargeant has been doing.

**Senator TROOD:** No, he has not. What he has been telling us is that, when you do these kinds of reviews, these are the kinds of things you take into account. He has not said one thing about what is actually being done. What he has been doing is projecting the kinds of issues that, if one were doing this review, one might light to look at. He has not told us one thing that is included in this review as the basis on which it is going to take place.

**Dr Watt:** I rather thought he did.

**Senator TROOD:** He did not.

**Air Marshal Harvey:** As well as the independent review that will be conducted, we have done an internal review. As you know, we have been through the Kinnaird review and Mortimer review. That laid the high-level process for project approval. Over the last couple of months, internal to my group we have done a detailed review of what we call the 'forward work program'. What is the program of project approvals in the future to get through government and deliver the Force 2030? We have gone through every committee and process in that to try to make it as efficient as we can just by our internal delivery of that. What we are looking forward to now is an external look at the whole supply chain of getting this project through all the way from industry providing advice, other Defence groups providing input to us, us getting through Defence committees and us getting it to government. It is really looking at efficiency all along that process to make sure that we are keeping faith with the high-level outcomes of Kinnaird-Mortimer and seeing how we can do it more efficiently as we go forward.

**CHAIR:** What you have just outlined strikes me as strikingly similar to the type of work that we would have anticipated Defence would have been preparing in its submission for the counterpart committee of this references inquiry into the work of the Capability Development Group and its subcommittees.

**Air Marshal Harvey:** In the initial discussion I had with the committee on that, I stepped through that process, but I think there is seen to be benefit to getting someone else to look over our shoulder as well and say, 'Can we make that even more efficient?'

**CHAIR:** So some of that preparatory work that you are about to do or are in the process of doing might be provided to that committee when it finally gets to meet.

**Air Marshal Harvey:** Certainly. I will be happy to explain the process. We go through all that committees. There is the first-pass process and the second-pass process. It is nothing unusual; it is just that we get somebody else to advise us on whether we can make it more efficient.

**CHAIR:** That is right. I think most of the members of this committee will understand the first-pass and second-pass process. They are more interested in the detail work of the Capability Development Group.

**Air Marshal Harvey:** It is how you input the first- and second-pass processes. Do we have the right number and focus of internal committees? Do we have the right time between them, the right people on the committees et cetera?

**CHAIR:** And the preparatory work of the Capability Development Group—how it comes to a decision, how we go from an idea to fruition. I put that up so there is no understanding of what is being sought by that committee. That is another committee.

**Senator TROOD:** Secretary, perhaps you could help me here. On page 8 of your opening remarks there are three dot points. Am I right in assuming that that is a reference to three different reviews?

**Dr Watt:** Yes. In the bottom one we talked about the budget review. That just a generic issue about the budget. It has a department-wide view. It is not particular to the capability plan. The second point—

**Senator TROOD:** That is an internal review; is that right?

**Dr Watt:** That is correct.

**Senator TROOD:** Who is it being undertaken by?

**Dr Watt:** It is being undertaken by the CFO.

**Senator TROOD:** By Mr Prior and his offices.

**Dr Watt:** That is correct.

**Senator TROOD:** The discussion that we just had with is about the SRP?

**Dr Watt:** That is the first dot point.

**Senator TROOD:** The first dot point—'a review of re-engineering'? That is the one that has yet to begin?

**Dr Watt:** That is correct. As we have said, it will be undertaken.

**Senator TROOD:** And you hope it will be completed by the end of the year.

**Dr Watt:** It will be completed well before the end of the year. Believe me on that.

**Senator TROOD:** But that is not likely to be an internal review.

**Dr Watt:** No, it will not be.

**Senator TROOD:** And at the moment you have not identified anybody to undertake that.

**Dr Watt:** We have not. One of the things that has taken Mr Sargeant some time is process re-engineers are not easy to find.

**Senator TROOD:** I am sure that is true. At the moment, a contract to undertake that review has not been let?

**Dr Watt:** No, but it will be shortly.

**Senator TROOD:** The third dot point—

**Dr Watt:** The middle one is what Air Marshal Harvey is talking about now.

**Senator TROOD:** I see. So that is one that began some time ago and is close to completion. Is that right, Air Marshal Harvey?

**Air Marshal Harvey:** In terms of the internal work we are doing—

**Senator TROOD:** Perhaps you can just tell me when that review began. The one that is the second dot point on page 8. The secretary has just told me that that is the one you were referring to a few moments ago.

**Air Marshal Harvey:** There are a number of activities going on. We have started an internal review within the Capability Development Group in terms of that forward work program.

**Senator TROOD:** When did you begin that process?

**Air Marshal Harvey:** I started that in detail probably two months ago. We have always had a forward work program predicting the timing of delivering Force 2030. I was concerned after I took over in the job that we needed a bit more rigour in that process.

**Senator TROOD:** So you initiated this process when you arrived in your current position?

**Air Marshal Harvey:** Shortly after that.

**Senator TROOD:** And it was because you had some concerns about the nature of the process.

**Air Marshal Harvey:** I just wanted to make sure. For example, as you said, the public DCP had a high number of first and second passes listed.

**Senator TROOD:** There is no shortage of reviews within the portfolio, as we all know. So you do not undertake these reviews lightly, do you?

**Air Marshal Harvey:** Internally, I would not necessarily call that a review as such. I think the internal work I do is just good practice. What I do review are the forward work processes. It is a matter of how you use the term 'review' in this case. This is just part of good business.

**Senator TROOD:** The secretary in his remarks has called this an internal review. What should we call it?

**Air Marshal Harvey:** There are a number of things. Brendan Sargeant is bringing in an external look over our shoulders. I am doing a review of the forward work program myself. I am also working with CFO and CEO-DMO in terms of the forward planning of the finances to balance up three key factors. One you discussed this morning was slippage in the approved projects. Another factor is where you program in contingency for projects. Another one you need to factor in is what we call overprogramming: preparing more projects to be approved than you can actually approve. Things happen and you do not get them all approved. You have to bring those three things into balance to correctly program.

**Senator TROOD:** These are all interrelated issues, aren't they?

**Air Marshal Harvey:** Correct.

**Senator TROOD:** They all address the same problem.



**Dr Watt:** They all address different aspects of the same problem.

**Senator TROOD:** Thank you. I agree with that proposition. They all address different aspects of what is clearly a profound problem.

**Air Marshal Harvey:** I would say it is a profoundly challenging task to look out to 2030 and deliver 150-odd projects.

**Senator TROOD:** We can quibble on language, Air Marshal Harvey, but I think we are all agreed that there is a problem here. Is it your practice when you arrive in new positions in Defence to initiate reviews?

**Air Marshal Harvey:** Again, I think it gets down to the matter of review. I of course would look at where things are, where we are going and what is the best way of getting there.

**Senator TROOD:** You arrived in this position and you decided that a review needed to be undertaken. Is that correct?

**Air Marshal Harvey:** No, as I said, I started this some months ago. When I first arrived, of course you have a look at where you are and where you are going.

**Senator TROOD:** You arrived in your position and you concluded, after a period of time there—weeks, months—that something was not quite right and it needed attention, so you instituted a review. Is that right?

**Air Marshal Harvey:** That is correct.

**Senator TROOD:** What specifically were you concerned about that caused the review to be initiated?

**Air Marshal Harvey:** As said by a number of people here today, it was the rate of project approval, were we going to meet—

**Senator TROOD:** So you were actually concerned about the speed with which projects were getting through the process?

**Air Marshal Harvey:** Correct.

**Senator TROOD:** Can I conclude from those remarks that you regarded the process as too slow?

**Air Marshal Harvey:** We were not getting enough projects through, so the question was: were we trying to do too many; were the individual projects too many?

**Senator TROOD:** We were not getting the projects through either the first or second pass. Is that right?

**Air Marshal Harvey:** We were not achieving the numbers we had previously said, so the aim was—

**Senator TROOD:** You were not achieving the numbers which were set out in the various statements of policy?

**Air Marshal Harvey:** There are various statements public, DCP, portfolio—

**Senator TROOD:** I understand that.

**Air Marshal Harvey:** We were not achieving the projections of project approvals as laid out in the Defence Capability Plan.

**Senator TROOD:** No, in fact you were a long way behind, weren't you?

**Air Marshal Harvey:** As explained before, we were slow kicking off after the extended election period, the caretaker period—

**Senator TROOD:** You were a long way behind.

**Dr Watt:** We are behind, Senator.

**Senator TROOD:** You are a long way behind.

**Dr Watt:** We are behind.

**Air Chief Marshal Houston:** Can I just say something here. If you have a look at previous white papers, there is always a period of time after the publication of a white paper where it takes a while for things to settle down and to get the program that is laid out in the white paper going. There is a need for a lot of work to initiate projects and then, as time goes by, the program gathers momentum. To a certain extent, yes, we have been slow to get going. But that is one of the factors at play here. We had a completely new program. Sure, there were a couple of projects that were extant and ongoing but there were a lot of new ones, and it takes a lot of work in those initial proposals to get them into a form to take them forward to government. So I think that is a factor at play here.

The other thing that I think is very relevant here is what happened with the election. We were going along reasonably well and then an election was called. In caretaker, there are no SCNS, there are no national security committees of cabinet, there are no decisions to proceed on projects. So for the best part of the period from the start of the financial year through until the new minister arrived, which was well into September, and the first NSC after that was into the next month, October, we were standing still. So, sure, projects were not progressed at that time. That all needs to be factored into consideration here.

When Air Marshal Harvey came to the job, we had a chat about it. I indicated to him very early on that the challenge was to find the best way to progress projects more quickly through the process. The fact that he had a look at it is exactly what he was directed to do.

**Senator TROOD:** Thank you, CDF. I do not think you have convinced Senator Johnston that the election was a particularly important intervention, and you have not convinced me. I do not think the committee has had an answer to the question which project failed to be advanced because of the election. Which project was ready to go if the election had not been called when it was? Which project or several projects would have been through one of those committees had it not been for the election?

**Air Chief Marshal Houston:** I do not have those before me at the moment but the normal practice is that we have somewhere between four and six projects with each National Security Committee of cabinet. That is the normal process. That is what I have seen in my six years as CDF. From essentially the end of May last year through to October nothing moved. It was quite frustrating actually because nothing was happening because we were in caretaker mode for a very extended period of time.

**Senator TROOD:** Thanks, CDF. I apologise for taking so much time.

**Senator JOHNSTON:** Secretary, Mr Thomson makes a statement here that I would like you to accept or refute. He says:

Thus, as things stand, Defence's force development plans over the next several years are simply unrealistic.

**Dr Watt:** I do not accept that, Senator. I do not think our plans are unrealistic.

**Senator JOHNSTON:** So you think that his assessment of all of this is incorrect?

**Dr Watt:** I think it is to a degree. Effectively, again, we have never hidden the fact that we have not progressed as fast as we wanted on the early stages of the white paper—that is accepted. We have not denied that we need to accelerate our projects. We have also explained that we have ways of endeavouring to do that. Mr Thomson is correct in saying over the next few years that we have some real challenges ahead of us, but I do not agree, therefore, that our force development plans are unrealistic.

**Senator JOHNSTON:** Fair enough.

**Dr Watt:** We might fall a little bit short of the mark, but we are a long way from being unrealistic.

**Senator JOHNSTON:** Hope springs eternal. Time will tell.

**Dr Watt:** I am sure you and I will be having this discussion in several years time.

**Senator JOHNSTON:** I am sure we will. Can you give me your understanding of the current status of the security of defence funding? So, for instance, are you under the apprehension that defence spending will increase by three per cent a year to 2017-21 and by 2.2 per cent thereafter to 2030 and that you are the beneficiary of 2.5 per cent fixed defence budget indexation to 2030? Is that your understanding?

**Dr Watt:** I might get Mr Prior to answer that.

**Mr Prior:** That is indeed the case apart from the amount of efficiencies that we have found and declared in this budget. Apart from those that were declared in the budget papers the three per cent that you referred to, the 2.2 per cent that you referred to and the 2.5 per cent are in the budget out to 2030. But as you would appreciate, Senator, and I think I have said this in previous hearings, when we move money to the right or defer money—whatever language you like—clearly then you do not have a linear trend of three per cent year on year. Otherwise, all of those funding framework elements are in fact in our budget.

**Senator JOHNSTON:** You are saying that any SRP savings are retained?

**Mr Prior:** Yes.

**Senator JOHNSTON:** But underspends are not.

**Mr Prior:** In this year's case the underspend that we have handed back is not retained.

**Senator JOHNSTON:** What about any underspend in future years?

**Dr Watt:** I think it is important that you distinguish between the two sorts of underspends. Capital underspends have not been handed back, they have been reprogrammed and operating cost underspends which have been handed back.

**Senator JOHNSTON:** So operating cost underspend will be handed back?

**Mr Prior:** I cannot speak for the future in that regard.

**Senator JOHNSTON:** So there is no set policy on that?

**Mr Prior:** Not that I am aware of.

**Senator JOHNSTON:** It is an ad hoc decision by the minister annually.

**Mr Prior:** I think it is the ERC process.

**Senator JOHNSTON:** The government makes its mind up as and when it is confronted with the issue.

**Mr Prior:** That is right. As I said to you previously in some years we have retained those underspends to re-prioritise to other priorities. This is a case where it was dealt with in this way.

**Dr Watt:** And Mr Prior is only talking about non-capital underspends. They have always been reprogrammed.

**Senator JOHNSTON:** Okay. You are talking about non-capital underspends this financial year.

**Dr Watt:** That have been handed back to government and those efficiencies have been declared.

**Senator JOHNSTON:** But there is no fixed policy on that into the future?

**Mr Prior:** There is no policy that I can turn to that says that that will be the way it will always be. My colleagues in Finance may have a different view at departmental level.

**Dr Watt:** Nor has there ever been a policy on current year operating underspends, it is fair to say—at least, not that we are aware of.

**Senator JOHNSTON:** As you are aware, Dr Thomson questions the baselines giving rise to the SRP savings. What do you have to say about that? He says they are notional and the baselines are calculated backwards. What is your view on that?

**Dr Watt:** We have a difference of opinion with Dr Thomson over the SRP savings. What the government chose to do with SRP—and rightly, in my view—was that instead of saying to Defence, 'Make the savings, add them up at the end of the year and show how you have invested that money in Force 2030,' the government said, 'We will reduce your budget now by giving you less to implement Force 2030 than we otherwise would have had to do and you will therefore demonstrate where you've made the savings to achieve that saving and reinvestment objective.' That means we do have to estimate them. We do not have hard and fast figures in every case, because expenditure on items changes for all sorts of reasons, including SRP. However, starting from that policy position, we have looked at ways of putting in place arrangements that would give the government surety about how Defence is making its savings. It is making the savings, because the money has already gone from our budget.

We have three or four ways of doing that. First, our own audit executives confirm the cost reductions we are making. Second, these go to the Defence Audit Committee, and the Materiel Audit Committee in the case of DMO. Third, we take those estimates—and they are necessarily estimates—to the Defence Strategic Reform Advisory Board, who take a big interest in this because they are there to oversee and monitor SRP and ensure it happens. Fourth, they are pored over by the central agencies, as you can imagine, for obvious reasons—Finance in particular and to a lesser extent Treasury and PM&C. Finally, they go into NSC and NSC does whatever it does.

**Senator JOHNSTON:** I quote something that he highlights as an example of the notional nature of these savings:

Around \$300 million of the new savings come from reducing planned civilian numbers by 1,000 over the next three years. But the reality is that Defence never needed the 1,000 positions in question. Last financial year they got by with 645 fewer people than planned and this financial year they got by with 1,205 fewer than they said they needed. The 1,000 positions that were cut were never filled. Yet, even after claiming the savings from having a thousand fewer civilians, the average strength of the civilian workforce next year is still planned to grow year-on-year by 992 positions.

**Dr Watt:** There are three points in there. I would like Mr Minns to talk about this, but let us deal with the second and third. Yes, we have workforce growth in prospect. As I have explained to you before, most of that workforce growth comes from civilianisation of military positions because civilians are cheaper, and that is part of our SRP savings. We are also replacing contractors with APS because APS are cheaper, and that is part of our savings.

**Senator JOHNSTON:** You are saying APS is cheaper than outsourcing?

**Dr Watt:** I am saying they are cheaper than contractors, not necessarily all outsourcing. The Defence budget is a wonderful thing. I could cut the civilian workforce tomorrow by a significant amount, but I would be replacing those civilians with military and with contractors.

**Senator JOHNSTON:** Or outsourcing.

**Dr Watt:** Possibly outsourcing. That is what Defence has done before. It has simply said: 'Times are tough. We'll have more contractors; we won't have civilians.' That is a high-cost solution which has been wasteful of money in Defence for a very long time. Perhaps privately I can give you a few examples of how wasteful that has been. That is the first point. If we are going to make our SRP targets and cut costs we do need some more APS to do that or it will not happen—point No. 1. Point number 2: Mr Minns, are you able to take Senator Johnston through the hieroglyphics of our APS numbers?

**Senator JOHNSTON:** Can we just confirm these numbers that he has put in there: \$300 million of new savings comes from reduced planned civilian numbers by 1,000 over the next three years. That is a fact, isn't it?

**Mr Minns:** Over the next three years, yes.

**Senator JOHNSTON:** There is a saving of people we have not yet employed.

**Mr Minns:** Whenever we talk about our workforce we go back to defining documents. The first is the whitepaper itself that predicted the capability development to build Force 2030, and in that process it identified likely workforce growth in both APS and AFS. Then the defence budget audit came into the picture. In addition to the budget audit there was the detailed diagnostic under SRP and from that SRP plan we then had a process of remixing our workforce going forward. So when we talk about what happens to our workforce in the next three years, there are three critical drivers on the APS side. The first one is the need to invest in 2030 capability development initiatives, and that sits with an estimate of 732 additional APS over that period. Then we have the civilianisation effect that the secretary has referred to—noncombat related ADF roles. There are 519 in prospect based on the DVA estimate that civilians are around 30 per cent cheaper to employ in a total full cost sense. Then there is a further 158 conversions of contractors to APS positions over the next three years, where the defence audit identified 15 to 30 per cent savings as a result.

Both our military and our APS workforces always have these different factors driving their movement. They are the three things that were the predictors of growth. At the same time, efficiency and economy measures sought to remove 118 roles and the first stage of SRP shared service and business improvement reform aims to take out 412 over that period. So we have factors driving our APS workforce up and factors driving it down. The 1,000 reduction means that we are effectively saying that we will continue to meet our SRP obligations, particularly civilisation and contractor conversions, and we will also meet our force 2030 obligations but we will use the additional reform measures that the secretary referred to in his opening statement to take a further and more stringent look at shared services opportunities. We will use that reform initiative to avoid growing by 1,000 people. The statement in the ASPI report is only really an accurate treatment if you take the view that we are not going to go ahead and civilianise or convert roles. In doing that we must create guidance for our APS workforce, and there must be guidance growth.

**Dr Watt:** Just to conclude on what Mr Minns has said, we are below our staffing target at this point in time for 2010-11. That is correct. That is not because we choose to be below our staffing target; we have not been able to recruit the people we wanted to as quickly as we would have liked. Okay, that is a fact of life. What the 1,000 APS reductions mean is that those people will now not be recruited. We will be doing our job in delivering what the government wants with 1,000 fewer people than we otherwise would have had. Like it or not.

**Senator HUMPHRIES:** I would like to take you up on something you said, Dr Watt, about Dr Thomson's figures. You said that you thought his figures for the number of first- and second-pass approvals that had occurred, and needed to occur in order to meet targets, was roughly right.

**Dr Watt:** I was looking for clarification from Air Marshall Harvey on their accuracy because I was not familiar with the figures. I do not know whether we got that clarification. That is my only point.

**Senator HUMPHRIES:** I don't think we did.

**Air Marshal Harvey:** The numbers are approximately right. That is what Dr Thompson put out.

**Senator HUMPHRIES:** If they are only approximately correct, could I ask you, in order for us to establish some benchmarks, to give us on notice your version of the first- and second-pass targets that he refers to in his paper.

**Air Marshal Harvey:** Certainly, I will check back through it again. The key part, through, is to check the reference point. As you know, we update the DCP on a six-monthly basis. As part of that process we adjust the balance of first and second passes. We will reference these numbers and get the answer to you.

**Senator HUMPHRIES:** As he points out, there is no equivalent Defence or DMO document that details where all the first- and second-pass approvals stand at any given point in time as this has to be collated from a number of sources. It begs the question why you do not publish some consolidated list of first- and second-pass approvals somewhere.

**Air Marshal Harvey:** We do at the end of each year. I believe in the annual report there is a list of all the projects that were approved.

**Senator HUMPHRIES:** That is projects that were approved. Are the projects that are yet to be approved, and the timeline for those approvals, published as well?

**Air Marshal Harvey:** The following budget statement I believe gives a projection of those that are in planning to be approved. Also, we individually announce approvals as they occur. Part of the challenge, as I said before, is that we are working on more projects than we expect to approve because things happen. With industry you may not get the response back, the project may change direction—

**Senator HUMPHRIES:** I appreciate that but the point is that we need to establish some benchmarks to test the assertion which I think has been made today that Force 2030 is still on track. It would be useful to do that. Dr Thompson makes the point that in the next 25 months there is what he calls an enormous bow wave of approvals required to meet the targets that the Defence white paper sets out. And that is despite the fact that only 10 first-pass approvals have been achieved over the last 25-or-so months.

Can you tell me: is there a benchmark that the department has set for itself for this coming financial year as to the number of approvals that you need to obtain in order, realistically, to maintain the achievability of the targets in Force 2030?

**Air Marshal Harvey:** Historically, over the last four years the average project approval rate has been 28 per year. That includes first passes, second passes and approvals by ministers—because there is a threshold below which ministers can approve—and then NSC as well. So we would certainly be aiming to get well above that. I mentioned for this year so far, even though there was a pause for a while, we have achieved 24. We expect to get more than that before the end of the year. Next year I expect to get well above that.

**Senator HUMPHRIES:** That is great. Was the average approval rate 28 first passes?

**Air Marshal Harvey:** No; 28 was the total—

**Senator HUMPHRIES:** So, 28 first- and second-pass approvals, this coming financial year, would be the benchmark you would set for keeping on track with Force 2030.

**Air Marshal Harvey:** I would be aiming for well above that.

**Senator HUMPHRIES:** If we come back at roughly this time next year and we have not achieved those 28 passes it would be some indication that there is trouble in the achievement of those targets for Force2030.

**Air Marshal Harvey:** If we achieve fewer than 28 we would be under considerable pressure.

**Dr Watt:** On the other hand, if we achieve more than 28 we are presumably going in the right direction—

**Senator HUMPHRIES:** Indeed—although you need 58, according to Dr Thompson, to get back on track.

**Dr Watt:** I do not know whether you are familiar with—and if this would satisfy your needs—table 44 starting on page 90 of the portfolio additional estimates statements. It is not perfect for what you want because we tend to publish timing of first and second passes in a band, for obvious reasons, rather than give point dates. But that provides some indication of what we are seeking to do.

**Senator HUMPHRIES:** I appreciate that but, with great respect, I think those targets are very rubbery.

**Dr Watt:** We provide the point dates simply because it is often impossible to be completely precise.

**Senator HUMPHRIES:** I accept that there is no one project where you can say, 'This has to achieve this first pass or this second pass by this date, otherwise Force 2030 falls apart. I accept that. But there has got to be an overall rate of approvals achieved, particularly in this next couple of years when, as Dr Thomson says, there is a bow wave of approval necessary to meet these targets. If you do not achieve those you have got a problem.

**Dr Watt:** We acknowledge that we have got some challenging times ahead. And you need a benchmark and we are happy to see what we can provide.

**CHAIR:** Air Marshal Harvey, you outlined four decision-making bodies: first pass, second pass, NSC and the minister's office. Dr Thomson in his report—

**Dr Watt:** The minister, Senator.

**CHAIR:** The minister, sorry. I take that point. Dr Thomson, in his report, identified only two first-pass approvals in the last 12 months. Is there a particular backlog in one of those four bodies?

**Air Marshal Harvey:** To clarify, it is not four bodies—

**CHAIR:** Four decision-making—

**Air Marshal Harvey:** There is the single minister, two ministers and then NSC, and any of those three can approve either a first or a second pass, depending on the value of the work. So there are three possible gates you can go through for first or second pass. And, no, there has not been any delay in any of those. In fact, once the submission gets out of the department they have been handled very expeditiously. The challenge of that is: we do a lot of work internally to make sure that they are in good shape so they can be readily considered and approved if appropriate.

**CHAIR:** If at the decision-making points there were quite acceptable time frames in approval or rejection of the projects that went to them, does that mean by definition that the causal features of delay occurred in the department on the preparatory side?

**Air Marshal Harvey:** We have not got them out of the department as quickly as we should.

**CHAIR:** Okay, they have not got them out of the department as quickly as they should have been, according to your plans. Is that because the work had not been done, or too much work was being done? What is the reason for that?

**Air Marshal Harvey:** It is a combination, as I said before. There was a period of pause there when we were going through the election caretaker period. Then I say it is the whole chain on our side. We need to get the advice from industry, other Defence groups that provide information to capability development group. We have to do our review, develop the submission to the reviewer, get it through the Defence committees—a combination of all those factors ramping up our staff effort. That has been the slow part of the job.

**CHAIR:** Up until the beginning of this calendar year, or perhaps the end of last calendar year, we had been under the impression that a lot of the processes leading to capability



acquisition had been significantly improved. It has now become clear that there are particular problems, as you say, in the preparatory process prior to going to the relevant decision making body. Why has that turnaround occurred on the preparatory side which had not been a feature of our discussions for at least the last three years?

**Air Marshal Harvey:** I think as the secretary mentioned before, we are certainly making sure it is very rigorous, to make sure you do not get issues when you get to government. That takes a lot more scrutiny early in the process, and that is why we are now looking at how we can make that more efficient, to get the rigour and the speed at the same time.

**CHAIR:** Up until, say, 12 months ago—the previous two or three years—in terms of progress on project approvals, they had been moving along pretty well. There were probably particular problems but they had been moving along pretty well, to such an extent that there had hardly been a discussion at this committee for two or three years. This problem has now been identified, Air Marshal Harvey has conceded it is on the preparatory side. I am asking him, or you: what has been the causal feature of that decline in performance from pretty good to arguably poor in the last 12 months?

**Dr Watt:** I do not think that the two are inconsistent. There is no doubt that going back to the start of the 2000s that the process of approvals has been improved enormously. The two-pass process and everything that goes with it has improved. When we look at the projects we have problems with now, they are not all but disproportionately pre-Kinnaird projects. We are doing better in that respect; there is no doubt about that. That is the first point. Secondly, what we are being challenged by is the step-up that is required in projects to deliver the white paper. That is what is challenging us. We could continue doing a lower number, and adding more rigour, which we are trying to do, to make sure we get all the things people want out of us. But the issue for us is the additional step-up. In other words, the pipe just is not wide enough to allow us to do what we want; we have to widen the pipe.

**CHAIR:** So, because of the large number of additional projects and their complexity, the rigour and the efficiency that would be required to get to the ministerial level for approval was perhaps underestimated?

**Dr Watt:** I think the time, rigour and everything else was underestimated. We can get the rigour—it ultimately comes back to the time required.

**Air Marshal Harvey:** Senator, I will add some stats from the last few years. In 2006-07, the total number of projects approved was 40, which was a record number. The next year the number dropped to 17. Then, in 2008-09, it went back up to 23. In fiscal year 2009-10 it was 28. As I said, this year so far, notwithstanding the pause at the start, we have 24 projects, and we aim to have a few more before the end of the year. The average is about 28. So the challenge for the future will be the higher demand, the number of projects to get through.

**CHAIR:** But, in that average of 28 that you are hoping for as we go forward—and you are hoping for more over time—there is a problem, identified by Dr Thomson, at first-pass approval stage, isn't there?

**Air Marshal Harvey:** Just to clarify, I said 28 was the historical average; we are aiming to do considerably better in the future.

**CHAIR:** I understand you are trying to improve on the long-term mean. But there is a particular problem, as I understand Dr Thomson's report, on first-stage approval.

**Air Chief Marshal Houston:** Chair, if you have a look at those historical figures you will note that it was an election year when the number really dropped off. There is a caretaker period and it takes a while for the new government to—

**CHAIR:** Get on top of things.

**Air Chief Marshal Houston:** get on top of very complex issues. Every time we have an election we lose momentum with the progress of our program.

**CHAIR:** Do you care to comment, Dr Watt?

**Dr Watt:** You are making a point about first-pass approval, Senator?

**CHAIR:** I am because, in my understanding from Dr Thomson's report—

**Dr Watt:** And that is right. But I think the question, for Air Marshal Harvey, is: is it a problem at first-pass stage or is the issue arithmetic? I do not know the answer to that.

**Air Marshal Harvey:** As I said, about two years after the white paper a whole number of new projects come through for first pass. Then, you get a bow wave of second passes, which happen to occur about two years after first pass.

**Dr Watt:** I think what I am hearing is that there is an element of arithmetic in this.

**Air Marshal Harvey:** That is true. But also, as we said, in rigour, people are now expecting a higher level of fidelity earlier in the process as well.

**CHAIR:** I take that point. There might be a level of arithmetic involved in this. The platform was identified two years ago in the white paper and it has to go through a planning process. But, when they were identified, we did not think it was only going to take five minutes to do the job, did we? We always knew it would take a considerable period of time to get the projects to the stage of going to government for approval.

**Dr Watt:** It is always tempting to underestimate how quickly you can do things.

**CHAIR:** You have answered the question; thank you.

**Senator JOHNSTON:** Can I go on to another part of the secretary's opening remarks. Very briefly, how many security clearances are in question and what are the areas?

**Dr Watt:** I will get Mr Merchant to join me.

**Senator JOHNSTON:** Mr Merchant, the question was, 'How many of these security clearances are problematic and what are the areas upon which they impact?'

**Mr Merchant:** From the examination we have done of the packs that were touched by the three contractors who appeared on the *Lateline* program, we estimate that about 1,500 clearances were touched by those contractors.

**Senator JOHNSTON:** Where are they? What areas are being impacted by the security clearances that are under a cloud?

**Mr Merchant:** At the time, Defence was dealing with clearances that were either Defence or Defence sponsored clearances. So those clearances relate essentially to Defence employees—both military and civilian—and also contractors who work for Defence.

**Senator JOHNSTON:** Does that include any ministerial staff?

**Mr Merchant:** I do not think in any of the 1,500 we have identified that it includes any ministerial staff. Certainly, I have not been advised that it does.

**Senator JOHNSTON:** Which areas of Defence are concerned, or is it broadly across the whole of Defence?

**Mr Merchant:** Yes, it is broadly across the whole of Defence.

**Senator JOHNSTON:** No embassies?

**Mr Merchant:** It may include some Defence staff who are posted overseas in embassies and high commissions, because we have Defence staff serving in a number of overseas embassies.

**Senator JOHNSTON:** When will you know?

**Mr Merchant:** As the secretary said in his opening comments, this matter is now being referred to the Inspector-General of Intelligence and Security.

**Senator JOHNSTON:** I see that.

**Mr Merchant:** As part of that process there will be an audit undertaken. One of the advantages of this investigation is that we still hold in hard copy the original information provided by the applicants, as well the soft copy information we have on our electronic systems. So the audit will be quite instructive in informing us about the issues that have been raised.

**Senator JOHNSTON:** Who is doing the audit?

**Mr Merchant:** At the moment the audit has been started under the auspices of the Inspector-General of Defence. Now that the matter has been passed to the Inspector-General of Intelligence and Security there will be discussions between the two offices about how to best continue that audit.

**Dr Watt:** But whatever is done, it will be done under the scrutiny of the Inspector-General of Intelligence and Security.

**Senator JOHNSTON:** So a statutory officer is involved in overseeing what has gone wrong here?

**Mr Merchant:** A statutory officer, namely the Inspector-General of Intelligence and Security, is going to investigate the claims that have been raised.

**Senator JOHNSTON:** When will we know the full extent of the damage?

**Mr Merchant:** I think the Inspector-General of Intelligence and Security's initial estimate to us is that her investigation could take a number of months to determine that.

**Senator JOHNSTON:** Is that six months or two months?

**Mr Merchant:** I think it should be less than that. When we had our discussions with her she indicated—I do not want to lock her in; this is very preliminary on her part—that she thought that the scale of this investigation was more likely to be in the range of about three months.

**Dr Watt:** There is one point to make. We are talking about primary data input in relation to this; we are not talking about a final security clearance. We need to be very clear about that.

**Senator JOHNSTON:** Hopefully people read the primary data.

**Dr Watt:** I hope people do, but the point is that there are a number of checks that go through the security clearance process that are designed to make sure that we have a variety of inputs before a clearance is given. For example, every clearance is subject to police checks. I think that is correct. These would have occurred under all cases. A potential flaw in primary data input does not necessarily lead to a potential flaw in a clearance.

**Senator JOHNSTON:** Has the IGIS indicated what it is going to cost to do this?

**Mr Merchant:** The IGIS has indicated to us that the ancillary costs—for example, travel for her investigators to interview people and possibly travel costs associated with people who might want to come forward for the investigation—would be about \$40,000 or so. That is what she has indicated in terms of the ancillary costs to it, but there would also obviously be the in-house costs of her investigators.

**Senator JOHNSTON:** Has she given you a rough quote on that?

**Mr Merchant:** She has said that she would like supplementation of about \$40,000 to cover those ancillary costs.

**Senator JOHNSTON:** So \$80,000 all up for travel and ancillary costs?

**Mr Merchant:** \$40,000.

**Senator JOHNSTON:** \$40,000—that is all?

**Mr Merchant:** That is her initial estimate of the costs associated with this.

**Senator JOHNSTON:** All right.

**Senator KROGER:** Chair, can I just follow up on that. Mr Merchant, I would like to note that there were questions put on notice at the last estimates in relation to security checks, the answers to which were given to us only last week, on 27 May. The questions really went to the heart of the security process. What has happened since then has shown that there was reason to raise those questions. As a simple follow-up question to Senator Johnston's question about the process and identifying how many security checks are flawed, I ask you: do we have a proper set of terms of reference for this?

**Mr Merchant:** I might just take exception to how many security clearances are flawed here. It might be helpful if I put a bit of context around this issue. Since the middle of 2009, we have been transitioning from a system of hard-copy, paper based security applications to soft-copy, electronic security applications, and one of the challenges we have had in moving through that transition has been with certain inflexibilities in the electronic vetting application form. These have been progressively fixed through a series of improvements and upgrades to that e-vetting form. The issue for the staff in the DSA, the Defence Security Authority, particularly in the Brisbane vetting centre, has been how to address those inflexibilities in the form while progressing the applications for security clearances.

Now, the staff in the DSA have worked very hard to address those challenges. It has not been an ideal situation, and there has been a need, as part of their business processes, to identify some workarounds. These workarounds are documented and managed. They are needed to allow applications to proceed to the assessment stage, where the extensive checks that are part of the security clearance process start. There was certainly a need for a number of these workarounds to be in place when the contractors who appeared on *Lateline* were employed in the Brisbane office.

I can give an example. There are some data fields in the electronic form which need to be filled in, even in situations where the applicant may not have the information available to them. For example, not all applicants know every birth date of all their relatives. In that case, the workaround established, documented and managed was that a birth date of 1 January 1900 would be entered into the field. That was recognised as a flag to the analysts who would do the subsequent assessment of the clearance and to ASIO, to whom we electronically transfer these forms to enable their security checks to start. That entry of '1/1/1900' was recognised as the equivalent of 'unknown', and that was then a flag that needed to be followed through with the applicant in the subsequent stages of the security clearance process.

We have done a lot since 2009 to improve the e-vetting capability. It is much better now than it was. It is still not perfect, though, and we continue to have a series of improvements on the list, to be implemented over time. But to say that that practice has resulted in flawed security clearances is, I think, jumping to a conclusion that we are a long way from reaching at this stage.

**Senator KROGER:** It would be reasonable to call it a sort of process—

**Mr Merchant:** I think it is also important to understand, as the Secretary said in his opening comment, that the contractors who were employed in the DSA, and who appeared on the *Lateline* program, were only involved in basic administrative work at the very start of the security clearance process. In particular, some of their duties did include the checking of forms as to whether those had complete data and subsequent entry of data. But they certainly were not involved in the stage of assessing the suitability of a person to hold a security clearance. That is only done by people who hold a suitable government certification—either certification III or certification IV, depending on the level of clearance that is being assessed. Certainly, the contractors were not involved in any subsequent decision to grant or to withhold a clearance.

I just think that is important context for members to have because, as the Secretary said, it is important that we do not jump to worst case conclusions here and make judgments that the security clearance is subsequently flawed. As I said, one of the advantages the Inspector-General of Defence will have in her investigation is that it will be possible to compare the hard copy original information from the applicants with what we now hold in soft copy on our system and to identify whether there are any variations, and if there are, whether those variations are material to the issue of granting a clearance or withholding it. Until we have been through that process, I think we should be careful about jumping to conclusions here.

**Senator KROGER:** What time frame did you put on that, again?

**Mr Merchant:** As I said, I think the inspector-general has indicated a matter of about three months—that is her initial preliminary estimate.

**Dr Watt:** Obviously, we will give every assistance to encourage this. We are very pleased that this matter has been referred to IGIS because we do need to get to the bottom of it. Because of the protections that IGIS is able to offer witnesses she will have an ability to speak to those witnesses, should they choose to speak to her, that we do not.

**Senator JOHNSTON:** What other work-arounds are there?

**Mr Merchant:** There are a number of work-arounds that we had to have in place. I have mentioned one in relation to birth dates. Mr Roberts, Chief Security Officer, has a more complete list of the work-arounds, so I will ask Mr Roberts to address that.

**Mr Roberts:** The first thing is that we are talking in two time frames here. Currently, there is no need for the work-arounds. As Mr Merchant indicated, since 2009-10, when those people were employed in the vetting centre, we have improved the vetting systems. When I talk to you now about the work-arounds, these are the ones that were in place in the early stages when we had a data mismatch, if you like, between the new vetting system that Mr Merchant has described to you and another new system we had at the time, which was an automatic data link to ASIO.

Previously when we sought an ASIO check, the information would go to ASIO in hard copy. We thought that we would streamline it further and, obviously, speed the process up if we had this electronic system where ASIO would be able to interrogate our vetting system and draw from it the information ASIO needed to do its checks. When we were first setting this up we discovered that some of the data that was in our vetting management system was not in a form that the ASIO system required. For example, Mr Merchant stated the issue of the ASIO system requiring a date. It would not accept 'do not know' or 'unknown', so we had to put something in that would allow the ASIO system to recognise: (a) that this is good enough for the check to proceed; and (b) that this data equals 'unknown' or needs to be followed up. The sort of thing that we were talking about indicatively at the time was the residential address. If the vettee had not supplied 10 full years of address history—for secret and top secret we need 10 years, or five years for the lower level classifications—the dates for the gap were entered into the data system by the contractors using the accepted entries, which were: 'Green Street,' 'Unknown Street' and 'Fake Street'. The analysts would then follow up with the vettee to obtain the missing information, and when the analysts had that information it would be forwarded on to ASIO.

**Senator JOHNSTON:** Was the last one 'Fake Street'?

**Mr Roberts:** Yes, 'Fake Street'. With employment gaps, it would be the same thing. The dates for the gap would be added and, depending on the issue, if the date was unknown 111900 could be used, and then the analyst would follow up, get the exact date if possible and notify ASIO. For education, for example, there were issues with the ASIO system not accepting a gap greater than 30 days. For example, if the vettee was at high school from February 2004 to November 2004, and then the vettee was at university from February 2005 to December 2008, there was the issue that November 2004 to February 2005 was more than 30 days, which sounds like school holidays. They would close the gap back to January and then confirm that was the case, and, if it was or whatever the outcome of that was, they would then go back and notify ASIO.

There were other issues around dates for unemployment and deceased estates. If the vettee had not included the date that their parents or spouse passed away, 111900 was used, meaning an unknown date. There was missing parents' information as well and holiday travel. You might recall that one of the *Lateline* people mentioned the fact that they just made up China. In instances where the vettee had noted Europe, Asia and South America as holiday travel destinations, the analyst or the contractor would select a country from this area and put that into the database. For example, they would select the United Kingdom as the country where

the person might have said 'Europe', and then in the comments section note 'Europe holiday', which is what the vettee had on the form, and then the analyst would make contact with the vettee to identify the countries they actually visited.

Parallel with that was deployment travel. In the event that a vettee put down, 'I was on a navy deployment to South-East Asia,' what would happen to keep the process going was that the analyst or the contractor would select a country—say, Singapore—they would put down 'deployment, HMAS *Canberra*', if that was the ship, and then they would make contact with the vettee to identify the countries were actually visited during the deployment. At the stage when this information was obtained, there was an official process whereby it was entered and stamped with an indication of who had obtained the information, the date it had been obtained and so forth. That was the process at the time.

As Mr Merchant has indicated, progressively we have been working with ASIO to try and narrow the gap of things where we have data transfer inconsistencies to the point where, largely speaking, we have eliminated them and the need for workarounds has gone.

**Mr Merchant:** I would like to add to that. It is important to note that, even at that time, the process of transferring this information to ASIO was not a once-only process. When the information was first given to ASIO there was subsequent follow-up, as further information was clarified with the applicant, to update the information that was given to ASIO. That is another reason why I say that, at this stage, I would not be jumping to worst-case conclusions about this matter.

**Senator JOHNSTON:** I understand that there is a relatively small window where the incapacity to address the ASIO database requirements initiated the workarounds. Is that right?

**Mr Roberts:** That is correct.

**Senator JOHNSTON:** But it is concerning that, if I have so many workarounds on the initial raw data for the applicant, all but the applicant's name was potentially a default address or number so that the name could get to ASIO. How many workarounds on one form can you possibly have?

**Mr Merchant:** No, I think that is an exaggeration. Typically, there would be only a small number of workarounds on any one form, and certainly, if there was a large number, then that would need to be clarified with the applicant at the time before the form was transferred to ASIO.

**Mr Roberts:** I would add that it was not every form or every application pack that suffered this problem. It was only where there was a data mismatch for whatever reason.

**Senator JOHNSTON:** There are 1,500.

**Mr Roberts:** No, the 1,500 are the packs that the three people on the program handled during their time. That is not to say that all those 1,500 necessarily had this problem.

**Senator JOHNSTON:** We will hear about it from the inspector.

**Mr Roberts:** We will.

**Senator TROOD:** Were all 1,500 cases passed on to ASIO?

**Mr Merchant:** I am not certain of that. Certainly all of the cases that they would have dealt with at, at that time, confidential and above would have required—

**Senator TROOD:** Do you have statistics on the number of cases passed to ASIO?

**Mr Merchant:** I do not have a breakdown of the 1,500. Of those 1,500, a large number would have been passed on to ASIO.

**Dr Watt:** When we have done the audit we would have a better idea. I think Mr Merchant's point that a large number would have gone to ASIO would be correct. But, until we have done the audit, we cannot exactly be sure. If you want to put the question on notice, we will answer it.

**Mr Merchant:** We may not have that information. At the time the structure of the security clearance was restricted, confidential, secret, top secret negative vetting and top secret positive vetting. All clearances confidential and above required an ASIO check.

**Senator TROOD:** And you are not sure how many of these 1,500 were in that category?

**Mr Merchant:** I am not sure how many of the 1,500 were at confidential and above.

**Dr Watt:** Again, the audit will tell us that with accuracy.

**Senator TROOD:** Have you been in touch with ASIO about this matter?

**Mr Merchant:** Yes, we have had discussions.

**Senator TROOD:** What have you told ASIO about this?

**Mr Merchant:** ASIO have been aware of this practice, obviously. As Mr Roberts explained, the need for the workarounds really arose because of some incapability between the new system and their system. These workarounds were agreed and negotiated with ASIO at the time. So they have been very well aware of this practice. As I said, there was that mutual recognition. That has been that confirmation with ASIO of the matters that we have held since the *Lateline*.

**Senator TROOD:** The reason I ask is that I spoke to ASIO about this matter last week. I do not know whether you saw that evidence.

**Mr Merchant:** I did.

**Senator TROOD:** If you saw that evidence, you may recall that ASIO was working on the premise that there were no difficulties, that your department was satisfied with its inquiries. The evidence that the committee received was that ASIO understood that the Defence department had essentially closed its file on this matter or at least there was not anything about which they needed to be concerned.

**Mr Merchant:** As I read it, I think they were saying that we were certainly not at this stage jumping to the conclusion that information had been fabricated for the security clearances. That is quite different to a documented and managed program of workarounds because of some inflexibility. I think that was what ASIO were saying to you.

**Dr Watt:** Senator, if you seek clarification, I am sure Mr Merchant and I will be happy to talk to the Director-General of Security and get you that clarification today.

**Senator TROOD:** Thank you, and if you could just clarify for me the number that actually went to ASIO I would be grateful.

**Dr Watt:** We may not be able to do that today, because that does await an audit. We just do not have the data to give you until we do that audit.

**Senator TROOD:** Thank you.



**Senator JOHNSTON:** I would like to go to the last issue that you raised in your opening statement—the Defence and ASC relationship. I should say that I think it is the Defence-Finance relationship.

**Dr Watt:** I might ask Dr Gumley to join us and Air Vice Marshal Deeble, if he is able to.

**Senator JOHNSTON:** I have a lot of stuff to talk about on submarines, but I am just interested in this sustainment and maintenance relationship. You have agreed to conduct a benchmarking review and as part of that you are going to look at the best commercial framework for submarine sustainment.

**Dr Watt:** That is correct.

**Senator JOHNSTON:** The performance targets based on best practice efficiency and effectiveness metrics.

**Dr Watt:** Yes.

**Senator JOHNSTON:** And the subsequent priorities for ASC and defence reform.

**Dr Watt:** Among other things.

**Senator JOHNSTON:** How is it in 2011 we are doing that?

**Dr Watt:** I think 2011 is an appropriate time to do it.

**Senator JOHNSTON:** Why wouldn't we have done it in 2000?

**Dr Watt:** Now, remember, Senator, we have an existing through-life support agreement with ASC for submarines. That agreement has been in place for some time. We all acknowledge that the agreement which is a cost plus contract is dated. We have been working for a very long period of time to put a new agreement in place That is the ISSC. That is why as part of this ISSC, in order to try to get the best handle that we can on how the ASC and ourselves might be expected to improve the productivity of the maintenance operation, we are looking at this benchmarking. I will ask Dr Gumley or Mr King—

**Senator JOHNSTON:** Before you do I want you to answer me this: is it fair to imply given that you are conducting a review—and we will talk about the costs and the time frame of who is going to be doing the benchmarking review in a moment—am I to infer that you do not know the best commercial framework for submarine sustainment as a benchmark?

**Dr Watt:** I do not think that is the case.

**Senator JOHNSTON:** Then why are we doing it?

**Dr Watt:** We are doing it because we want to make sure that we have got the best and the right possible thing over time. I will pass over to Mr King.

**Senator JOHNSTON:** What have we got now?

**Dr Watt:** We have got a through-life support contract which is a cost plus agreement.

**Senator JOHNSTON:** That does not deal with any benchmarking.

**Dr Watt:** I have asked someone else to answer the question but, Senator, I think the point we would all agree is that the cost plus agreement is long term not necessarily the best commercial framework for anything.

**Dr Gumley:** The origin of the current through-life support agreement was 2003. At that stage the Collins program was coming out of the build into the sustainment. Nobody, whether

it be defence people or ASC, had a full understanding of the cost for doing sustainment. We set up the contract in 2003 and I was party to it when I was at ASC to learn a lot of information about the cost of maintaining a submarine.

**Senator JOHNSTON:** Where do you learn that from?

**Dr Gumley:** By doing it. So for the first three or four years the purpose was to get full-cycle dockings, mid-cycle dockings, other various types of maintenance periods and build a database on how much it costs to do things. What does it cost to change a periscope? What does it cost to do maintenance on the torpedo tubes? Therefore you would be able to have a much better basis. The only way you can build that sort of knowledge is by doing it, recording it, and then after that you can work out how you do it better. The origin of the cost plus contract was to build that information base. Hopefully, now we are in a much better position, after seven years have gone by, to actually understand the costs of sustainment on Collins and it is time for a new contracting regime. There is no doubt about that at all.

There are also some issues on industry structure which we have learnt over the years. At the moment ASC does virtually all the touch labour work on the submarine. One should ask whether that should continue—this is part of the benchmarking—or whether it would be better that ASC adopted a managing contractor role with all the engineering work but perhaps tender out aspects of the blue-collar work to people who can do the work or know the business. They are some of the things that we have to look at in the benchmarking study. Mr King has been involved with writing some of the terms of reference for the benchmarking study.

**Senator JOHNSTON:** Just before we get there, what has brought us to this? Why are we doing it now?

**Dr Gumley:** First of all we know that we have to be able to do it more productively than we are at the moment. We all have to work out how to do submarine maintenance more productively than we are at the moment.

**Senator JOHNSTON:** Why?

**Dr Gumley:** Because I think it would be very complacent to sit back and say just because you have done something for seven years it is necessarily the right or the best way. We should always be looking for improvement.

**Senator JOHNSTON:** Is it not because the costs of these submarines are absolutely killing us?

**Dr Gumley:** The cost is going up that is of concern to us but so is the age of the submarine and so is the impending obsolescence of parts of the submarine.

**Senator JOHNSTON:** Without counting obsolescence aren't we at \$700 million a year for support and sustainment?

**Dr Gumley:** I am not sure I have that figure.

**Dr Watt:** We will check that Senator. I think it is one that has surprised Dr Gumley. We will come back to you. I think it is important to take note of what Dr Gumley has said. The costs of maintenance of Collins are rising, its age and, as he said, the obsolescence of some things all of which have to be replaced as part of the normal cycle. We do need to look at doing this more efficiently.

**Senator JOHNSTON:** *Rankin* was commissioned only in 2003, which in terms of a 25-year life, which was what was intended, means it is a baby—barely out of short pants.

**Dr Gumley:** Yes, but many of the systems in it are identical to the systems in HMAS *Collins*, which was commissioned many years before that, in 1996. So many of the systems in a submarine now are at least 15 years old on a 30- to 35-year total life of a submarine. It is not unexpected that some of those systems, particularly anything to do with computers, are starting to get pretty aged now.

**Dr Watt:** It is also acknowledged that it is time to update and modernise the through-life support equipment.

**Senator JOHNSTON:** All right. Who is doing it?

**Dr Gumley:** We are, working with ASC. There is a negotiation team from DMO and a negotiation team from ASC. They have been working on it for about six to 12 months now.

**Senator JOHNSTON:** Is that the benchmarking review?

**Dr Gumley:** No.

**Senator JOHNSTON:** You are talking about the contract negotiations?

**Dr Watt:** Mr King will talk about the benchmark review.

**CHAIR:** Before he does, do you have the full historical data for those seven years for all of the subs?

**Dr Gumley:** Frankly, we do not have as much information as we would like. We have quite a bit of data, but it is probably not quite enough. That is what has left risks in the program. There are things happening to the boats that were unexpected and many of us have chronicled in previous hearings of this committee and elsewhere some of the issues with the generators and the drive train. Some of those are still very much on a cost-plus basis because they are emergent work—we just do not have the data to be able to pre-cost them.

**CHAIR:** Does ASC have the full historical data?

**Dr Gumley:** ASC has a lot of data.

**CHAIR:** More than you?

**Dr Gumley:** Probably more than us. They would certainly have all the records.

**CHAIR:** Do you have access to that?

**Dr Gumley:** We have access to the records under the cost-plus contract and it is a question of whether that access enables us to say, 'This is how much it cost to change a system,' or, 'This is how much it cost to repair a system.'

**CHAIR:** Is the amount of data you do not have—that the DMO has not got in its system—critical to completing the review and going to an alternative form of contractual arrangement for maintenance and sustainment in the future?

**Dr Gumley:** I agree it is very important to have all the data, because it is almost impossible to set a performance based contract unless you know how much things are going to cost—

**CHAIR:** That is what I would have thought.

**Dr Gumley:** and, therefore, what KPIs you can set in a performance contract for everybody to do better, including ourselves.

**CHAIR:** The government owns ASC. Are there any serious impediments to getting a full exchange of critical data to DMO from ASC so that you can do your reviews properly?

**Mr King:** I am sorry, Senator. Can you repeat that please?

**CHAIR:** Dr Gumley has told us, Mr King, that there is some critical data that DMO does not have but the ASC has. ASC, of course, has its own charter and its own lines of communication. Is there any impediment that we are aware of to DMO getting that critical data so that it can go into contractual negotiations properly in the future?

**Mr King:** No, there is no impediment to getting that data. I think, as the secretary and the CEO have highlighted, building and maintaining a submarine is probably at the most challenging edge of the work we do, and for any nation. It is particularly difficult in this case because Australia's need for a conventional submarine capability far exceeds any other conventional submarine operator in the world. That means that we embarked on a very adventurous and challenging program to build the Collins class, which at its time was the most advanced conventional submarine in the world and it remains very much in that position. That brings with it a sense, or the requirement, that we have to maintain these submarines as a parent navy.

So not only is it the most challenging platform that we operate but also we do it alone. That means there are just genuine hard problems to be tackled. Added to that in early 2000 to 2003 was the ownership of ASC and its coming back into government ownership. My view is that there was also some distraction in the mid-2000s in the sale process of ASC. When we would have liked more data to be accumulated on Collins and its maintenance costs and drivers in fact at least part of the ASC management was focused on the sale process, which was a big issue. Now, of course, that process has been terminated. DMO and ASC are now refocusing on collecting the information we need to drive those important changes that we need to get the material ready net days and at an efficient cost. The problem with that is that you have the engineering uniqueness of the Collins submarine, the uniqueness of Australia and its operational environment and the fact that other nations, understandably, just do not share all of this information relevant to their platforms, which are not the same as our platform, with you. That is understandable. This is really heartland, strategic information.

I have been engaged with Mr Coles in the UK, who is a likely leader of this independent review. Mr Coles has done similar work in the UK. He has also done some work for New Zealand and a small amount of work on the air warfare destroyer for us. We cannot go to the world, as you would understand, to share these very sensitive pieces of information. Obviously a gentleman from inside the UK with all the appropriate security clearances and experience with the UK maritime industry is an ideal candidate to undertake this work for us. We have not finalised that yet and it will be subject to commercial arrangements.

**CHAIR:** Thank you, Mr King, but, as you said at the outset, there is no impediment for that exchange of critical data.

**Mr King:** No, ASC and us both being government agencies. The TSLA contract allows all that information to be shared.

**CHAIR:** And there are no restrictions on ASC with other members of the alliance in sharing that information with the DMO?

**Mr King:** The alliance does not work for the submarine. That is just straight DMO to ASC.

**CHAIR:** Thank you. I just wanted to establish that.

**Senator FAULKNER:** The questions I want to ask go to stories that were published in the *Age* and *Sydney Morning Herald* in mid April. One was headed 'Gay-hate campaign in army left unpunished'.

**Air Chief Marshal Houston:** We will just get the Chief of Army. I sense that we are going to be between a rock and a hard place because the Chief of Army and I have to go.

**Senator FAULKNER:** Would you both prefer to be here for my questioning on this. If you would, I am happy to leave it.

**Air Chief Marshal Houston:** I think the Chief of Army—

**Senator FAULKNER:** It is up to General Gillespie. If he would like to be here then that is fine and I will hold off my questioning until he returns.

**Air Chief Marshal Houston:** We will come back for the evening session.

**Senator FAULKNER:** I am happy to do that, CDF.

**Air Chief Marshal Houston:** Thank you very much.

**Proceedings suspended from 12:29 to 13:31**

**CHAIR:** The first issue we are going to deal with relates to matters dealing with the Australian Defence Force Academy.

**Senator TROOD:** I know my colleague Senator Johnston has some questions about this, but I want to begin, General Hurley, by asking about the status of the six reviews that the Minister for Defence instituted into the events at ADFA earlier in the year. What is the time line on each of them and have any been concluded?

**Lt Gen Hurley:** All six reviews have commenced. When I say reviews, I am covering the three reviews being conducted by Ms Elizabeth Broderick: the three cultural stock takes, the review into the pathways for women in the APS in the Defence organisation and the review into the management of complaints. Ms Broderick is not conducting the review into the allegations that have arisen. That is being held separately by DLA Piper. That is not actually a review; that is a separate activity. The reviews being conducted by Ms Broderick have commenced. Her reviews are in two phases and three elements. The first one is into the culture at ADFA, which is really, in her terms, a gender equity review of policies and practices at ADFA. We expect the report on that in the latter half of the year. She has not yet finished her full planning on that. The second phase of her review is the treatment of women in the ADF and pathways for progression of women in the ADF. Again, we expect those elements of her reviews to be completed towards the latter part of the year. She has not given us complete dates for that yet.

If you bear with me, I will go through each of the three cultural stock takes. The cultural stock take on the management of alcohol use in the ADF is underway. We expect that there will be a report from the panel by 31 July this year. The social media use review is also

underway, and we expect an interim report by the end of July 2011. I haven't got a concluding date for that yet. The review into behaviour and personal conduct in the ADF, which is General Orme's review, is underway. Again, we expect an interim report on 15 July and a final report on 30 August. The review into the management of complaints being conducted by the IGADF has also been commenced and we intend the review to be substantially completed by the end of July this year. The Defence review into leadership pathways for women in the APS has commenced and a report is due by the 31 July this year.

**Senator TROOD:** Thank you, General Hurley.

**Senator JOHNSTON:** General, this morning in the *Herald Sun*—I think it was this morning—there is an article surrounding the treatment of cadets at ADFA. One of the allegations is that Federal Police are investigating further allegations that an ADF lieutenant was assaulted in the presence of top Defence brass after tense talks about the case. Are you aware of that inquiry by the Federal Police?

**Lt Gen. Hurley:** There is no inquiry by the Federal Police. I can clarify that.

**Senator JOHNSTON:** Good. I am glad to hear that.

**Lt Gen. Hurley:** There have been allegations made about two issues you mentioned: about the management of cadets in the initial interview process and an allegation of assault against the legal officer. The first issue has been taken to the IGADF by ADFA. So ADFIS, the investigative service, has done an assessment of evidence and has gone to the IG, because if there are any issues involved in this then probably military justice issues. They are looking at how they work that through. On the second issue of the alleged assault, ADFIS has commenced an investigation into that.

**Senator JOHNSTON:** ADFIS have commenced an investigation?

**Lt Gen. Hurley:** Yes.

**Senator JOHNSTON:** Right. Who do ADFIS report to?

**Lt Gen. Hurley:** The CDF.

**Senator JOHNSTON:** Are you aware of whether Defence officials have provided formal written statements in support of those ADFIS enquiries?

**Lt Gen. Hurley:** To my knowledge, only the complainant has been interviewed to date.

**Senator JOHNSTON:** Does it involve five cadets, two of whom are 17 years of age?

**Lt Gen. Hurley:** Sorry, we are talking about two different things. In terms of the alleged assault—

**Senator JOHNSTON:** Yes, the lieutenant.

**Lt Gen. Hurley:** Yes.

**Senator JOHNSTON:** You said that there was an ADFIS inquiry to the treatment of cadets, is there not?

**Lt Gen. Hurley:** The treatment of the cadets is a discussion between ADFIS and the IGADF about the appropriate handling of that complaint.

**Senator JOHNSTON:** So we have not progressed. Okay. But are you aware of who the cadets are—their status?

**Lt Gen. Hurley:** I think this is a claim against those who were involved in the original Skype incident.

**Senator JOHNSTON:** Is it true that two of them are 17 years of age?

**Lt Gen. Hurley:** Two are under 18, yes.

**Senator JOHNSTON:** When would we expect, if you can tell us—you may not know—that inquiry to be completed?

**Lt Gen. Hurley:** I do not know.

**Senator KROGER:** What is the normal timeframe in dealing with things like this? What would be a reasonable timeframe to expect?

**Lt Gen. Hurley:** I am not a trained investigator. I think they would need to look at the complexities of the issues raised, how long it takes to get statements and bring all that together. It could be weeks. There is no common yardstick for this.

**Senator KROGER:** So it could be the end of the year?

**Lt Gen. Hurley:** I doubt it. It will not take forever, but it is difficult to say how long it will be.

**Senator JOHNSTON:** Are you aware of the Law Institute of Victoria's ethical committee making an assessment with respect to an order that defence lawyers not be provided to the accused boys by the ADF?

**Lt Gen. Hurley:** Only what I read in the paper this morning.

**Senator JOHNSTON:** But you have not heard anything like that?

**Lt Gen. Hurley:** No.

**Senator JOHNSTON:** Can you confirm that laptops that have a Skype capability have been removed from cadets at Duntroon?

**Lt Gen Hurley:** I cannot. The Deputy Chief of Army is not aware of the issue so we will have to take that on notice.

**Senator JOHNSTON:** You do not know, is the answer to the question, given that you are taking it on notice.

**Lt Gen Hurley:** Yes, we do not know the answer to that question.

**Senator JOHNSTON:** Is it possible that we have had, as a result of the ADFA incident, laptops removed from cadets at Duntroon?

**Lt Gen Hurley:** That is a hypothetical. I do not know. We will find out an answer.

**Senator JOHNSTON:** I would like to know on what basis those computers were removed, if they were removed, and why, when and when they will be returned, if you could take that on notice.

**Lt Gen Hurley:** Thank you. We will do that.

[13:41]

**CHAIR:** We move to questions on the Defence Materiel Organisation.

**Senator JOHNSTON:** I turn to soldier survivability, Land 125 phase 3B, I think. What does that involve? Is it to do with the protection of soldiers with respect to ballistics, IEDs et cetera? What does phase 3B survivability do?

**Brig. Phelps:** Land 125 phase 3 is a multiphase project. I will put it in context. Phase 3A looks at the dismounted battle management systems. It is a post-second pass project and it is being managed by Electronic Systems Division of the DMO. Phase 3B is titled survivability. It has three broad aspects to deliver: firstly, improved body armour; secondly, improved eye protection; and thirdly, improved hearing protection. As it was an unapproved project—it is a first to second pass project—other funding sources, Force Protection Review funding, Army additional equipment funding and sustainment funding, were used to deliver the improved body armour system which was MCBAS. We are in the final stages of introducing into service a ballistic and laser ocular protection system—so, ballistic goggles that protect against fragments and lasers on the battlefield. The third component of phase 3B was the advanced hearing protection—that is, in-ear protection to help soldiers on the battlefield. We went out to tender but there were no sufficiently mature systems around that would meet our requirements. We have identified a potential system and we are in the process of acquiring some of those to test for advanced hearing protection.

**Senator JOHNSTON:** You said that 3B was up for approval—that it went from first pass but never made second pass. Why was that?

**Brig. Phelps:** It was in the process of moving through first to second pass when the urgent need for these requirements arose.

**Senator JOHNSTON:** Has it been a rapid acquisition?

**Brig. Phelps:** They were acquired, I would say, rapidly—operationally—using non-land 125 funding.

**Senator JOHNSTON:** Where did we get the money from?

**Brig. Phelps:** Force protection review serials. There was another program, army additional equipment, and we also have available to us normal sustainment funding for ongoing development purposes.

**Senator JOHNSTON:** What is industry's involvement in this project?

**Brig. Phelps:** To date, MCBAS was acquired through Australian Defence Apparel of Bendigo. I will have to check my notes, but we are in contract with an Australian company for the eyewear.

**Senator JOHNSTON:** Where are we at with the delivery of the program?

**Brig. Phelps:** MCBAS, as you know, has been delivered and is in service.

**Senator JOHNSTON:** I am told that we are moving from MCBAS to TBAS.

**Brig. Phelps:** That is correct; we are.

**Senator JOHNSTON:** So MCBAS is in service but we are changing it.

**Brig. Phelps:** Yes, we are.

**Senator JOHNSTON:** Where are we up to on that, and why are we doing that?

**Brig. Phelps:** You were here last year when we went through all the issues on MCBAS. It was designed for a specific theatre.

**Senator JOHNSTON:** I was here. Were you here?

**Brig. Phelps:** I was not at the table but I was in the background, listening—



**Senator JOHNSTON:** That is good.

**Brig. Phelps:** knowing that I was taking it over in a month. So MCBAS was designed for more static and vehicle mounted operations. It provides a good level, an extensive level, of body coverage but, as we know, proved less suitable to the environment of Afghanistan.

**Senator JOHNSTON:** At 17 kilos?

**Brig. Phelps:** I will have to check that figure but I think it was 13½ kilos—when you have all the extremities on. You can take extremities off and it comes down to somewhere around 8-8½ kilos in the base configuration.

**Senator JOHNSTON:** So we have gone to TBAS.

**Brig. Phelps:** Yes, Senator.

**Senator JOHNSTON:** Are we doing research and development on TBAS?

**Brig. Phelps:** We have largely completed the research and development phase. It was something that was in train this time last year. We have actually delivered the first of the TBAS systems to the MTF3 and the SOTG that are deploying. They had them for their mission rehearsal exercise and they are taking them with them into theatre.

**Senator JOHNSTON:** How many sets?

**Brig. Phelps:** Approximately 1,500.

**Senator JOHNSTON:** So 1,500 sets have gone to Tarin Kowt?

**Brig. Phelps:** Wherever they are deploying it. They are with the soldiers now. They took them with them from Australia.

**Senator JOHNSTON:** Into Kandahar, Tarin Kowt and Kabul?

**Brig. Phelps:** Yes, Senator.

**Senator JOHNSTON:** When was that finished? When were they developed?

**Brig. Phelps:** There were developed over an extensive period up to and including late last year. We went through three development iterations and sought extensive feedback from soldiers from conventional forces and special forces. We delivered them to the soldiers in March this year.

**Senator JOHNSTON:** So we have had them in theatre for 2½ months.

**Brig. Phelps:** No, they went to the soldiers here in Australia, in Townsville.

**Senator JOHNSTON:** But we have had them in theatre for 2½ months?

**Brig. Phelps:** No, those soldiers have only just deployed with that kit.

**Senator JOHNSTON:** How long have we had them in theatre—weeks?

**Brig. Phelps:** Weeks, Senator. I am not sure of the exact deployment time phase. My requirement is to get them to the soldiers in Townsville or in other places in Australia. They have them and they are now taking them with them into theatre.

**Senator JOHNSTON:** And there are 1,500 sets?

**Brig. Phelps:** Approximately 1,500 sets.

**Senator JOHNSTON:** What has happened to MCBAS.

**Brig. Phelps:** MCBAS is retained in service. It would be the highest level tier of a tiered-armour system. We are working with Army now on what is the long-term plan for body armour, and we will retain a number of MCBAS as a higher-level system, because it serves an appropriate purpose in less mobile operations.

**Senator JOHNSTON:** Now that is phase 3B.

**Brig. Phelps:** Yes, Senator.

**Senator JOHNSTON:** What sort of feedback have you had on that?

**Brig. Phelps:** We have had nothing but positive feedback, particularly on TBAS.

**Senator JOHNSTON:** How many special forces personnel are wearing TBAS?

**Brig. Phelps:** I cannot give you the exact number, on a day-to-day basis, of how many are wearing them; I can give you the breakdown of how many were acquired for each portion. I just need to find that in my notes.

**Senator JOHNSTON:** That is all right. But there is a problem in sending sets, and then wanting to know if people are actually wearing them and putting them into service. I note, from my own observations both at home and over there, that special forces wear very little standard issue kit. Do you contest that remark?

**Brig. Phelps:** No, Senator; they wear a variety of kit.

**Senator JOHNSTON:** We have provided special forces with TBAS.

**Brig. Phelps:** Yes we have.

**Senator JOHNSTON:** Are they wearing it?

**Brig. Phelps:** I would have to take that on notice.

**Senator JOHNSTON:** I am obliged to you for doing that but would have thought that it is pretty fundamental that, when we go to the trouble of developing a particular type of protection for our personnel, we follow up to ensure it is being deployed. You are not sure that it is being worn, notwithstanding that it has been delivered?

**Dr Watt:** I think it is a matter of: you are not necessarily asking the right person to talk about wearing it.

**Senator Feeney:** Given the operational nature of the question.

**Brig. Phelps:** We have issued it to the soldiers for use. The feedback we have had from both special forces and conventional force soldiers is that it meets their requirements. I believe those forces are just now being deployed into theatre and will be going for the relief in place. That is the only information I can give you as to what they use on a day-to-day basis.

**Senator JOHNSTON:** I have a problem with the words 'meets their requirements'. They seem to me to cover up a multitude of sins. These are people who are not terribly descriptive. 'Meeting their requirements' means that, if there is nothing better available, they will wear them and suffer the consequences, if there are some, largely in silence. In terms of where we have been on this whole project of in-combat uniforms, I would like to know what steps we are undertaking to ascertain, on an objective basis, that personnel wearing our new TBAS—and we will talk about the cost of that in a minute—are happy with the product: that is, when you lie down in the prone position you can get the butt of the F88 into your shoulder and the ocular will zero so that you can shoot back at something, and that you can actually get your

head up so that so that you can get your eye to the sight with the helmet on. What are we doing about that?

**Brig. Phelps:** The part of the trial process for the development of TBAS is that we went through, as I said, almost three versions and iterations of that, based on all the feedback that we had. As to the trialling to date, it is not a case of us telling the soldiers this is the best they can have; it is the soldiers telling us that we have responded to their needs and taken into account all their requirements. They have suggested some modifications and changes along the way; where there is objective evidence to support those changes, we have incorporated them.

**Senator Feeney:** I might perhaps ask the VCDF and the Deputy Chief of Army to assist as well.

**Senator JOHNSTON:** I am happy to come back to this if you want the Chief of Army present. We have got onto this as a DMO issue, but I am happy to cancel and come back later if you would like.

**Senator Feeney:** Except insofar as your question went to operational experience—

**Senator JOHNSTON:** I am all ears.

**Lt Gen. Hurley:** There are a number of assumptions in some of your questions. These are new systems that have been introduced. As Brigadier Phelps has pointed out, we went to a lot of trouble to ascertain what the soldiers required of the equipment; we did not just throw it at them. Having just issued that equipment, it is a bit difficult to say, 'Yes they are wearing it,' or not, because some of them may not even be in theatre yet. So we will find that answer for you on who is wearing what. But a lot of work has gone into getting this equipment. I could ask the Deputy Chief of Army just to comment on the feedback that came out from the latest MRE that was conducted for this group that is just leaving.

**Senator JOHNSTON:** 'MRE'?

**Lt Gen. Hurley:** Mission rehearsal exercise.

**Senator JOHNSTON:** Mission rehearsal exercise; forgive me.

**Major Gen. Symon:** Perhaps just before discussing the mission rehearsal exercise, there are a couple of other bits that I would not mind adding. We came from a place, as you well know, a couple of years ago where there was no flexibility and there was no choice in this issue. The body armour was heavy, it was designed for Iraq and, as Brigadier Phelps has indicated, very much designed for vehicle-borne operations.

As we moved into the mentoring role and the like, clearly there was a lot of pressure on us to move very quickly both to lighten that body armour system and to still protect our soldiers as best we could—to provide them an array of equipment so that commanders on the ground could make and direct a choice based on the nature of the task at hand. Really, that has been a pressure on us for a couple of years now and also driving the path that we have been going down.

There has been a very constructive collaboration under a title called 'digger works', which is not dissimilar to the 'grunt works' arrangement that you may well be aware of inside the US Army.

**Senator JOHNSTON:** Yes.

**Major Gen. Symon:** It is a collaboration between our army, DMO and DSTO, putting people together whose focus is one thing, and that is how best to answer the soldiers' need for flexibility and how to be able to tailor the body armour that saves their lives but also provides the very issues that you are talking about—the functionality that they so desperately need in the task that they have.

Added to that sort of grunt works focus, back in Australia our operational analysts in theatre are talking to special forces and the soldiers who are on operations and getting their feedback. We have closed a loop that was not there a couple of years ago. We have put a focus on the flexibility for the soldiers, which I concede was a vulnerability a couple of years ago.

With respect to the mission rehearsal exercise, I would be happy to table this correspondence, although I am not sure what the Privacy Act says about it. It is correspondence that has come in, one as recently as today from the CO who is about to go into theatre and who is based in Townsville at the moment. He has provided a letter to us which is extremely complimentary. It is complimentary of all the people in digger works. It actually asks for them to receive some recognition for the hard work they have been doing over the 12 months. He is speaking on behalf of the unit that is about to deploy through this fighting season, and he is full of accolades for the work that they have done. The unit, as he contends, is very happy with the support he has had. He is very happy with the equipment, and I am not sure what the rules are here, but I would be more than happy to pass it to you.

**Senator JOHNSTON:** I really appreciate that, and I think that is very good. I think we have come a long way, but I think it has been like pulling teeth—if you do not mind me saying that. We have had a lot of problems with this gear. I think there is some light at the end of the tunnel; I think we are there now, but when you talk about people who have been deployed operationally, are you talking about defence, science and technology people?

**Major Gen. Symon:** In some cases, the DSTO people have deployed forward. We have had them deploying forward as part of this concern. But I was talking about digger works back here in Australia. The operational analysts are forward; it depends on who has the qualifications. In some cases it is DSDO personnel and in some cases it is uniformed people who have been put through a particular training for the task.

**Senator JOHNSTON:** I am more interested in an objective scientific assessment of the equipment in line with a paper that was produced in 2009 by Mrs Leanne Rees and Warrant Officer Paul Dabinet. Does that ring any bells?

**Major Gen. Symon:** No, Senator.

**Brig. Phelps:** Are you able to tell us some more about the paper; who published it, or—

**Senator JOHNSTON:** It is a paper following their attendance at a seminar entitled 'Participation by Land Operations Division personnel at the soldier survivability and personal protection seminar and at meetings with defence science and technology laboratory, United Kingdom December 2009'. I have the executive summary of the paper before me. These people provide a very strong perspective on what is required to get our combat body armour to a functional standard. I do not question that we have got there and I do not question what we have done except that it took so long, given that MCBAS was extremely heavy, but we all know how important this particular aspect of what is going on in Afghanistan is for us. I want

to know what objective evaluation we are undertaking, right now, with our new TBAS to see, firstly, that it provides maximum protection, maximum flexibility and capability for the soldiers such that they are all satisfied and want to wear it. What are we doing about that?

**Major Gen. Symon:** There are compromises that need to be made. I think you would appreciate that when you said 'maximum protection'—

**Senator JOHNSTON:** For dismounted patrols.

**Major Gen. Symon:** But maximum protection and maximum flexibility are not necessarily possible. There are trade-offs that are required.

**Senator JOHNSTON:** Sure.

**Major Gen. Symon:** That is why we have moved to a tiered body armour system.

**Senator JOHNSTON:** That is why I used the word 'and'.

**Major Gen. Symon:** So where we have moved from a situation where there was no 'and', we now have three suites of 'and', which means that the commander can, before going outside the wire, make a judgment about the trade-off between the flexibility and the protection. That is a very fine military judgment. We stay well clear of that. We see that our job back here is to provide them that flexibility and allow the commanders on the ground to make that very important judgment.

To answer your question about whether we are making sure that, objectively and scientifically, we are getting the feedback and making any adaptations that we can, the answer is: yes, we are. That is why we have the operational analysts in theatre. That is why digger works has been formed back here in Australia, not only to keep improving but to make sure that it gets the lessons learnt and the feedback from the soldiers in theatre.

**Senator JOHNSTON:** I guess it comes down to this: are you confident that the men at the bottom of the chain of command, who are wearing this equipment, will openly express any reservations they have about it—firstly, to their senior command, and secondly, to the people you have put in place to see that the stuff is working as it should? This is the issue.

**Lt. Gen. Hurley:** Men and women, I think, will feel quite freely that they can respond to concerns about that. If you look at the history you will find that over the last two or three years they have certainly done that.

**Senator JOHNSTON:** They have responded to me.

**Lt. Gen. Hurley:** And they have responded to us—

**Senator JOHNSTON:** And I have had a knock-down, drag-out brawl with the Chief of Army telling me that MCBAS is a wonderful thing, when all I have is complaints.

**Lt. Gen. Hurley:** MCBAS was and is—it still remains—a good piece of kit for certain circumstances. We were in a transition period in an operation and we had to adjust to that. We have done that.

**Senator JOHNSTON:** You know that I am not going to take issue with you on that; you are entirely correct—but the fact is that it was so good it was inflexible and too heavy.

**Lt. Gen. Hurley:** We were transitioning from an operation in one country to an operation in another country which had similar characteristics to another type of task, and we have moved with that.

**Senator JOHNSTON:** I am just keen that when we come back here next year I do not have this list of complaints that the stuff does not work. I want you to tell me what you are doing to make sure that that does not happen.

**Lt. Gen. Hurley:** You have heard from the Deputy Chief of Army that we have our operational analyst in place with DSTO and the services in-country. We will get feedback through the operational reports that come back from each rotation. The operational commanders at JOC will do a review of each rotation. So there are many processes by which the effectiveness of all equipment can be assessed in the operational environment.

**Senator JOHNSTON:** I am obliged to you for those reassurances. Why did we not get it past second pass initially?

**Brig. Phelps:** I will have to take that on notice. It is a capital project that is going through the normal second-pass process. It has not held up getting this capability into service. TBAS is not part of Land 125. It is just an evolutionary process to maintain combat body armour. It is still being funded through force protection review funding and through our sustainment funding.

**Senator JOHNSTON:** But it is in the DCP.

**Brig. Phelps:** The broad 125 phase 3B remains in the DCP. Because we have delivered two of the three elements of that Defence is reconsidering how it should reshape the scope for Land 125 Phase 3B. However, that is in the remit of CDG so will not be speaking too much further on that.

**Senator JOHNSTON:** Tell me that again.

**Brig. Phelps:** Land 125 Phase 3B remains between a first and second pass process. Two of the three elements that were originally envisaged to be delivered under phase 3B—MCBAS and eye protection—have been delivered or are about to be delivered. On hearing protection, there was no sufficiently mature system around for us to do that. We have identified a system and we are acquiring a number of those sets to trial.

**Senator JOHNSTON:** I am with you. Forgive me for not picking it up when you first went through it. If I can go to Air Marshal Harvey, where is this in capability?

**Air Marshal Harvey:** As explained before, Land 125 Phase 3B is between first and second pass, and the current scheduling of the second pass is between the fiscal years 2012-13 and 2014-15.

**Senator JOHNSTON:** Given that we have largely headed that off—and correct me if I am wrong—what is there to go forward with?

**Air Marshal Harvey:** Again, the next phase of acquisition will take into account lessons learnt from DSTO on the batch of TBAS acquired, and that will be the next batch required in that time frame I mentioned.

**Senator JOHNSTON:** Surely we will have solved the problem by then?

**Air Marshal Harvey:** We will have learnt more about the best way to go. As I said, there is always a balance between the level of protection and flexibility.

**Senator JOHNSTON:** We will have had men in the field using this gear for two or three years by then.

**Air Marshal Harvey:** Correct—and we will learn from that.

**Senator JOHNSTON:** So why are we continuing with it?

**Lt Gen. Hurley:** I think we have demonstrated that, as we were going through 3B, an operational requirement came up and we diverted the resources to answer that operational requirement. We still have a requirement for soldier combat systems. That is an evolving thing. The next acquisition of soldier combat systems could be, in response to lessons learnt in Afghanistan, that we bring forward money from 3B, or that we wait and work with this piece of kit until we leave Afghanistan in due course and then go back to our next evolution of body armour.

**Senator JOHNSTON:** So we will stick to the plan and learn our lessons as we go?

**Lt Gen. Hurley:** Yes.

**Senator JOHNSTON:** Where are we at with phase 3C?

**Brig. Phelps:** Again, that is a first or second pass project, so I will hand over to Air Marshal Harvey.

**Air Marshal Harvey:** In the process of that, in August 2008 the project signed a contract with Thales Australia for the detailed design of the enhanced F88 Austeyr preliminary design review. The preliminary design review was completed in March 2009 and the detailed design review occurred in October 2009. Second pass approval for phase 3C was subsequently postponed due to a range of other priority issues. There have been ongoing discussions with Thales about the scope of that design work—what will be included in the upgrade to the rifle—and we are presently progressing a submission that should be considered shortly.

**Senator JOHNSTON:** This is the standard rifle that we use in theatre?

**Air Marshal Harvey:** That is right. There is a plan to upgrade it for the future to reduce weight, increase modularity and make it more flexible for future use.

**Senator JOHNSTON:** Why did we defer it?

**Air Marshal Harvey:** My understanding was that, in the context of ongoing design work, consideration of what would actually be done in the upgrade and prioritisation amongst other projects, the decision was to defer because it was not urgently required at the time.

**Senator JOHNSTON:** What is phase 4?

**Air Marshal Harvey:** Land 125 Phase 4 is what is referred to as the soldier enhancement project. It will deliver a range of discrete subsystems that will enhance the dismounted close combat capability for the land force.

**Senator JOHNSTON:** Correct me if I am wrong, but that is pretty important to what we are doing right now.

**Air Marshal Harvey:** Yes, but it is the next phase of evolution of those capabilities.

**Senator JOHNSTON:** You say it enhances. What does it do?

**Air Marshal Harvey:** The specific effects that Land 125 Phase 4 seeks to enhance are improvements to situational awareness and target acquisition; improved lethality of extended range for the fire team, comprising four men; weight reduction; combat mobility for fire teams; enhanced head protection; and special force requirements that are common to the

dismounted close combatant. So, there is a range of enhancements for the close combat soldier.

**Senator JOHNSTON:** That is pretty fundamental to what we are doing right now, today, is it not?

**Air Marshal Harvey:** It is essentially the next phase of that activity, yes.

**Senator JOHNSTON:** When is that due to be first and second passed?

**Air Marshal Harvey:** In the period 2012-13 to 2014-15. Acquisition and provision will be in the order of \$500 million to \$1.5 billion. So it is a large project.

**Senator JOHNSTON:** Yes. So we brought forward, worked our way through and funded the modular combat body armour system. This provides protection and a whole lot of other adjuncts that are fundamental to what we are doing today. Why is it out to 2014?

**Air Marshal Harvey:** As the DCP has about 150 projects, not all can occur at the same time. They are phased in based on need and when existing systems go out and new ones come in.

**Senator JOHNSTON:** But we do not actually have men in the field for a lot of those projects, do we? We have boots on the ground that are depending on this stuff—why is there not any urgency about this?

**Air Marshal Harvey:** As the Deputy Chief of Army said, the urgent requirement was addressed by delivering the first batch as part of the force protection review.

**Lt Gen. Hurley:** Senator, I think we are looking at two time frames. One is today's problems, which we are dealing with, and one is future issues. The DCP looks to future technologies and how to prepare and develop the capability the ADF will need in the future. When these projects were originally planned they were trying to position into the future, taking into account the evolution of technology, in terms of developing soldier protection systems. They remain there for that.

If we have an urgent requirement, as we do in the battlefield space at the present time, we either address that with funds that exist in the DCP—that is the budgeting requirement we need to move to—or seek additional funding through, perhaps, the force protection review. Either way, we position ourselves to deal with today's problems today and get the best possible equipment to our soldiers and hands. We are laying off funding into the future and thinking about where we will go to next.

For example, what we have might be good in Afghanistan today but, if our next operation is in the heat of a jungle in our region, there will be another bit of kit we need and we will have to have the thinking space and the funding positioned to allow us to address that.

**Senator JOHNSTON:** On 1 February 2011, the minister announced that the high-technology anti-IED measure would not proceed. What was the cost of this project?

**Lt Gen. Hurley:** Sorry, this is the—

**Senator JOHNSTON:** In a press release on 1 February 2011, the minister said that a 'high-technology anti-IED measure' would 'not proceed'.

**Dr Watt:** We might have to take that on notice.

**Senator JOHNSTON:** Nobody knows about that?



**Dr Watt:** We know about the project. You asked what the cost of it was.

**Senator JOHNSTON:** Why is it not proceeding?

**Lt Gen. Hurley:** Can you clarify more detail of the project, Senator?

**Senator JOHNSTON:** It is a press release by Minister Smith about a joint press conference with Mr Clare on 1 February 2011 on force protection measures, in particular the 'high-technology anti-IED measure' that 'will not proceed'.

**Lt Gen. Hurley:** That was in relation to an airborne system we introduced in the force protection review the previous year, where we were trying to insert some new technology into a platform that would give us broader coverage in the counter-IED battle. We could not do that; it was just too difficult to do.

**Senator JOHNSTON:** It was a UAV, was it?

**Lt Gen. Hurley:** No, it was not a UAV. We have taken that conceptually and moved it elsewhere, but that particular solution we thought we could field we could not field.

**Senator JOHNSTON:** What is its DCP number?

**Lt Gen. Hurley:** It is not a DCP project.

**Senator JOHNSTON:** So we have a lot of things happening with force protection that are not in the DCP?

**Lt Gen. Hurley:** Correct. It was right at the developmental end for us, in terms of trying to fill a capability in a platform that we did not have in service. It just became too difficult to try to get it through in a timely way once we had done a fair bit of work on it.

**Senator JOHNSTON:** I will turn to the ballistic plates for body armour made in Australia. On 25 March Minister Clare and Minister Snowdon announced that:

Ballistic plates for combat body armour to protect Australian troops can now be made in Australia thanks to the development of new manufacturing technology.

Where do ADA and, I think, BAE get their plates from now? I think you will find that it might be Military Ceramics Corporation.

**Brig. Phelps:** I would look that up. As background to that announcement, it was the outcome of a cooperative development program between the CSIRO, DSTO and ADA. It announced that a pilot plant had successfully manufactured new ceramic plates using a new material with the capacity to be shaped into complex shapes. That now has to be transferred to ADA's factory and expanded to a production sized capability.

**Senator JOHNSTON:** Where is the pilot plant?

**Brig. Phelps:** The pilot plant was that CSIRO's facility in Clayton.

**Senator JOHNSTON:** In Victoria?

**Brig. Phelps:** Yes.

**Senator JOHNSTON:** And they are transferring the technology to ADA?

**Brig. Phelps:** To my understanding, that is correct. DMO is not involved in this process at all. I just happen to know a bit of background about it, so I can give you that. If you want to go into any further detail I would have to defer to the Chief Defence Scientist.

**Senator JOHNSTON:** The CSIRO has been pretty involved in it, hasn't it?

**Brig. Phelps:** Yes, it has, but I do not know to what extent.

**Lt Gen. Hurley:** We have Professor Clark at the table.

**Prof. Clark:** I can also maybe cover some of your previous questions about what we are doing with TBAS, holistically. As you know, the tiered body armour system has three tiers that we have been looking at. Basically we have to look at the trade-off between protection and a reduction in burden. For the past 18 months we have been working with DMO on the TBAS within the Diggerworks framework, which you just heard about. With the assistance of Biokinetics and Associates Ltd in Canada, we have produced an ADF ballistic standard for torso armour that will assist in specifying and certifying TBAS in future armour systems.

With Medical Device Research Australia Pty Ltd, we have developed a human injury assessment tool to help visualise configurations of personal protective equipment on the human for injury assessment—for example, the impact of body armour size and configuration on the vulnerability to ballistic impact of projectiles, such as bullets and fragments, and coverage and location. This model has influenced the development of TBAS by allowing the DMO and Army to consider the positioning and size of soft and hard armour protection. With the assistance of the University of South Australia, we have conducted 3D body scans on approximately 400 Army personnel to inform the sizing requirements of the TBAS. This anthropometric data has also informed the positioning and sizing of the soft and hard armour protection. Fit mapping has been conducted and further work is required to assess the trade-off between the optimal protection placement of armour and the physical impediment to completing tasks.

With assistance of the University of Wollongong, we have conducted heat strain assessments for the TBAS and MCBAS systems. The surface area coverage of the system was a primary factor that influenced heat strain. Tier two TBAS presented equivalent heat strain compared to in-service chest webbing that offers no ballistic protection—but it had lower heat strain than that produced by tier three TBAS, for example.

With the assistance of the University of Wollongong, we have conducted physical mobility assessments for the TBAS. The mass of a system was a primary factor that influenced the ability of soldiers to move rapidly. Physical mobility was equivalent for tier two and tier three TBAS, and these tiers were superior to the MCBAS. In-service webbing and tier one were superior to all other systems.

**Senator JOHNSTON:** Who produced the webbing? Where did it come from?

**Prof. Clark:** I do not have that—

**Senator JOHNSTON:** Was it Australian?

**Prof. Clark:** I do not have that information.

**Lt Gen. Hurley:** Do you want that question answered?

**Senator JOHNSTON:** On notice, please.

**Prof. Clark:** We have provided inputs into the requirements and specifications of the outer layer of the TBAS. Advice has been sought on signatures, glossing colour, durability and flammability. The durability issue has been recently highlighted by the fast wearing of MCBAS duracore that is not evident in eagle marine fabric, for example. We are currently assessing the durability of these two materials to inform the preferred fabric optimisation for

TBAS. We have assisted DMO to confirm the sizing recommendations and more work is required to assess the usability of recommended sizes. Tiers 2 and 3 are being introduced to MTF3, which you heard about, for their mission rehearsal exercise carried out in May 2011, and we have participated in those MREs. As you have heard, we do have operational analysts forward deployed in theatre. We also deploy fly-away teams for specific tasks and this will be an ongoing study.

**Senator JOHNSTON:** How many analysts have you got in theatre at the moment?

**Prof. Clark:** I am not sure if I want to state that publicly. I need to seek advice about that.

**Senator JOHNSTON:** Fine.

**Prof. Clark:** I can always make that available to you.

**Senator JOHNSTON:** I do not have an issue with that.

**Dr Watt:** Perhaps what we could do is get for you the number of defence civilians in theatre, which might be a bit less sensitive. We do have a number of civilians from different parts in theatre.

**Senator JOHNSTON:** Okay.

**Prof. Clark:** Overall the main message is that DSTO has been working closely with our DMO colleagues within the digger works framework. There is a very scientific assessment process going on as TBAS is being rolled out, and we are fully involved.

**Senator JOHNSTON:** What are you doing to objectively assess its acceptance? It is all very well having all the science on your side, but what about whether they will wear it or not?

**Prof. Clark:** I take your point about getting feedback from the field. I will have to take that on notice.

**Senator JOHNSTON:** This body armour ballistic plate issue: are you aware of anything to do with that? CSIRO?

**Prof. Clark:** Again, I will have to follow that up and answer your question on notice.

**Senator JOHNSTON:** Minister Clare said:

... most ballistic plates used by the ADF are currently imported from the United States.

We have a manufacturing here in Australia who says that he provides a lot of these things—Military Ceramics Corporation. Any advice on that?

**Brig. Phelps:** I can give you where the current ballistic plates are manufactured, in answer to your earlier question. We have seven ballistic plates in service. Various they are manufactured in Germany, the USA, Canada and Australia.

**Senator JOHNSTON:** Right. How much money did we give CSIRO for this development?

**Brig. Phelps:** I do not have that detail.

**Senator JOHNSTON:** Did we give them any money at all?

**Brig. Phelps:** As I said, I am only incidental to that issue; I was not involved in the management of it. I gave you the information I had as background information. I would have to take that on notice.

**Senator JOHNSTON:** If you could. I am done on that subject, Chair.

**Lt Gen. Hurley:** I have an answer about the computers at RMC. Commandant RMC has confirmed that there has been no withdrawal of computers either military or civil from cadets at RMC.

**Senator JOHNSTON:** Good. On clothing still, what are we doing about this new computerised DPCU from the US? I note that down at Swanbourne a number of personnel are wearing it. What is the situation? Where are we going on this?

**Dr Gumley:** The Crye patent and the uniforms have been progressing at a very fast rate since Minister Clare announced it at the Land Warfare Conference in November last year. You will recall that we got the first 5,000 sets of uniforms, and they are being distributed to people in theatre and those who are going to theatre shortly, and so they have been getting their equipment. We have just in the last week negotiated an arrangement with the Crye company for them to design an Australian version of their pattern in the various materials, and I think Brigadier Phelps has some details on that to share.

**Brig. Phelps:** We signed a contract on 13 May with Crye Precision for two broad outcomes. First were the licences for the right to manufacture the Crye Precision and field uniforms in Australia—we are acquiring a licence to do that. The second broad part of that contract was for Crye to develop for us a uniquely Australian MultiCam pattern, and we are expecting to get the first prototypes of that in about five weeks.

**Senator JOHNSTON:** Did we have to do the second part of the contract?

**Brig. Phelps:** We felt that it was important to do so. The MultiCam pattern is a proven pattern—

**Senator JOHNSTON:** Sure. It is five colours.

**Brig. Phelps:** It is seven colours. It works in theatre. The US use it and the UK, you may be aware, use a variant—they have had their own unique variant. There was some discussion, I believe, in the media and maybe in here last year, about the need to be identified uniquely as Australian soldiers. Therefore we have taken a step to have a uniquely Australian MultiCam pattern. When they are developing that they will also be looking at the broader environments in which we operate to see if we cannot accommodate more than just Afghanistan in that pattern and make it more broadly applicable but without losing the effectiveness that it offers us in Afghanistan.

**Senator JOHNSTON:** Have the contacts been completed?

**Brig. Phelps:** No, Senator. They were only signed on 13 May.

**Senator JOHNSTON:** Has the consideration being paid?

**Brig. Phelps:** I would have to go and check on that, but I do not think—

**Senator JOHNSTON:** Can you tell us what it was? How much did it cost us?

**Brig. Phelps:** The two parts of the contract, one, to obtain the licences was US\$4.7 million and, two, to do the MultiCam development was US\$3.1 million.

**Dr Gumley:** The purpose of getting the licences is to enable Australian manufacturers to make the uniform in future. By having the licences, with the government furnished information we will then be able to have a competition with industry to be able to make this fabric and keep it onshore, which gives us, as you would be well aware, the flexibility to be able to make uniforms in the future.

**Senator JOHNSTON:** In line with statements surrounding—

**Dr Gumley:** In line with that and other statements made by the Minister for Defence Materiel.

**Senator JOHNSTON:** So when are you going to go to tender?

**Brig. Phelps:** We have to go through the process of developing the MultiCam pattern. I would anticipate that that will not be finished until early next year by the time we go through a thorough review and development process.

**Senator JOHNSTON:** It is an experimental project, isn't it, for Crye?

**Brig. Phelps:** Not really. They have done this before for the United Kingdom. They are doing it for us and we just want to make sure that it is done robustly and objectively tested in a number of environments before we do the final acceptance. I am not anticipating that it is a risky project for Crye at all.

**Senator JOHNSTON:** That is good. Will it accord with all of the technological developments we have in our current DPCU?

**Brig. Phelps:** Yes, it will.

**Senator JOHNSTON:** Very good. So we have got the IP. We are going to have the licence to produce our own colour and we are going to have a contest for an Australian producer to be able to compete onshore?

**Dr Gumley:** That is correct, Senator.

**Major Gen. Symon:** There is one other piece of the puzzle. When we were talking over this last time we talked about the trial report from SOTG and their high level of acceptance and the Chief of Army at the time highlighted the fact that we also needed to trial it, which we are doing at the moment, with the MTF. So by the end of the year we will be able to stand a trial report of a SOTG against a trial report of the MTF, plus we are issuing it to soldiers back here in Australia who are training for other reasons, and in essence make sure that as objectively as we can we have got a lot of feedback to the path.

**Senator JOHNSTON:** So when I land in Camp Holland will I notice the difference between a US soldier and an Australian soldier?

**Lt Gen. Hurley:** Only by their accent at the moment.

**Senator JOHNSTON:** Just to look at them.

**Brig. Phelps:** The performance requirement is that they have to be distinctly different at five metres, so close-up you can see them. The reality with these camouflage patterns is that the further you get away the more they blend in with the environment and it is difficult to become uniquely distinguishable.

**Senator JOHNSTON:** I think that is good. This is sounding good. When is this a contest going to be on?

**Brig. Phelps:** I cannot give you an exact time for the tender yet. We are working with Army Headquarters staff now on the transition plan to move us from the current suite of DPCU-DPDU across into the Crye Precision, when and in what at numbers. Certainly the operational deployments will have that, and then we have to just work on the broader rollout. We do not actually have to wait. Once we have the licence to manufacture the uniform we

could manufacture those in DPCU-DPDU. We have the right to do that—we own the licence to do that.

**Senator JOHNSTON:** Is the DMO stipulating or looking for any component of this manufacture offshore?

**Brig. Phelps:** At the moment we are working on what constitutes 'Australian made'. Certainly the cut, make and—

**Senator JOHNSTON:** I have a pretty fair idea of what that is: it is made by someone from Australia.

**Brig. Phelps:** We are working in the whole-of-government definition of what constitutes Australian made. It has got to do with where the value-added is done to the product. It does allow for imported components. We have considered the issue. Certainly the cut, make and sew will be done in Australia. It is about the extent to which the materiel itself has to be manufactured in Australia. We have considered the issues. We have made a recommendation to government and we are waiting for government to consider that recommendation.

**Senator JOHNSTON:** When did you make that recommendation?

**Brig. Phelps:** I signed that recommendation last Friday.

**Senator JOHNSTON:** So currently the minister has a recommendation from you about what will be deemed to be Australian made in terms of DPCU fabric.

**Brig. Phelps:** In DPC fabrics, yes.

**Senator JOHNSTON:** That is good. I have no further questions on that matter. Can we go now to JLTV and 121 phase 3. Are we in a tender process for that phase?

**Dr Gumley:** JLTV phase 4.

**Senator JOHNSTON:** Phase 4 is for tender?

**Dr Gumley:** No, on phase 4 we have the two programs working. We have the JLTV, which is the American program, and we have three Australian manufacturers for the MSA program in Australia.

**Senator JOHNSTON:** Phase 3 is the trucks?

**Dr Gumley:** Yes.

**Senator JOHNSTON:** Right, so let's talk about phase 4. We have a contest between three onshore and we have spent \$40 million with the Americans and we are up for another 60 because they have just cancelled that—is that right?

**Dr Gumley:** No, there is the EMD phase of the American program, which we are negotiating with them now as to what it will cost us and what we get for our money. It will be a couple of months, I think, before we get some clear advice on that to be able to offer government. Whilst that is happening—and this pretty much evens up the competition—the three MSA vendors in Australia are having their prototype vehicles tested at the Monegetta test ground and we are doing some explosive testing as well, at another place, to see how well those vehicles fare. We hope to have that testing program, the actual physical testing, finished by about the third week of July. From then it has to go into a scientific analysis as to what those results actually show us. I would hope that somewhere around September we would

have some idea as to how well the three local vehicles compare with the American products as well.

**Senator JOHNSTON:** To be in the American project has cost us \$40 million so far.

**Dr Gumley:** It is of that order. The exact figure is US\$30.6 million, which will be paid at a lower exchange rate when we pay that money out, so let's say of the order of \$40 million.

**Senator JOHNSTON:** What has happened to that project?

**Dr Gumley:** We have had staff inside the JLTV project. We have visited—

**Senator JOHNSTON:** How many staff?

**Dr Gumley:** Three or four—something like that.

**Senator JOHNSTON:** Out of a total of?

**Dr Gumley:** I do not know; but you do not have to have a pro rata number of staff as long as you have visibility of the data and can understand what is going on. The crucial thing for Australia here is to be a knowledgeable customer, and that is what we are doing—

**Senator JOHNSTON:** But we are a participant, not a customer, aren't we? We are actually participating in it.

**Dr Gumley:** We are a knowledgeable participant. It is a lot better to make a procurement decision when you know what you are getting.

**Senator JOHNSTON:** All right. Where are we at with that project?

**Dr Gumley:** That project has moved out of its very first phase, and now, as I said, we are negotiating. The Americans are analysing their data, and they are looking at what happens with their engineering phase, which comes up next. The US are expecting to have a request for proposal to US industry in late 2011—later this year.

**Senator JOHNSTON:** That is not what we anticipated, though, is it?

**Dr Gumley:** They do seem to have slipped somewhat.

**Senator JOHNSTON:** Isn't it a fact that we had a \$40 million investment in a contest, and we were looking for a vehicle that could be mass produced so we could get into the supply chain at a really low average unit cost?

**Dr Gumley:** That was the intention of the program, yes.

**Senator JOHNSTON:** And we burnt the \$40 million.

**Dr Gumley:** No, we have achieved a large amount of data about how the project is going.

**Senator JOHNSTON:** But none of them were acceptable.

**Dr Gumley:** There were a large number of criteria they had to meet, and on each of them it has been found that you could have done better on it. I am pretty sure that when we do the three Australian MSA ones we are going to say the same thing.

**Senator JOHNSTON:** Right; but let us deal with the problems. The problems were that each one was about 8½ tons.

**Dr Gumley:** The US are coming over a bit heavy because of the protection. We have been this through many times—that you get mobility versus protection and that there are compromises. In fact, it is a very similar story to the body armour one we have just been talking about.

**Senator JOHNSTON:** The threshold is 7½ tons for a Chinook.

**Dr Gumley:** Yes; and the U.S. Army want more protection, the US Marines would prefer more mobility and those discussions are going on in the United States at the moment.

**Senator JOHNSTON:** What do we have to show for our \$40 million?

**Dr Gumley:** A large amount of information and knowledge about what are the—

**Senator JOHNSTON:** About unacceptable vehicles.

**Dr Gumley:** Most of the vehicles are acceptable but not against every single criterion, and there is another prototyping phase to move through to get to something that can be manufactured in large quantities.

**Senator JOHNSTON:** And all the while we think that the next phase is going to be about \$60 million, and all the while we are disclosing extreme confidence in that process by running our own competition onshore.

**Dr Gumley:** A couple of years ago I characterised the reason we are running our own competition onshore as (a) good for Australian industry and (b) an insurance policy. Whenever you get into a development project you hope to have your bases covered, and I think it was a good investment for the government to make to get involved with the MSA program—the Australian one—just as it was good for the government to make it again with JLTV.

**Senator JOHNSTON:** Do you still say it is a good investment?

**Dr Gumley:** Yes.

**Senator JOHNSTON:** Why?

**Air Marshal Harvey:** Can I just add to that to clarify. In the phase of the project that we are in, there was not a competition for a winner in the JLTV at this stage; it was a requirements determination. So there were a number of prototypes that were designed to learn from to finalise the requirements for the project for the next phase.

**Senator JOHNSTON:** How many prototypes were there?

**Air Marshal Harvey:** There were three types of vehicles with a number in each, and, just to clarify, we have three people inside the project.

**Senator JOHNSTON:** I thought there were something like 12 vehicles.

**Air Marshal Harvey:** That is right—a number of each one.

**Senator JOHNSTON:** And none of them got over the first threshold.

**Air Marshal Harvey:** As I said, there were no thresholds other than to refine requirements of the future phase. The EMD phase is to work out something that can be produced. If I can just clarify, we have three people inside the project.

**Senator JOHNSTON:** So we know what does not work.

**Air Marshal Harvey:** We have learnt the requirements: what needs to be specified. We have also had the chance to inject our requirements into the project in case we go down that path in the future.

**Senator JOHNSTON:** So effectively we have a competition of four.



**Dr Gumley:** I think it is a competition of more than four, because there will be probably more than one American manufacturer being considered.

**Senator JOHNSTON:** So it is a competition of more than three and maybe up to five.

**Dr Gumley:** That is probably right, yes.

**Senator JOHNSTON:** Is that disclosed in the tender?

**Dr Gumley:** Which tender are you referring to?

**Senator JOHNSTON:** The onshore tender.

**Dr Gumley:** I think all participants in the onshore tender are aware of us being in the JLTV program.

**Senator JOHNSTON:** But isn't it a requirement that there be more than that? They are competing, honestly believing that one of them is going to win, aren't they?

**Dr Gumley:** I think all three of them know that they are in competition with each other and in competition with the US program.

**Senator JOHNSTON:** How many of them are participating in the US program?

**Dr Gumley:** At the moment there are three, but the US intends to make it an open competition for the next phase. Clearly those three who have done a lot of development work already, you would think, would have their head in front.

**Senator JOHNSTON:** Our three?

**Dr Gumley:** No, the three in America that have been making American vehicles.

**Senator JOHNSTON:** Are any of the three related to our three?

**Dr Gumley:** Not directly.

**Senator JOHNSTON:** We are getting into some very muddy waters here. This is a very big tender, isn't it? How much is it worth?

**Dr Gumley:** We will have to get the dollar figures.

**Air Marshal Harvey:** We are finding those numbers. To clarify, there are three vehicles being looked at in the MSA—manufactured and supported in Australia. One is the Hawkeye vehicle, one is the Eagle and there is the Ocelot as well.

**Senator JOHNSTON:** Force protection?

**Air Marshal Harvey:** Yes. All of the vehicles and the JLTV options have been tested in Australia at Monegeetta and Puckapunyal.

**Senator JOHNSTON:** While we are looking for that, what is all of this testing on shore costing us?

**Air Marshal Harvey:** The testing of the US vehicles was part of the—

**Senator JOHNSTON:** No.

**Air Marshal Harvey:** The part of the internal funding is for the wages et cetera of the personnel running the testing. The rest is part of the original contribution to the MSA part of the program. So we fund our contribution to the US program and we fund our involvement in the MSA side of things, and part of that is the testing before going to the next phase.

**Senator JOHNSTON:** All right.

**Dr Gumley:** The intent is to get approximately 1,300 vehicles of that order, with a total acquisition cost at the high end of the \$1 billion-\$2 billion band. That is what is DCP. It will be cost capped, so if the unit price of a vehicle goes up too much it means you buy fewer vehicles.

**Senator JOHNSTON:** And when is the decision to be made?

**Dr Gumley:** At this stage what we are trying to do is align the JLTV project and the MSA project so the government gets choices towards the end of this year about whether we commit to the MSA project, the JLTV, both or neither. It is up to government to make that decision.

**Senator JOHNSTON:** When is that decision likely to be put to government.

**Dr Gumley:** Towards the end of this year is the current intention. It is an engineering development project, and you cannot be sure there will not be some delay.

**Senator JOHNSTON:** In the meantime, what are we doing for vehicles?

**Dr Gumley:** We have a large number of other projects underway at the moment. For example, the minister announced the other day another 101 Bushmasters. I had better defer to the uniformed staff here, but there are many Army missions where you might use a Bushmaster rather than a JLTV. There are others where the JLTV will have the advantage. But I think that is a question better to direct—

**Senator JOHNSTON:** So we do not actually have a vehicle to compete with a 7½-tonne light MRAP vehicle.

**Dr Gumley:** No, because the Bushmaster is about double that weight. The 'L' in JLTV stands for the word 'light'; so, yes, it is a much smaller vehicle.

**Senator JOHNSTON:** So we do not have anything that we can use. This is a new vehicle for Army.

**Dr Gumley:** It is a new vehicle for Army with a high degree of mobility and an adequate level of protection against the threats they might meet.

**Senator JOHNSTON:** It is going to conform to what might be described as an MRAP vehicle—mine resistant ambush protected?

**Dr Gumley:** I know what an MRAP is. I do not think they meet quite the same specification.

**Air Marshal Harvey:** From my knowledge, the MRAP is a very large vehicle. This is a much lighter vehicle. It is largely replacing the current Land Rovers, which are not protected at all. That is why it really is a huge jump from the Land Rover.

**Senator JOHNSTON:** Isn't that the underlying reason why none of these vehicles in the United States got past the first hurdle? They could not comply with that?

**Air Marshal Harvey:** As I said, the first hurdle was to refine requirements. It was not to provide a winner. That was not the aim of this phase of the project.

**Dr Gumley:** So there is a gap in the overall vehicle portfolio. You move out of canvas top vehicles—B-vehicles, Jeeps and so on. Then you move up to modified issue-V-type vehicles—sports utility vehicles with armour plating on them. We have all heard about protected cars and protected vehicles. Then you can jump up to a well-protected vehicle like a

Bushmaster. There is a gap in the middle, and Australia, America and other countries are looking for vehicles to fill that gap, which is why the project is in the DCP in the first place.

**Senator JOHNSTON:** All right. So we might be spending \$60 million with the Americans and running a competition on shore at the same time.

**Dr Gumley:** They will be decisions for government which we will put to government, as I mentioned, late this year or perhaps a little bit after.

**Senator JOHNSTON:** We had an employee, a Ms Wolfe, who was involved in a Federal Court action—Jane Alice Margaret Wolfe. Dr Gumley, you and a Ms Lynelle Briggs were respondents. There was a consent order filed on 8 April 2010. The order set out that this person would be reinstated and that the action would be discontinued on the basis set out in the order. Mr Secretary, how much money did we pay the applicant?

**Dr Watt:** I would like Mr Dunstall, who handled the legal issue at the time, to come forward. We might have to move on to another question while I get some papers sent up.

**Senator JOHNSTON:** As I understand it, Mr Dunstall, the Public Service Commissioner has to issue a certificate before an SES member can be dismissed.

**Mr Dunstall:** That is correct.

**Senator JOHNSTON:** Broadly speaking, while such a certificate is relevant to a number of specific threshold issues, the certificate would be granted if the removal of the person were in the public interest. Is that correct?

**Mr Dunstall:** There are a number of sections under the Public Service Act that relate, potentially, to the termination of an employee. But that is correct—sections 36 and 38 of the Public Service Act provide the legislative basis for an agency head to terminate the employment of an SES officer only after the Public Service Commissioner has issued a certificate to assure that all the requirements of the commissioner's directions have been met and that termination is in the public interest.

**Senator JOHNSTON:** A certificate was in fact issued.

**Mr Dunstall:** It was.

**Senator JOHNSTON:** Obviously the department provided material upon which the commissioner could issue such a certificate.

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** So the commissioner adjudicated that the dismissal of the particular person in question was in the public interest.

**Mr Dunstall:** A certificate was issued. Correct.

**Senator JOHNSTON:** I know the certificate was issued, but it is not just a matter of a pro forma functus officio role, is it? There is an adjudication made.

**Mr Dunstall:** You would have to speak with the Public Service Commissioner about the circumstances taken into account.

**Senator JOHNSTON:** We have spoken to him. The act stipulates what they have to take into account and it is quite a detailed analysis.

**Mr Dunstall:** As I understand it, yes.

**Senator JOHNSTON:** So the Public Service Commissioner resolved that the removal of the person in question was in the public interest.

**Mr Dunstall:** The Public Service Commissioner must have done that; otherwise the certificate would not have been issued.

**Senator JOHNSTON:** Correct. Otherwise the Public Service Commissioner was acting ultra vires, I suppose.

**Mr Dunstall:** Was not acting consistent with their legislation.

**Senator JOHNSTON:** Have you seen the pleadings in this matter?

**Mr Dunstall:** I have seen the statement of claim.

**Senator JOHNSTON:** And the defence?

**Mr Dunstall:** And the defence—yes.

**Senator JOHNSTON:** Was the fact that the Public Service Commissioner was acting without authority ever raised?

**Mr Dunstall:** I cannot recall because I do not have the documents in front of me. There were a number of grounds on which the application was made to the Federal Court. I do not have those grounds in front of me.

**Senator JOHNSTON:** One of them was 'denied procedural fairness', as pleaded in paragraph 66A, 66B and 66C of the further amended statement of claim.

**Mr Dunstall:** Procedural fairness was argued in the original statement of claim. As I understand it, the statement of claim was amended three times during the course of the proceedings.

**Senator JOHNSTON:** So we had extensive interlocutory proceedings?

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** When we got to court, was any evidence taken?

**Mr Dunstall:** There were a couple of mentions in the Federal Court, but we never got to a trial of the substantive issues.

**Senator JOHNSTON:** Did it come on for hearing and it was adjourned?

**Mr Dunstall:** I am not entirely sure.

**Senator JOHNSTON:** It came on for mention.

**Mr Dunstall:** It certainly came on for mention. The matter appeared before the Federal Court on 24 April and 18 May for directions hearings—that is, the normal directions process. The hearing on 18 May 2009 issued orders regarding applications, evidence, affidavits and those kinds of preliminary matters.

**Senator JOHNSTON:** You are DMO's in-house counsel?

**Mr Dunstall:** I was at the relevant time.

**Senator JOHNSTON:** What are you now?

**Mr Dunstall:** I am the general manager commercial.

**Senator JOHNSTON:** That is good to know.

**Mr Dunstall:** I still have responsibility for the legal function within DMO.

**Senator JOHNSTON:** I am using my words very carefully here: no evidence whatsoever was adduced in this matter?

**Mr Dunstall:** Each party put their evidence into supporting affidavits, but there was no oral evidence produced to the court because it did not proceed to a hearing.

**Senator JOHNSTON:** Was the matter ever scheduled for hearing?

**Mr Dunstall:** I cannot recall whether a hearing date was ever set. We did a court ordered mediation on 11 November. I do not believe it was ever set down for hearing. I will have to take that on notice.

**Senator JOHNSTON:** Did the court ordered mediation yield a resolution?

**Mr Dunstall:** No.

**Senator JOHNSTON:** I note that there has been an order made and the applicant was wholly successful.

**Mr Dunstall:** The court made consent orders with the consent of both parties. Those orders were made on 8 April. Those orders provided that the termination of the applicant's employment on the ground of unsatisfactory performance be referred back to the secretary, or the secretary's delegate, for further consideration, which is the usual outcome in a matter that has been affected by procedural fairness. Also that the commissioner's certificate decision be quashed and that, in the event that a certificate may be required in the future, the matter should be referred to the commission for further consideration, as required by law.

**Senator JOHNSTON:** But that was all done by agreement, with no evidence taken?

**Mr Dunstall:** No oral evidence in a hearing—that is correct.

**Senator JOHNSTON:** The matter was never litigated properly.

**Mr Dunstall:** It was litigated properly; it just never proceeded to a formal hearing.

**Senator JOHNSTON:** I think it is a question about whether there was any evidence or submissions made and whether there was any disagreement with respect to that order being made.

**Mr Dunstall:** It was a consent order. The parties had worked the terms of the order out and presented it to court for the court's endorsement.

**Senator JOHNSTON:** And the applicant got her job back, with costs?

**Mr Dunstall:** The applicant was re-employed within the DMO—not to the same job because that job was no longer in existence.

**Senator JOHNSTON:** Was re-employed within the DMO, with costs to be paid?

**Mr Dunstall:** The order was for the party-party costs. Obviously the applicant needs to fund the solicitor and own client costs, but, yes, there was an order for the parties to determine the costs to be payable on a party-party basis to the applicant.

**Senator JOHNSTON:** How much were those costs?

**Mr Dunstall:** I do not have that information in front of me.

**Dr Watt:** We are undertaking to get that. Mr Cunliffe, the head of defence legal, has been managing it from that point on. Unfortunately, thinking we would not need him for the DMO, we have sent him back but he is coming back up.

**Senator JOHNSTON:** That is fine. The order was made on 8 April 2010 and the decision to dismiss the applicant was made in 2009.

**Mr Dunstall:** Sorry, but which decision was made on 16 March 2009?

**Senator JOHNSTON:** The decision to terminate was made on 16 March 2009.

**Mr Dunstall:** That is correct.

**Senator JOHNSTON:** And the order of the Federal Court was made on 8 April 2010.

**Mr Dunstall:** That is correct.

**Senator JOHNSTON:** Was there any accommodation for earnings not earned by the applicant in that interim period at all?

**Mr Dunstall:** Because the decision was found to be wanting for procedural fairness, it is taken as if the applicant had been employed for all that period. So, as part of the outcome of the court order, the organisation repaid salary for that period.

**Senator JOHNSTON:** Do we have any idea how much that amount was?

**Mr Dunstall:** As I understand it, it was from 16 March 2009 until the applicant recommenced employment, which was around two or three weeks after the court decision. Or it may have been a month. I do not have that exact figure.

**Senator JOHNSTON:** Was it 13 or 14 months?

**Dr Watt:** We can provide that information when Mr Cunliffe is here.

**Senator JOHNSTON:** Okay. So we paid costs, wages and legal fees.

**Mr Dunstall:** We did.

**Senator JOHNSTON:** Do you have any idea how much we paid in legal fees?

**Mr Dunstall:** I think that information is coming up with Mr Cunliffe.

**Senator JOHNSTON:** So that is coming. What else did we pay?

**Dr Watt:** From memory, that is the extent of it.

**Senator JOHNSTON:** We have employed someone to review—

**Dr Watt:** Yes, there would have been costs associated with the management of the case. Again, we can provide that. Mr Dunstall may or may not have that but, if not, we can get it.

**Mr Dunstall:** I do not have that material.

**Senator JOHNSTON:** What did we actually do to comply with the order?

**Dr Watt:** The order is being remade. Again, I would like to leave this until Mr Cunliffe is here, because he is the officer handling it, not Mr Dunstall. We can go through that when he is here.

**Senator JOHNSTON:** And Mr Cunliffe is the departmental—

**Dr Watt:** Mr Cunliffe is the head of defence legal.

**Senator JOHNSTON:** Do we know when he first became involved in the matter?

**Dr Watt:** Sitting right here, I do not know the exact time. This matter was handled by the Defence Materiel Organisation. While Mr Cunliffe may have had some association with that case during that time—and I cannot be sure—certainly he became very significantly involved from April 2010 on.

**Senator JOHNSTON:** Did we employ private practitioners to advise us in this matter?

**Mr Dunstall:** The Commonwealth was advised by the Australian Government Solicitor.

**Senator JOHNSTON:** That is good. Anybody else?

**Mr Dunstall:** Not to my knowledge.

**Senator JOHNSTON:** So no private lawyers were employed to provide advice to anybody on the Commonwealth side?

**Mr Dunstall:** The Australian Government Solicitor were the legal advisers for the Commonwealth on the matter.

**Senator JOHNSTON:** So there were no private law firms like Phillips Fox, Mallesons or any of those people involved?

**Mr Dunstall:** Not that I am aware.

**Senator JOHNSTON:** Not that you are aware?

**Mr Dunstall:** My evidence is in relation to the matter leading up to the court orders. I cannot comment—

**Senator JOHNSTON:** So it was AGS up to that point?

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** Who was it after that?

**Dr Watt:** Again, Senator, I would prefer to leave that until Mr Cunliffe is here.

**Senator JOHNSTON:** Dr Watt, you retained the services of—

**Dr Watt:** Mr Stephen Skehill.

**Senator JOHNSTON:** Yes, Mr Stephen Skehill, special counsel with Mallesons Stephen Jacques.

**Dr Watt:** More importantly, he is a former Secretary of the Attorney-General's Department and, I think, the Department of Social Security.

**Senator JOHNSTON:** Good. I am sure that stood him in good stead.

**Dr Watt:** It does mean he knows a little bit about government.

**Senator JOHNSTON:** And it is very important that he does. You retained him in what capacity?

**Dr Watt:** The Federal Court requested that there be further consideration of this matter, as you said. The matter was referred back to the Secretary of Defence or his delegate for further consideration in accordance with the law. I appointed Mr Skehill to do that.

**Senator JOHNSTON:** Pause there. It was not really in accordance with the law; it was in accordance with what was agreed.

**Dr Watt:** That is right—agreed in or by the Federal Court.

**Senator JOHNSTON:** Were you part of that agreement?

**Dr Watt:** No, I was not, but the matter was referred back to me as Secretary of the Department of Defence.

**Mr Dunstall:** That reference to 'in accordance with the law' is to ensure that the decision is made in accordance with the law, including the law of procedural fairness. That is what it is directed at.

**Senator JOHNSTON:** Yes, I understand that. What did you, as secretary, interpret that order to mean for the decision to be made in accordance with law?

**Dr Watt:** Again, I would like to hold these questions till Mr Cunliffe, my legal counsel, is here.

**Senator JOHNSTON:** He is your legal counsel?

**Dr Watt:** He is. As head of Defence Legal, he is the legal counsel to the secretary and the CDF whether he likes it or not.

**Senator JOHNSTON:** But Mr Skehill is not your legal counsel?

**Dr Watt:** Mr Cunliffe is my in-house legal counsel. Mr Skehill is remaking the issue.

**Senator JOHNSTON:** He is what?

**Dr Watt:** Mr Skehill is reviewing the particular case.

**Senator JOHNSTON:** Okay. When was he asked to do that?

**Dr Watt:** He was appointed on 19 August 2010. He was asked a week or so before then.

**Senator JOHNSTON:** What is the significance of 19 August 2010? Why is it 19 August?

**Dr Watt:** I do not know. It was 19 August when he started.

**Senator JOHNSTON:** The order was made on 8 April. You just thought it was a good idea to get some advice?

**Dr Watt:** No, that is not correct. First of all the order had to be made. There was some consideration of the issues. We did talk to a number of people about a potential review. Mr Skehill accepted the task. He was appointed on 19 August as I understand it.

**Senator JOHNSTON:** By you.

**Dr Watt:** By me.

**Senator JOHNSTON:** By letter?

**Dr Watt:** Yes.

**Senator JOHNSTON:** What did you ask him to do?

**Dr Watt:** Again, I would like to wait till that letter is here before I answer that question.

**Senator JOHNSTON:** Okay.

**Dr Watt:** We can go back over all this again.

**Senator JOHNSTON:** Yes.

**Senator Feeney:** Chair, I wonder if we might perhaps wait until Mr Cunliffe arrives and return to this subject in a comprehensive way rather than—

**Senator JOHNSTON:** Yes, sure.

**CHAIR:** Senator Faulkner has an issue to raise at some time.

**Senator FAULKNER:** Yes, but I am waiting for the Chief of Army and CDF.

**CHAIR:** Okay. Senator Humphries, do you have DMO issues?



**Senator HUMPHRIES:** Yes, I have. Coming back to this issue about slippages and reprogramming of the capital investment program, I want to start by asking about the liaison which occurs with industry about those sorts of issues. Obviously a lot of defence capability will be built around a certain timeliness in the way in which projects are rolled out. With the announcement in the most recent budget that a large amount of deferral is to occur, what kind of discussion has been held already with defence industry about how that project might be managed from the point of view of industry capability?

**Dr Gumley:** Senator, the slippage is a complicated thing, because a number of our projects are quite lumpy. Perhaps I might use this opportunity to correct slightly the evidence I gave earlier today. I do have the slippage figures for each year for the last five years, if that might be of interest to you. This might illustrate how the lumpiness actually does happen, which of course has a direct impact to the industry effects that you just asked about. The actual slippage, when you compare with the portfolio budget statements, in 2006-07 was 22 per cent. In 2007-08 it was 20 per cent. We said that 2008-09 was a good year. It was actually minus eight per cent. We actually were able to produce at a greater rate than we predicted. In 2009-10 it was 14 per cent and in 2010-11, although we have not finished the year, it is trending towards 24 per cent.

**CHAIR:** What do those percentage figures represent, Dr Gumley?

**Dr Gumley:** That is the actual cashflow spend compared with the PBS estimate. The PBS book comes out in May and it is for the year starting 1 July, so it is comparing those two numbers.

**CHAIR:** When you said eight per cent in 2008, what does that—

**Dr Gumley:** Minus eight per cent. It means that we had a buffer and we actually spent some of that buffer on extra delivery from industry. But it paid itself back, because the year after that we went up to 14 per cent. What the secretary said earlier is absolutely correct. You get a bit of movement across the financial year boundary and therefore it is not good to just look at one year or another. You have really got to look at the trend to get a good picture. At any one time you could have perhaps one or two months of cashflow which can deviate across the boundary. We do not think it is good contracting practice just to pay money because you are getting towards the end of the financial year. You should only pay money when the equipment is safe and ready. That is the way the contracts are set up.

**CHAIR:** That is the age-old problem: spending money that has been appropriated by 30 June.

**Dr Gumley:** Yes. So (a) it is not legal to do it and, (b) we do not do it anyway

**Senator Feeney:** Pleased to hear it.

**Dr Gumley:** To relate that back to the question Senator Humphries just asked about industry, we talk to industry regularly. We have the chief executives roundtable about once every three or four months. That is where the CEOs of the top 10 to 14 companies come in for a discussion, or we go to them. We take them through what we expect is going to happen in the year to come. It is very important to industry that they have adequate information of project flow, because there are 27,000 or 28,000 people working in Australian industry; they have got responsibilities to their employees. They have got to work out their skilling and qualification programs. So having that communication of information is vital to us actually

delivering our projects. If we did not provide some information to industry they would not have the staff and we would not get the projects done. So we talk to them honestly and openly about what sort of slippage they expect, and that gives us a lot of the information to go into the following year's PBS.

**Senator HUMPHRIES:** Thank you for that. I was aware of those figures, because you have actually given them to me already on notice. I have those figures in front of me at the moment. But I come back to my original question, which you have not answered. Actually the figures you gave me on notice suggested that the slippage for this year would be 22 per cent but you are saying it is now 24 pc.

**Dr Gumley:** That is the figure I have in front of me at the moment, Senator.

**Senator HUMPHRIES:** Clearly there is a lot of potential work for defence industry which has to be rescheduled as a result of slippages of that order. What consultation is DMO or the department undertaking with defence industry to meet the kinds of partnerships that I think it spoke about in its defence industry statement that Mr Combet released last year?

**Dr Gumley:** At an individual project level we meet at various areas of management—project manager, unit project manager, CEO to CEO, and we get the company's view on what is likely to happen with their projects. It is our job then to aggregate those up into a master amount of detail as to what we are going to be putting in the PBS. In addition to that we have the industry forums. A crucial conference is coming up, the defence and industry conference in Adelaide at the end of June, early July. We use this every two years to take industry through quite a bit of detail on what the future health of the industry looks like and what the expectations on them are and what the expectations on us are. After the plenary sessions that breaks into a large number of other meetings and dialogue about what the future demand profile looks like. I do my best to try to share as much of the future demand profile as I can, because it is a matter of responsibility to industry that they understand what work is coming their way.

**Senator HUMPHRIES:** So what consultations of that kind have occurred with industry since the budget was brought down?

**Dr Gumley:** The budget was brought down only a couple of weeks ago. We have not had those yet. We typically use the four or six weeks between the budget and the DNI conference to develop the message and the detail and be able to do the sectoral splits—marine, land, air, electronics and so on—so we can give industry quite a bit of information about what is coming. We also do our best to estimate what is Australian content and what is imported content, so the industry gets a good feel for that as well.

**Senator HUMPHRIES:** In the week since the budget was brought down I know that there has been considerable disquiet within Australian defence industry about where they stand with respect to these reprogrammed projects and what impact this is going to have on the capacity of industry to deliver future expectations of defence with respect to procurement. You mentioned earlier today that a number of the problems that have led to these slippages relate to defence industry capacity but every time there is slippage that capacity is further damaged to some extent, isn't it? How do you factor in the requirements of industry for a certain level of predictability or, at least, foreshadowing of changes in the shape of the

defence procurement requirement when making these decisions so as to preserve the sort of capacity that your own paper says we need to have?

**Dr Gumley:** The government gives four-year forward estimates. That gives a good estimation of demand.

**Senator HUMPHRIES:** But with \$1 in every \$5 approximately, at least in several of the last few years, not being met, those forward estimates do not provide much comfort to defence industry surely because they do not know which of those dollars they are bidding for are actually going to be rolled out for spending in the forward estimates.

**Dr Gumley:** It is a little bit too narrow a view of Australian industry to just look at the projects. There is more of an averaging effect that goes on than just comes from the capital expenditure, which we have concentrated on so far. Within DMO over half of our budget goes to sustainment. In the sustainment space about 75 per cent goes to Australian industry. It is fluctuating far less than the lumpy capital projects go. Over half of our projects come from overseas. Australians do not make C17 aircraft, did not make the Largs Bay ship or other things. So a lot of the stability is actually coming from the sustainment budget. If you have a good look at the PBS this year, you will see that the sustainment budget actually goes up by quite a large amount. I do not think the picture is anywhere near as difficult as perhaps you might be hearing from some people.

**Senator HUMPHRIES:** Minister Clare said at the Australian Defence Magazine Conference recently:

When milestones aren't met industry isn't paid and money is reprogrammed into future years—that is bad news for Defence capability and bad news for the defence industry.

He was not describing the sort of phenomenon that is taking place right now, was he?

**Dr Gumley:** To a certain extent. Let us analyse that. He said it was 'bad news for defence capability'. Clearly, the war fighters would like to have their equipment earlier if they can have it. So any delay is bad news for the war fighters. One of our jobs is to try to get the best schedule performance we can. On terms of 'bad news for the defence industry', certainly when I worked in the industry the cash flow, meeting annual targets and profit figures were very important. That is how you measure yourself in industry. If there are significant milestones delayed across the financial year boundary then that is not good for industry financially either. So I think Minister Clare said exactly the right thing.

**Senator HUMPHRIES:** Can you identify precisely what the impact of the announcement the government made to reprogram a number of its capital investment programs will have on specific areas of Australian defence industry? Can you identify whether any activity taking place in Australia will need to be shut down or substantially redesigned in order to provide continuing employment in an area where government is not purchasing in the next little while?

**Dr Gumley:** Well, let us look at some of the major causes of project delay to analyse that. The tanker aircraft—the first of them are arriving today or tomorrow, and there is a contractual issue as to when we accept those aircraft, which we will negotiate with Airbus Military in the next few days. The work still has to be done. Whether the cash flow occurs in June, July or August, the work still has to be done. So I do not see, for example, that there will be a big impact on the workforce there.

**Senator HUMPHRIES:** That is an example of an industry that has the product arriving, and the flow-on effects of that are right there. I am talking about industries where that is not going to happen.

**Dr Gumley:** But the cash flow slippage might be in the next financial year. I am offering a counterexample, that their reprogramming across a financial year boundary does not actually have a big impact on employment.

**Senator HUMPHRIES:** That is cold comfort if you are one of those industries that suddenly find themselves unable to sustain an investment they have made in an ongoing workforce because the government has deferred a program.

**Dr Gumley:** Mr King and I are just talking amongst ourselves here about what deferred programs you might be referring to, where you are hearing there are difficulties.

**Senator HUMPHRIES:** I might put some questions on notice about some of those programs and I will get you to respond to those.

**Air Marshal Harvey:** Senator, I might be able to clarify some issues there. I think we need to differentiate between slippage on approved projects, which is a cash flow issue, and slips in approving projects. What we need to do is balance up the new projects being approved for industry versus how they are performing on the currently approved ones. I think perhaps we are getting the two mixed in together there. The discussion this morning was about the rate of approval of projects, which is future work for industry, as opposed to their performance on current projects.

**Senator HUMPHRIES:** All right. Let us turn to something that directly affects the way in which industry operates with respect to Defence and the way in which it gears itself to meet Defence needs. Minister Smith's announcement on 6 May said:

The two-pass process will now apply to so-called minor projects between the value of \$8 to \$20 million.

Now, whatever one might say about how the two-pass process works in terms of getting better rigour or better value for money, it certainly does result in longer time frames for a project from go to whoa. Doesn't that have the potential to significantly delay decisions that might have an adverse impact on Australian business?

**Dr Watt:** Senator, I think there will be a two-pass like process, but remember that the full two-pass process that we have for major capital acquisitions includes going to SCNS, NSC and so forth with the appropriate cabinet documentation et cetera. Again, we are now moving beyond the narrow DMO focus, so we do not necessarily have the right people here, unless I have Mr Prior behind me. He has come back. The intention is that it be a two-pass like process—in other words, introducing more rigour than the two-pass process does into the minor projects process but without taking the full time for a two-pass process, if you know what I mean.

**CHAIR:** Is it a partial reversal of the decision made by Mr Combet when he was the minister assist?

**Dr Watt:** I am sorry, Chair?

**CHAIR:** Is it a partial reversal of the decision made by Mr Combet to exclude projects to a certain level from the two-stage process that he was the minister assist?

**Dr Watt:** I do not think that was made by Mr Combet, Chair. I could check that. But, for a long time, there has been a graduated series of thresholds for projects. I think, if the cost is \$100 million and above, you go to NSC, unless the project is, for example, regarded as very high risk. If it is between \$20 million and \$80 million, it is a two-minister process, which involves the Minister for Defence writing to the Minister for Finance and Deregulation and seeking agreement.

**CHAIR:** Just to clarify, between \$20 million and \$100 million involves the two ministers.

**Dr Gumley:** Yes, sorry—between \$20 million and \$100 million. If it is between \$8 million and \$20 million, the Minister for Defence is the decision-making delegate; below \$8 million, the delegate is in the department. That is the way it has been for a while, Senator, and I think that—

**CHAIR:** I have a memory that when Mr Combet was the Minister assisting the Minister for Climate Change and Energy Efficiency there was a change in the four-part process and some projects were sent back to the two ministers to make a decision.

**Dr Watt:** The thresholds have been changed from time to time. I do not know whether it was when Mr Combet was the minister.

**Dr Gumley:** From memory, and I might have to correct myself, there was a period when it was \$50 million not \$100 million before it had to go to the NSC. I think that threshold went up, so the two ministers had more prerogative and a broader band. As long as I have been in DMO it has been \$20 million for the minors projects and I think it goes back to Kinnaird in 2003 where the two pass process was applied to the majors and not the minors. I do not think there has been a change there.

**Dr Watt:** The threshold certainly was increased; the original Kinnaird was \$50 million. This was discussed on a number of occasions. I do not recall whether the change was made when Minister Combet was the Parliamentary Secretary for Defence Materiel or the Minister for Defence Materiel, or whether it was done before. We can clarify that, but it has changed.

**CHAIR:** It may have been done prior to your time, Dr Watt.

**Dr Watt:** I was in Finance. I have seen this from the other side. We will check it for you. The idea is to introduce greater rigour without the necessary time periods and documentation that you would have for a major project.

**Senator HUMPHRIES:** Can you explain how that occurs? If you have a two pass-like process, how do you do that without taking the time that the two pass process might take?

**Mr Prior:** The intention is to have a two pass-like process. It will be an internal two pass-like process, within Defence, so it will not be going to NSC. We think if we put more rigour into the front end of these projects and ensure the business cases are worked up as well as they can be and considered with all the due regard for costs and schedules just like the larger projects then that will be balanced against what currently may occur with projects that might not have as much rigour applied to them if they do not go through the two pass process—that is, some things are perhaps not well thought through and sometimes that takes time to work through. Our plan is to put more rigour in upfront and that should not mean any additional overall time for our minors program. The minors program is a year-by-year program, so to speak, although once projects are approved they can take more than a year. A much less significant amount of money is involved than the full capital investment program.

**Senator HUMPHRIES:** I appreciate the aspiration that you are aiming for, but everything I read in the statement made by the minister on 6 May reeks of additional bureaucratic process in making decisions. The early indicators and warning system, the full diagnostic reviews and so forth sound as if the process is going to slow down. I realise that rigour is an important consideration. I want to know whether you can assure Australian industry, which needs a reasonably timely approach for decision-making, that this will not result in a blow-out in the time frame for decisions.

**Dr Watt:** I think we have had this discussion in previous estimates. To take a couple of examples, early indicators and warnings are designed to identify problems as they occur rather than after they have occurred. I do not think that would necessarily slow down a project. If anything, you can catch the problem earlier, before it becomes a serious problem and you might even speed up finishing it. They are designed to be a series of indicators and warnings that we would use within Defence that would try and give us an early warning of whether something was going wrong. I do not think that is going to slow down industry working on a project. In fact, if anything, if you could pick it up earlier, you solve the problems earlier, rather than picking it up later and having a bigger problem to solve.

It is the same with the gate review processes that Mr King makes so much use of in the DMO. Up until now he has the gate reviews that have been done in the DMO. They are not designed to slow the project up; they are designed to work in parallel with the project. But, again, to identify problems, things that are not going as well as they might, before they become bigger problems is, I think, a fair way to put it. They are quick, short, in-house reviews, just as the gate reviews that are used elsewhere in the Australian government are designed to do the same thing.

What we are trying to do in many of these cases is get to issues earlier and solve them before they become bigger issues. Does that slow up the process? I do not believe it necessarily does. With the minors process, we would have to acknowledge that there may be some slowing up, but the point is, again, if we do not have the right rigour in our projects before we begin, we are more likely to have problems. Sometimes the way to deal with the potential problem is to put a bit more rigour and bureaucracy in early and solve it before it becomes a serious problem.

**Senator HUMPHRIES:** I hear what you are saying; I just hope that is how it works out.

**Dr Watt:** So do we, believe me.

**Senator HUMPHRIES:** Can I ask about the early indicators and warning system that you have announced. In the statement there are a series of triggers that are indicated for first- and second-pass processes, triggers that will activate one of these early warning systems. The consequence of a trigger being activated is that Defence will conduct an internal review—another review—of the project and recommend whether a full diagnostic examination, a gate review, is required and should be conducted. What essentially is the difference here between the present process and the new process? Aren't the sorts of considerations referred to in the statement things that can already lead to a diagnostic review? Therefore, what is different about this early indicator and warning system?

**Dr Watt:** I defer to Dr Gumley, who is responsible for post second-pass indicators and warnings, and Air Marshal Harvey, who is between first and second pass. But I think the idea

is to introduce greater regularity of testing and greater regularity of response. That is the idea of having a more formalised set of warnings and indicators.

**Dr Gumley:** It has been our experience that sometimes very well-meaning projects get mixed up with the forest and the trees type argument; they are so busy working their day-to-day issues—and working very hard—that they lose track of the overall health of the project. By having an early warning indicator system, it is designed so that the problem areas get escalated such that other people can add help as required. It has been happening informally on a very large number of projects. What we are now doing is formalising it so proper records are kept of it such that the senior managers, the secretary and the CDF can become aware of what is happening in a project before it goes belly-up. I think that is a very prudent thing to do.

**Air Marshal Harvey:** From the pre-second-pass stage, again, I agree with Dr Gumley. The aim is to formalise it so that you are basically forced to look at each project each reporting period and you report if there is an issue. The other thing, certainly with pre-second-pass projects, is that the issues get raised early. There is always a tendency to try to deal with the issues at one's own level, but this forces people to see them and raise them early so they get the higher level management attention.

**Senator HUMPHRIES:** Okay. Again, with, as you put it, Dr Watt, more regular reviews, in the case of the quarterly accountability reports, you have a mandatory review now of each project?

**Dr Watt:** No, I think the statement indicates a high priority or otherwise designed project. The quarterly reports are not expected to be every project.

**Senator HUMPHRIES:** You are right; I am sorry. I am looking under the section headed 'Full diagnostic reviews', and it says, 'All major projects will now undergo at least one gate review per year.'

**Dr Watt:** I think that is all major DMO projects.

**Senator HUMPHRIES:** Yes, DMO projects—at least one review per year. That is not happening at the moment, so presumably that imposes a certain extra layer of bureaucracy which was not present for some projects prior to this—again, more thoroughness but, again, potential for more delays.

**Mr Gumley:** Out of the Mortimer review in 2008, adopted by government in 2009, we started looking at introducing gate review system, and frankly it has been very successful.

**Senator HUMPHRIES:** I don't doubt that.

**Mr Gumley:** It is one of these management things that you would do naturally to roll out to the other projects. Now we have trialled it on quite a few projects—middle-size and larger ones—it is now time to look at some of the smaller projects as well, because even a small project, which is the glue type project for the ADF, if it goes wrong you can affect a large number of other projects and other assets. We have learned how to do gate reviews better.

One of the key issues has been having the external person on the gate review. It is nice to have somebody who has had difficulty with projects in the past, who has fixed them, who has been immersed in them, who is now out of the main firing line who can come back in and add

that old-fashioned word 'experience' to a project to make sure that we actually improve it before it goes too badly wrong.

**Mr King:** I am broadly responsible for implementing the gate review process in DMO. Our experience to date has been ultimately that investment saves time and money. It can relate back to your question about industry. What is new in the process in particular is that the early indicators and warnings are now mandatory reporting thresholds. So when projects trigger one of those thresholds, it will be subject to review. Quite often a project going through that process will become a project of concern. Often it will not. But what we are able to do is to bring together the parties to make sure that the project can go back on track. I think our experience would say that in those gate reviews—speaking to industry, speaking to the project, speaking to the capability managers, seeing what the blocks are, seeing what needs to be done to get progress again—I think what we really do in that process is give better certainty to the capability manager and better certainty to industry on how to execute the project.

So far we have a mediated about \$4 billion worth of projects by going through that project of concern process, and those capabilities are now either fielded or being fielded when they were in a real stalemate. There is no doubt that it has a cost. There is no doubt that it takes effort. The question is: is that worthwhile and does that bring a better outcome? Our experience to date is: yes it does.

**Senator HUMPHRIES:** Despite all this rigour we are still ending up with problems like the amphibious ships and the air warfare destroyer, though, aren't we? The rigour is good up to a point; it is not necessarily picking up all these issues at an early enough stage, though, is it?

**Mr King:** The air warfare destroyer has been fully reported and managed, and I am sure we will want a talk about that some more. I would like to put that into context, though. I started that project in 2004 and since 2004, going through all those processes, today we stand on the edge of a 12-month slip in what is about a 10-or 11-year program. It is a program which has built about \$400 million worth of infrastructure; a project which is rebuilding the maritime industry capability in Australia, with about 2000 people; a project that is building the most complex surface combatant ever built in Australia. And while we are very disappointed to be challenged by a 12-month schedule slip, it has not crept up on us, we have been diligent in understanding where our challenges and diligent in taking the best action we can to make sure the project challenges are minimised to the best possible extent. I do think that that has got to be put in the context of the enormous challenge that we are taking on, which is in the national capability and one which I am, clearly, fully behind and really believe in.

**CHAIR:** Mr King, you have opened up a very interesting area, which I am sure is going to be explored in due course.

**Dr Watt:** Chair, can I just make one final point. Senator Humphries mentioned amphibious ships. It is not a DCP project. That is a different issue. I do not want to prejudge Mr Rizzo's report, but effectively that has been an ongoing sustainment issue. They were bought at a time when I think we have all agreed we perhaps did not have the rigour we have now.



**Senator HUMPHRIES:** But DMO still has an overview role with the amphibious ships sustainment, doesn't it?

**Dr Watt:** I am not disputing that, but this is not a DCP project and not subject to indicators and warnings.

**CHAIR:** We understand.

**Proceedings suspended from 15:34 to 15:51**

**CHAIR:** The committee will resume work. Mr Merchant, I think you have something to advise us.

**Mr Merchant:** Yes, thanks, Chair. In the session before lunch that addressed the issue of the security clearances in Defence, I think it was Senator Trood who raised the issue of the statement given last week at estimates by the Director-General of Security. We undertook to clarify that issue with him. The Director-General of Security was unavailable today, but we have been in touch with the acting Director-General of Security, Mr David Fricker. I can advise that last week at estimates the Director-General of Security answered a question concerning the claims about inappropriate vetting procedures by the Department of Defence. He said:

I understand that the claims of inappropriate vetting practices have been reviewed by the Department of Defence and have not been substantiated. I think that is probably all I can say on this matter.

The Director-General of Security's answer reflected the preliminary view formed from the initial assessment of this issue by Defence's inspector-general, Mr Ray Bromwich. That preliminary view was that 'there is no evidence of a deliberate intent to undermine the integrity of the security vetting process'. Mr Bromwich added, 'This is a preliminary view only and is subject to further investigation.' That preliminary view was passed to ASIO. As we said this morning, the further investigation of this issue has now been referred to the Inspector-General of Intelligence and Security to undertake.

**CHAIR:** Thank you, Mr Merchant. We have contacted the minister's office and we are advised he is on his way, so we will resume questions now.

**Dr Watt:** The parliamentary secretary's office.

**CHAIR:** Yes, the parliamentary secretary's office.

**Dr Watt:** We are not allowed to call him a minister.

**CHAIR:** That is right.

**Dr Watt:** As much as we might like to.

**CHAIR:** I call him a lot of things!

**Senator JOHNSTON:** With respect to Federal Court action 16 of 2009, pursuant to the consent orders we paid wages to the applicant. How much did we pay?

**Dr Watt:** I now have with me Mark Cunliffe, head of Defence Legal, who I think can answer that question.

**Mr Cunliffe:** I regret that that is actually a question within DMO. I am able to point to figures on the other matters that you raised. I do not think David can answer it either. DMO, I gather, is seeking that information from its records. That component is a component they can verify. I am afraid I cannot. Apologies.

**Senator JOHNSTON:** We had some legal fees, costs and charges—as you will—prior to the issue of the certificate?

**Mr Cunliffe:** The figure that our records show as having been paid, again, by the Defence Materiel Organisation to the AGS leading up to and including those Federal Court proceedings is \$575,526.97.

**Senator JOHNSTON:** We will come back to that—575 grand?

**Mr Cunliffe:** Yes.

**Senator JOHNSTON:** Were there any other legal expenses prior to the certificate being issued? You are aware of what I am talking about: the Public Service Commissioner's certificate.

**Mr Cunliffe:** I should advise that I do not have a breakdown on the exact timing of those. That is the figure up to and including the Federal Court proceedings. The DMO may be able to separate the figure beforehand.

**Dr Watt:** We will take that on notice.

**Senator JOHNSTON:** That is fine, I am happy for you to do that, but you can understand why I am interested in that number. We have had, I suspect, prior to the issue of the Public Service Commissioner's certificate extensive legal advice as to procedure such that we would not run foul of procedural fairness. And yet without a shot being fired we have fallen at the first hurdle.

**Dr Watt:** I think it is fair to say that Mr Cunliffe cannot answer that question any more than I can. Mr Dunstall may be able to.

**Mr Cunliffe:** Perhaps this is worthwhile, and I think it has been mentioned previously in hearings with this committee: effectively, we have two legal structures within the totality of Defence. One of them is the part which is within the Defence Materiel Organisation, and so while we can identify some of those numbers to a degree I am afraid the actual operation of the matter is not something that I can talk to.

**Senator JOHNSTON:** Mr Dunstall: tell us what advice we had before we went to the Public Service Commissioner?

**Mr Dunstall:** I was not involved in the matter until the application for review was received on 14 April 2009.

**Senator JOHNSTON:** Was that in the form of a writ of summons?

**Mr Dunstall:** That was an application with the—

**Senator JOHNSTON:** An application, right.

**Mr Dunstall:** Obviously, at that point I became aware of the matter and I became aware that the organisation had been receiving legal advice from the Australian Government Solicitor.

**Senator JOHNSTON:** From what date?

**Mr Dunstall:** As I understand it, the DMO engaged the Australian Government Solicitor on and from 7 April 2008. That advice, obviously, was to seek to provide the CEO DMO with advice to seek to ensure that the performance management process was undertaken in accordance with law.

**Senator JOHNSTON:** Correct me if I am wrong, but 7 April 2008 is almost a year before the certificate is issued?

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** Right. How long had the applicant being employed by the DMO at that time?

**Mr Dunstall:** Ms Wolfe was engaged on 2 July 2007.

**Senator JOHNSTON:** Less than a year?

**Mr Dunstall:** That is correct.

**Senator JOHNSTON:** We then had a further year of legal advice until the issue of the certificate?

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** And who was providing legal advice?

**Mr Dunstall:** Who specifically, in the Australian Government Solicitor's—

**Senator JOHNSTON:** Who, specifically?

**Mr Dunstall:** The senior partner was Paul Vermeesch, who is an experienced workplace relations lawyer.

**Senator JOHNSTON:** Paul Vermeesch. And did he provide written advice?

**Mr Dunstall:** I do not know that I have reviewed the advice prior to that time, but I would imagine that there was advice in writing, whether that was via email or formal written advice; I am sure there must have been.

**Senator JOHNSTON:** You can see where this is going, Mr Dunstall. We have had extensive legal advice and yet, when the battle flags have gone up, one side has capitulated ignominiously by way of the consent order. What were the costs up to the issue of the certificate?

**Mr Dunstall:** I do not have that breakdown.

**Senator JOHNSTON:** Can you break it down for me?

**Mr Dunstall:** I will take that on notice and I will get the breakdown for you.

**Senator JOHNSTON:** I know that we have got \$575,000 for a litigious matter that required no court time, which strikes me as being nice work if you can get it. The post-order legal fees I would like to know too.

**Mr Dunstall:** Post the?

**Senator JOHNSTON:** Federal Court order.

**Mr Dunstall:** Or post the Public Service Commissioner's certificate?

**Senator JOHNSTON:** You can break it up like that too: pre certificate, post certificate and post order. That would be good. What other legal services did the DMO have in addition to AGS?

**Mr Dunstall:** None that I am aware of, Senator, in terms of legal services. Obviously when the application was received, I in my role as the special counsel to CEO DMO was coordinating the legal instructions that were going to AGS in terms of the carriage of the matter.

**Senator JOHNSTON:** So we had legal advice with respect to the obtaining of the certificate?

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** Did the lawyers actually draft the application for the certificate—that is, correspondence that formed the basis of the certificate to the Public Service Commissioner?

**Mr Dunstall:** I am not aware, but I can find out for you.

**Senator JOHNSTON:** Please, because if they did I am left wondering why we never fired a shot in anger, as I think the taxpayer would be. We then had interlocutory proceedings.

**Mr Dunstall:** There were a number of directions hearings.

**Senator JOHNSTON:** Were they just directions hearings or were they in fact strike-out applications, affidavits being filed and a whole host of preliminary argy-bargy?

**Mr Dunstall:** As I said, on 18 May 2009 the court did issue orders regarding applications, evidence, affidavits to be filed and dates for the presentation of the material.

**Senator JOHNSTON:** How many affidavits did we file as the Commonwealth?

**Mr Dunstall:** Again, I do not have that level of detail but I can find out for you.

**Senator JOHNSTON:** I would be very obliged if you would, because I am told there were several.

**Mr Dunstall:** I expect there were, Senator.

**Senator JOHNSTON:** And I want to talk to you about who the deponents were. Do you have any idea of who the deponents were?

**Mr Dunstall:** I do not have all that detail.

**Senator JOHNSTON:** Does anybody here have any idea of who the deponents were?

**Mr Dunstall:** I doubt that, with that level of detail. We would have to go and track that through.

**Senator JOHNSTON:** It is pretty interesting and important. So we have had legal advice throughout. We have lodged an application for a Public Service Commissioner certificate to dismiss a senior executive service employee. We have done that and the applicant has been without work for some 13 months thereafter, on the issue of the certificate. Correct?

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** We have ended up paying her the salary she would otherwise have obtained?

**Mr Dunstall:** Yes.

**Senator JOHNSTON:** Which was how much?

**Mr Dunstall:** As Mr Cunliffe indicated, we are seeking that information.

**Senator JOHNSTON:** What else have we paid to her?

**Mr Dunstall:** As per the previous evidence, we paid party-party costs.

**Senator JOHNSTON:** Which were how much?

**Mr Dunstall:** Mr Cunliffe might have that information.

**Mr Cunliffe:** The amount of party-party costs that we paid was \$252,242.37.

**Senator JOHNSTON:** And not a shot was fired in anger. The court never convened to hear any evidence. So we have spent \$700,000 on this matter?

**Mr Cunliffe:** That is correct.

**Senator JOHNSTON:** How much was that—two hundred and what?

**Mr Cunliffe:** \$252,242.37.

**Senator JOHNSTON:** I stand corrected: more than \$800,000.

**Senator IAN MACDONALD:** Does the \$575,000 include counsel?

**Mr Dunstall:** It did include counsel fees.

**Senator IAN MACDONALD:** Independent counsel?

**Mr Dunstall:** The counsel that was engaged for it was Tom Howe, Chief Counsel, Litigation, Australian Government Solicitor.

**Senator IAN MACDONALD:** Is it possible for this committee to ask to have a look at the bill you got for legal advice?

**Mr Dunstall:** To look at the bill?

**Senator JOHNSTON:** Yes.

**Senator IAN MACDONALD:** I cannot believe that we would pay \$575,000 and not even get to court. I understand there were affidavits. I used to be a lawyer many years ago, but these sorts of figures are not within my understanding. I have recently actually been a party in a couple of court cases. I thought they charged me, but this comparison they charged me nothing. I simply cannot believe. I would like to have a look at the bill if I could.

**Dr Watt:** We can undertake to see if we can provide that evidence. It would have to be subject to, I suppose, some caveats, but we can undertake to provide it.

**Senator JOHNSTON:** Secretary, does the department believe that legal, professional privilege overrides the work of this committee?

**Dr Watt:** I am not suggesting it does; I am just saying that it might be something that we have to look at—that is all.

**Senator JOHNSTON:** That is good.

**Dr Watt:** I am not anxious to have that argument with you, Senator.

**Senator JOHNSTON:** No.

**Dr Watt:** We will look at it.

**Senator JOHNSTON:** I think we are all a little touchy about that, if you follow.

**Dr Watt:** Understandable, Senator.

**Senator JOHNSTON:** Was that \$252,000 taxed? Was there taxation or was there an agreement?

**Mr Cunliffe:** No; there was a negotiation.

**Senator JOHNSTON:** A negotiation?

**Mr Cunliffe:** Eventually it was paid by agreement.

**Senator JOHNSTON:** So, again, we had no shots in anger?

**Mr Cunliffe:** That is correct.

**Senator JOHNSTON:** So it was \$827,000—if my maths serves me correctly—for this matter? Correct?

**Dr Watt:** Your maths is accurate.

**Senator JOHNSTON:** Who paid the costs?

**Dr Watt:** Are you asking about which part of the department it came out of?

**Senator JOHNSTON:** There are several people who I think should have paid this.

**Dr Watt:** You are quite right. Mr Dunstall might be able to tell us. I think the Defence Materiel Organisation was the funder.

**Mr Dunstall:** I would have to check. I am not sure about the solicitor fees.

**Senator JOHNSTON:** Why would the DMO pay these costs, Mr Dunstall?

**Mr Dunstall:** Why would the DMO?

**Senator JOHNSTON:** The Public Service Commissioner has issued a certificate.

**Mr Dunstall:** The matter related to an employment matter within the Defence Materiel Organisation.

**Senator JOHNSTON:** But you cannot sack an executive service member without the certificate, and the certificate was granted.

**Mr Dunstall:** Correct.

**Senator JOHNSTON:** Surely the DMO is absolved. Did we run that argument or not? Did we just lay down and let it all happen, did we?

**Mr Dunstall:** With the Public Service Commissioner?

**Senator JOHNSTON:** Yes.

**Mr Dunstall:** We are all part of the Commonwealth so, ultimately, the Commonwealth pays.

**Senator JOHNSTON:** But the bottom line is that you cannot sack anybody unless the Public Service Commissioner says yes.

**Mr Dunstall:** That is correct.

**Senator JOHNSTON:** She said yes, and she has got statutory reason to meet that answer, has she not?

**Mr Dunstall:** The then commissioner was required to comply with the legislation prior to issuing the certificate. To the best of the commissioner's knowledge and belief that was complied with.

**Senator JOHNSTON:** This is most irregular. She has said, 'You can dismiss that person. The threshold issues of several conditions have been met. Her future employment is not in the public interest. I will grant the certificate.' So the DMO is home scot-free, are they not? Yet we have worn 800 grand worth of pain.

**Dr Watt:** With respect, I think it is a question that might be better addressed to the Public Service Commissioner.

**Senator JOHNSTON:** The Public Service Commissioner is not too keen, as you would understand, to talk about this.

**Dr Watt:** I do not know if that is the case.

**Senator JOHNSTON:** No private lawyers were involved on behalf of the DMO other than the Australian Government Solicitor?

**Mr Dunstall:** Until the court order, to the best of my knowledge and belief, only the Australian Government Solicitor was involved.

**Senator JOHNSTON:** Did the Public Service Commissioner have any legal advice?

**Mr Dunstall:** Yes.

**Senator JOHNSTON:** Who from?

**Mr Dunstall:** Again, the Australian Government Solicitor acted for both the DMO and the Public Service Commissioner.

**Senator JOHNSTON:** Now what do you call that? When a solicitor is acting for two parties in a litigation, what do you call that?

**Mr Dunstall:** We are all part of the Commonwealth. It is the one client. We are part of the Commonwealth, so there was no conflict—

**Senator JOHNSTON:** Getting separate legal advice pursuant to statutory provisions?

**Mr Dunstall:** There was no conflict because we are all part of the Commonwealth.

**Senator JOHNSTON:** I have to disagree with you. I think we have a living, breathing, smoking conflict of interest and yet we still went to the AGS and they never smelt it themselves.

**Mr Dunstall:** Obviously, when we were discussing who should represent DMO and the Public Service Commissioner there was discussion around whether it was appropriate to have the one firm represent both parties. Because there was clearly a mutuality of interest in the litigation and we were all part of the Commonwealth, it was determined that there was no conflict of interest. All parties agreed to that.

**Senator JOHNSTON:** I would like to see the bills that were delivered. Were they delivered to DMO or to the defence department from AGS?

**Mr Dunstall:** My understanding is that the bills came through DMO.

**Senator JOHNSTON:** I would like to see the bills from the DMO. Were they taxable? Could we contest them?

**Mr Dunstall:** We can always contest the bills if we take the view that they are excessive. Obviously, before we pay out for any legal advice—AGS or otherwise—we review the bills that were received.

**Senator JOHNSTON:** Did you do that in this instance?

**Mr Dunstall:** I did.

**Senator JOHNSTON:** And you determined that the bills were fair and reasonable?

**Mr Dunstall:** In conjunction with others, yes, in terms of the amount of work that was being undertaken.

**Senator JOHNSTON:** What work was undertaken? Tell me the pain and suffering in all of this. Tell me what work was undertaken.

**Mr Dunstall:** The normal legal work that is required to be undertaken when there is a major litigation matter.

**Senator JOHNSTON:** You call this a 'major litigation matter'?

**Mr Dunstall:** It was going to court. It involved significant evidence over a significant amount of time.

**Senator JOHNSTON:** Are you aware of what the value of current projects on the books for DMO is?

**Mr Dunstall:** I think our budget is something like \$10.2 billion. The CEO would know that better than I.

**Senator JOHNSTON:** There are probably \$60 billion or \$70 billion of projects floating around?

**Mr Dunstall:** That is correct.

**Senator JOHNSTON:** And the dismissal of a senior executive service person with a certificate from the Australian Public Service Commissioner is major litigation for you?

**Mr Dunstall:** I would think it would be major litigation for anybody. It is not something that one embarks on without serious consideration.

**Senator JOHNSTON:** So you did have serious consideration on this?

**Mr Dunstall:** Of course, Senator.

**Senator JOHNSTON:** And you had legal advice?

**Mr Dunstall:** Yes.

**Senator JOHNSTON:** Was the legal advice correct?

**Mr Dunstall:** The advice we received all the way through the process and certainly when we received the original application of statement of claim was that the Commonwealth was in a strong position to defend those claims.

**Senator JOHNSTON:** Have you read this order?

**Mr Dunstall:** I am across it.

**Senator JOHNSTON:** How could we possibly be in a strong position? We have absolutely yielded in a most ignominious way:

... each vitiated by jurisdictional error in that the applicant was denied procedural fairness as pleaded in various paragraphs of the further amended statement of claim.

**Mr Dunstall:** That is correct. The emphasis there is on 'the further amended statement of claim'.

**Senator JOHNSTON:** Sure.

**Mr Dunstall:** So, in relation to the original application of statement of claim we received, which obviously articulated the grounds on which procedural fairness was alleged, and in relation to the information we were aware of during that time, we felt we were in a strong position to defend the claims.

**Senator JOHNSTON:** Until she actually pleaded the right stuff.



**Mr Dunstall:** Until an amendment was made on or around 14 December 2009. We became aware of information at that point—

**Senator JOHNSTON:** What information?

**Mr Dunstall:** I will pass to Mr Cunliffe to comment on that because it is not appropriate to reveal—

**Senator JOHNSTON:** Information that your solicitors had not come to terms with?

**Mr Cunliffe:** Were we to go into the details of that information there is the potential to cause difficulties for the subsequent process. I seek the indulgence of the committee, therefore.

**Senator JOHNSTON:** You know me, I am always reasonable. So that is to do with the work of Mr Skehill?

**Mr Cunliffe:** That is correct.

**Senator JOHNSTON:** Mr Skehill was retained in August after the order.

**Dr Watt:** Retained, Senator, yes. But there was a period of time between contacting Mr Skehill and asking him to take the responsibility and the actual formal starting. Mr Cunliffe can, I think, explain.

**Mr Cunliffe:** At the secretary's request, I approached several people. I approached Mr Skehill on 12 May—in fact, we met on 12 May; I had probably rung him a day or two earlier to set up a meeting to discuss this possibility of him being appointed as the Secretary of Defence's delegate. There was then a series of processes over the subsequent months, including refining documentation and various other steps that were necessary, and so the formal commissioning was the August date.

**Senator JOHNSTON:** So he was formally commissioned. Mr Cunliffe, did you have independent, separate legal advice with respect to this Federal Court order?

**Mr Cunliffe:** No. We did not. There were discussions in the light of the advice received which led to the process, and in fact that was something which we were aware of. But we did not have separate legal advice in relation to those matters, no.

**Senator JOHNSTON:** When did you become involved?

**Mr Cunliffe:** 25 January 2010 is my earliest date of involvement. I should mention that, on a previous occasion, which I am told was August the previous year, a question had been raised about whether I should have some earlier role, but I took the view and put the view that the appropriate area to run the matter, given its history until then, was the DMO, and that continued.

**Senator JOHNSTON:** Did you get any legal advice as to the question of liability for costs—as to which department should be paying those costs?

**Dr Watt:** This is costs up until now? Costs up until the Federal Court case or—

**Senator JOHNSTON:** This is the \$252,000 that were given to the applicant, by agreement.

**Mr Cunliffe:** No.

**Senator JOHNSTON:** We just accepted that that was a Defence responsibility?

**Dr Watt:** No. As you heard Mr Dunstall say, the matter was handled by the DMO, not Mr Cunliffe.

**Senator JOHNSTON:** Yes, but Mr Cunliffe was involved in the matter prior to its resolution and was aware of the costs I am sure—the \$252,000. Did it not occur to you that it may not be a DMO liability?

**Mr Cunliffe:** No, in fact it goes back to the form of the order that was made, which was that the DMO would pay Ms Wolfe's costs as agreed or taxed.

**Senator JOHNSTON:** Were you party to that?

**Mr Cunliffe:** I was certainly involved in meetings before that. I do not know that I was party to those formal words, but, yes, I was party to several meetings.

**Senator JOHNSTON:** The wording of the order I have is that, 'The third respondent pay the applicant's costs agreed or taxed'. Who is the third respondent?

**Mr Cunliffe:** I do not have the papers in front of me, but the notes that I have indicate that it was the Defence Materiel Organisation.

**Dr Watt:** We can confirm that.

**Senator JOHNSTON:** Well, my order says, 'Justice Stone, 8 April 2010 ... The third respondent pay the applicant's costs as agreed or taxed.' And the third respondent is the Commonwealth of Australia.

**Mr Cunliffe:** Perhaps it is a matter of following through to where the matter had started at that stage.

**Senator JOHNSTON:** So we were unconcerned with which department of the Commonwealth would bear these costs?

**Dr Watt:** I do not think that is what Mr Cunliffe said.

**Mr Cunliffe:** Senator, what I was certainly concerned by was that those matters would not be coming out of the money that I am directly responsible for. From that point of view there were some discussions, but there seemed to me a natural acceptance—

**Senator JOHNSTON:** It is Defence money as opposed to DMO money?

**Mr Cunliffe:** Yes.

**Senator JOHNSTON:** So we never thought that, because of the statutory provisions, the Public Service Commissioner should pay?

**Mr Cunliffe:** I did not think that, no.

**Senator JOHNSTON:** Is that because it did not occur to you, given the statutory matrix?

**Mr Cunliffe:** I would proffer some views, but I might just ask the Defence General Counsel, Dr Lloyd, to go through it with more precision.

**Dr Lloyd:** In fairness to Mark, I think I took the decision at the time. Did it occur to me? No. I took the view at the time that, as the substantive matter had arisen in the DMO and it was fundamentally a DMO matter, it was for the DMO to meet the costs. But I did not seek separate advice on that.

**Senator JOHNSTON:** Knowing section 36—I think it is section 36 of the act; I will dig it out in a minute—and given all of the threshold issues that had to be met for the issue of a

certificate, which is not a proforma but a serious adjudication by the commissioner, would you revisit that decision?

**Dr Lloyd:** I guess I could always revisit that decision, but to my mind at the time—and I think I would still think this—it is where the substance of the matter resides that costs would be paid, and I think the substance of the matter was that it was an issue of the termination of a DMO employee.

**Senator JOHNSTON:** We can argue on the semantics, but the fact is that you cannot sack anybody without a certificate.

**Dr Lloyd:** That is true.

**Senator JOHNSTON:** And a certificate was granted.

**Dr Lloyd:** That is also true.

**Senator JOHNSTON:** What I am saying to you is that technically the DMO is home and dry. It has done everything it was supposed to do. The commissioner then took on all of the responsibility to say, 'Yes, this person's future employment is not in the public interest'—end of story, according to the act.

**Dr Lloyd:** I am not so sure that is entirely correct. It is probably an issue of the Public Service Act and therefore the Public Service Commission is best placed to comment, but I think there is actually a decision to terminate that still needs to be taken.

**Senator JOHNSTON:** Sure.

**Dr Lloyd:** In other words, the certificate is a necessary precondition but it is not of itself the act which terminates employment. So I am not sure that would be entirely accurate.

**Senator JOHNSTON:** Everything is void if there is no certificate.

**Dr Lloyd:** That is certainly true. As I say, it is a necessary precondition but it is also not the crucial final step.

**Senator JOHNSTON:** If we had wanted legal advice on that particular point, where would we have gone?

**Dr Lloyd:** On who was responsible?

**Senator JOHNSTON:** Yes.

**Dr Lloyd:** I think we would have started with the Australian Government Solicitor.

**Senator JOHNSTON:** Would we have had any difficulty with the Australian Government Solicitor making a determination?

**Dr Lloyd:** Were there to be a difficulty, you would probably look to the Legal Services Directions, which recognise that in those circumstances it may be appropriate to involve the Solicitor-General. But the first issue would be: was there a significant difference of view?

**Dr Watt:** I appreciate that the chair is getting a cup of tea, but I think one of the issues we have is that while we have some interest in the Public Service Act—often considerable interest—we are not as expert as you are in the Public Service Act, and neither of us may be as expert as the commissioner is. Perhaps we are at a slight disadvantage in answering some of these questions.

*Senator Faulkner interjecting—*

**Dr Watt:** I think Senator Faulkner is offering himself as an expert.

**Senator FAULKNER:** No, I just thought I would throw that in as a lighthearted moment to enable the chair to have time to return to the table. Could I commend the *Hansard* to you—many days of debate in the Senate.

**Mr Cunliffe:** I recall it well.

**Senator FAULKNER:** Yes, I am sure you do, Mr Cunliffe.

**Senator JOHNSTON:** There was a Ms Williams from the AGS who gave the DMO advice, and there was a Mr Vermeesch.

**Dr Watt:** I think we need to refer to Mr Dunstall again.

**Mr Dunstall:** Ms Williams was the junior lawyer, and she was obviously overseen by the partner, a senior executive lawyer, Paul Vermeesch.

**Senator JOHNSTON:** We call these people partners, do we?

**Mr Dunstall:** That is the equivalent in the private sector of the senior executive lawyer within AGS; they are the partner equivalent.

**Senator JOHNSTON:** All right. What I would like you to provide, because we will move on from this, is a full statement of all of the work carried out by the AGS in those three separate tranches, together with the costs and the time set out.

**Mr Dunstall:** Senator—

**Senator JOHNSTON:** I do not think there is any legal professional privilege here. I think the committee is onto something that the committee should know about, given the \$827,000. I have not even got to how many people were employed from within the department to manage this, which we will get to in a moment. I just want a full assessment of what this whole thing has cost us in terms of lawyers—lawyers who said, 'We obviously have a strong case.; so strong that we—

**Mr Dunstall:** Correct, Senator.

**Senator JOHNSTON:** never fired a shot in anger but just paid money out hand over fist. How many DMO personnel were involved in this?

**Mr Dunstall:** In terms of involvement leading up to the court order from the date of the application was received up until the court order.

**Senator JOHNSTON:** Up until the court order.

**Mr Dunstall:** Obviously the CEO was involved.

**Senator JOHNSTON:** Yes.

**Mr Dunstall:** I was involved, as I said before, in some instruction and oversighting of the matter.

**Senator JOHNSTON:** You are an SES member.

**Mr Dunstall:** I am.

**Senator JOHNSTON:** Yes.

**Mr Dunstall:** We would have had a couple of other individuals in our HR area who were also responsible.

**Senator JOHNSTON:** How many is 'a couple'?

**Mr Dunstall:** To my understanding 'a couple' is two.

**Senator JOHNSTON:** So that is four. Any others?

**Mr Dunstall:** To the extent that other persons may have had information that was required then an email tasking would have gone out and that person or persons would have provided input.

**Senator JOHNSTON:** So we did not stand up a team of people of a dozen or more to deal with this issue?

**Mr Dunstall:** No. And none of us were engaged full time on it, obviously.

**Senator JOHNSTON:** What about before the application for the certificate?

**Mr Dunstall:** I cannot comment on that because I was not involved.

**Senator JOHNSTON:** Did anybody comment on that?

**Mr Dunstall:** I am not aware.

**Dr Watt:** I do not think we were able to. Again, we can see what we can get on notice.

**Senator JOHNSTON:** What about the department secretary? Had a tiger team been working on this?

**Dr Watt:** I would be surprised, Senator.

**Mr Cunliffe:** A very small tiger. A pussycat perhaps. At certain points from that date in January I was involved in some meetings with the secretary and, at certain other points subsequent to that, Dr Lloyd has been involved and one other staff member. I think that is all. None of us were full time. I would like to be able to devote myself to one matter at a time.

**Senator JOHNSTON:** We have then retained Mr Skehill. How much is that costing us?

**Mr Cunliffe:** To date, we have paid Mr Skehill plus counsel—I do not have a breakdown between the two—a total of \$297,983.37.

**Senator JOHNSTON:** My goodness! It is just never ending, isn't it? I think we just cracked the million.

**Dr Watt:** It is not never ending. It will not be never ending.

**Senator JOHNSTON:** Gee whiz! This is all about dismissing somebody and we have got a million dollars worth of pain and suffering here. My Lord! What is the \$297,000 for?

**Mr Cunliffe:** It is for the work that Mr Skehill has done to give effect to the role that he has been asked to undertake.

**Senator JOHNSTON:** And what role is that?

**Dr Lloyd:** I can read it out, if that would assist. Mr Skehill has been requested to determine, firstly, whether there were in place measures directed to ensuring that the agency had established a performance management system which complies with the requirements of the directions—

**Senator JOHNSTON:** What directions?

**Dr Lloyd:** This is the Public Service Commissioner's directions. Secondly, if not, whether the failure to comply with such a direction has the effect that the applicant's employment cannot be terminated or other powers in respect to her employment exercised upon reaching the view that the preconditions for the exercise of the relevant statutory power are met. So, in

essence, the first one being: is there a system and, if there were to be a failure, is that material?

**Senator JOHNSTON:** Mr Dunstall, what is the answer to that? You had the best legal advice money could buy. Surely that is the fundamental issue. What did they say?

**Mr Dunstall:** The Australian Government Solicitor, Senator?

**Senator JOHNSTON:** Yes.

**Mr Dunstall:** The Australian Government Solicitor's advice was, from the advice that we had at the time, as I have mentioned before, that we were in a strong position.

**Senator JOHNSTON:** And yet we now do not accept that, because we are effectively asking Mr Skehill to review that position, aren't we?

**Mr Dunstall:** The terms of reference are as Dr Lloyd is reading out.

**Senator JOHNSTON:** They are fundamentally undermining the basis upon which we went forward, as a threshold issue.

**Mr Dunstall:** Senator, the court order indicated that the matter—as usual with a procedural fairness matter—the decision is quashed and that the matter be referred back to the secretary or the secretary's delegate for further consideration in accordance with the law. That is the process that is being undertaken.

**Senator JOHNSTON:** But the secretary is so concerned that the thing did not go forward properly, notwithstanding the legal advice, that he has got someone else to second-guess your lawyers.

**Mr Dunstall:** That is not the case, Senator.

**Senator BARNETT:** What are the terms and conditions again, Dr Lloyd?

**Dr Lloyd:** Whether there were in place measures directed to ensuring the agency had established a performance management system which complies with the requirements of the directions. I should explain: that arises out of a matter that had been raised in the pleadings that we thought it was important to have addressed as a threshold issue. The next matter is—

**Senator JOHNSTON:** Hang on, just pause there. Surely that is a matter for the lawyers at first instance advising the DMO, whether it is compliant.

**Mr Cunliffe:** Not in light of the court order, Senator.

**Dr Lloyd:** Once it had come to the secretary then it is a matter on which the secretary needs to have reached his own decision.

**Senator JOHNSTON:** Okay. What is the next one?

**Dr Lloyd:** The next one is: whether the applicant's performance has been unsatisfactory; and finally, if the performance has been unsatisfactory, what consequence, if any, should follow.

**Senator JOHNSTON:** So we are still looking at the performance of the applicant, having paid out \$252,000 in court costs, \$575,000 in legal fees and \$297 to find out.

**Dr Lloyd:** That is precisely what the court order has asked us to address.

**Senator JOHNSTON:** And we are still focused on this employee.

**Dr Lloyd:** Correct.

**Dr Watt:** Senator, the important to make is that the court case did not proceed on the basis of natural justice, not the substance of the case. So we are addressing the substance of the case.

**Senator JOHNSTON:** But you see, Secretary, natural justice is the fundamental threshold issue. If you do not get that right, everything else is almost permanently tainted.

**Dr Watt:** I do not think that is our advice, Senator.

**Senator JOHNSTON:** It has been good so far, I can tell you. It has been a class act, your advice so far. The poor old taxpayer is just getting slaughtered here.

**Dr Watt:** You will not get an argument from us, Senator. This has cost a lot of money we would have preferred to avoid.

**Senator JOHNSTON:** All right. Let's move on. We had how many affidavits sworn in this matter?

**Mr Dunstall:** Senator, as I say, I will have to take that on notice and get you the answer.

**Senator JOHNSTON:** We had one from a Michael Coutts-Trotter. Do we know who he is?

**Mr Dunstall:** He was a senior public servant in the New South Wales public service, as I understand.

**Senator JOHNSTON:** And he is the husband of a minister of the Commonwealth, correct?

**Mr Dunstall:** I am not aware, Senator. He may well be.

**Senator JOHNSTON:** He is the husband of Minister Plibersek. Do we not have a problem with that? Swearing an affidavit in a matter such as this?

**Dr Watt:** Why would you, Senator?

**Senator JOHNSTON:** There may be a conflict of interest there somewhere, wouldn't there be? The husband of a minister of the Crown—a senior executive service member of the Commonwealth?

**Dr Watt:** First of all, it is not a minister of the Crown, Senator. It is the husband of a minister of the Crown, who was not employed at all by the Commonwealth; in fact, at the time he was employed by the New South Wales state government in one form or another. I find it hard to see any conflict.

**Senator JOHNSTON:** Righto. What was his relevance to all of this?

**Dr Watt:** Senator, I do not have the affidavit in front of me.

**Senator JOHNSTON:** Just off the top of your head, because I am sure you know: what was his relevance? I am not as green as all that much cabbage water. You know full well what his relevance was. Please tell us.

**Dr Lloyd:** This again raises the matter that Mr Cunliffe raised; that there is some information which we actually have kept away from the new decision maker to ensure that it does not affect his decision and could potentially go into that space.

**Senator JOHNSTON:** Okay. I accept that. Mr Cunliffe, how do you propose that we would proceed with getting to the bottom of this mess as a committee? A separate briefing? Private? In camera?

**Mr Cunliffe:** Senator, with the secretary's agreement, that would be one possibility. The alternative, I suppose, would be at a later time, but that is probably something that—

**Senator JOHNSTON:** And when, if at all, will any of these matters be able to be made public?

**Mr Cunliffe:** There are difficulties with that. At the heart of this matter individual circumstances bring with them much difficulty. I suppose I feel some compunction therefore trying to put times on it when that is the threshold. You have identified the concerns, but the concerns also go to an individual who has a life and who has to suffer through this.

**Senator JOHNSTON:** I am going to hand over to my colleague, but I accept everything you have said. I am just looking for a vehicle whereby the committee can get to the bottom of this, because I do think that the amount of money involved is outrageous.

**Dr Watt:** Senator, perhaps I can help a little bit. We do hope that Mr Skehill will have completed his work shortly. It has taken longer than it was intended, significantly longer. That goes to the nature of a difficult case, I suspect, though I would not want to comment on that because that is for Mr Skehill to say, not for me. Once Mr Skehill has completed his work, that might be an obvious opportunity for the Senate to discuss the matter further.

**Senator IAN MACDONALD:** Was Mr Coutts-Trotter who filed an affidavit filing an affidavit on behalf of the applicant rather than the respondents?

**Mr Dunstall:** No, Senator, my understanding is that that was an affidavit on behalf of the respondents.

**Senator JOHNSTON:** The responsible minister is Minister Snowdon. Did we give him a full brief on all of this?

**Senator Feeney:** I am not in a position to comment, unfortunately.

**Senator JOHNSTON:** I am sure the secretary is.

**Dr Watt:** Mr Snowdon certainly has had some information about the case, but because it is a personnel matter that goes to individuals and is about individuals rather than about a broader personnel issue, it is not something that you would expect the minister would be regularly burdened with.

**Senator JOHNSTON:** Okay, so the minister does not know about it. I think that he has a fair idea—

**Dr Watt:** I would not put words in his mouth, Senator, but I do think that he is aware of the issue. I believe—and I will have to check this—that it was covered in an incoming government brief. It clearly is an issue but, because it goes to the nature of individual circumstances, it is not an issue that we would brief as regularly as we would otherwise.

**Senator JOHNSTON:** I will close by saying, Secretary, that I think the committee needs to be fully informed because there are just so many questions as to who is responsible for this mess, where it is going, and when it is going to be finalised. Quite frankly, it is beyond comprehension how the dismissal of one person can lead to this mess. I will leave it up to you to write to the committee and tell us your proposals, taking on board everything that senior



counsel has said about the personalities involved. I think the committee does need to know about this.

**Dr Watt:** I will be happy to write to the committee chair, Senator, accordingly.

**Senator IAN MACDONALD:** Accepting what you have said about the information available, how could a public servant from the New South Wales government, I understand, possibly have an involvement? In what way could that evidence be used by the Commonwealth department in, I assume, resisting the application that had been made? Were they an expert witness on how things operate?

**Mr Dunstall:** Senator, it is difficult for me to answer that without going to the matters that Mr Cunliffe has already raised.

**Senator IAN MACDONALD:** Can you just tell me how it is that a New South Wales government public servant who just happens to be the husband of a federal minister can possibly be involved in a federal government matter?

**CHAIR:** Mr Dunstall, I would ask you not to answer that question as yet. Secretary, you have advised the committee that senior counsel has been retained to carry out a review of the process and other matters post settlement. You have advised us that it has taken longer than you had anticipated but that you expected his report shortly, and you have offered to write to myself as chairman of the committee to forward this matter if the committee wishes to hear further evidence. Before Mr Dunstall is directed to attend, would you care to consider whether the issue raised by Senator Macdonald is comprehended by the report you have instructed Mr Skehill to give and, if so, whether it is appropriate, at this stage, for Mr Dunstall to be answering the question put forward by Senator Macdonald.

**Dr Watt:** I would like to take a small piece of advice. These issues have not been discussed with Mr Skehill; therefore, I would prefer Mr Dunstall not to answer. Apart from that, I don't think he knows—at this stage—and it would be hypothetical.

**Senator IAN MACDONALD:** He must know!

**CHAIR:** Before we go there, Parliamentary Secretary, are you satisfied with that direction from the secretary?

**Senator Feeney:** Certainly.

**Senator IAN MACDONALD:** Mr Dunstall, you must be able to indicate why a New South Wales public servant would be entering into a Commonwealth government action, or defence of an action. I do not want to know what the evidence is, but was it in the way of expert evidence? I appreciate that you are saying you do not want to disclose it, but I just find it incomprehensible—and you might understand that, being a politician, I am suspicious when it has a husband and wife of a federal minister involved. Put those nasty thoughts out of my mind by explaining, if you can, the administrative reason we would have for calling a New South Wales public servant to assist us in defence of an application against the department.

**Mr Cunliffe:** I wonder if I might step in, with the Chair's favour. Can I answer in very neutral terms: it was to matters of fact. I would prefer not to go beyond that, but it was as a witness of fact, to answer an earlier question that you raised.

May I also clarify, Chair, that Mr Skehill is a special counsel at Mallesons and not a senior counsel. He was assisted for a period by a senior counsel. That senior counsel has now been

elevated to the judiciary, so I do not know what he proposes if he needs future advice. I am sorry to be slightly opaque, Senator, but perhaps that is the important distinction, since that was a matter that you were raising.

**Senator IAN MACDONALD:** We can all be left, then, guessing—regrettably, probably coming to the wrong conclusion with guessing, but I will not pursue it.

**Mr Dunstall:** May I just correct the record slightly in terms of something I said before. In relation to the legal advice that we received leading up to the court order, we did also at one point receive advice from the Solicitor-General in addition to the Australian Government Solicitor.

**Senator JOHNSTON:** How much did that cost?

**Mr Dunstall:** I will have to take it on notice.

**Senator HUMPHRIES:** I wanted to ask about the air warfare destroyer issue. I am aware of the minister's announcement last week about the problems that have emerged in this project. Could you start with a summary of the status of this project at the present time.

**Mr King:** It is worthwhile to put this in context, so I will broadly run over the project history. I joined DMO in 2004 as a project manager for air warfare destroyer and I was assisted at that time by Captain Cawley, now Mr Cawley, the current project manager. He will provide more of the detail as we go along. In 2004 there was a report to government and a requirement for the military for two projects to be started. They were pre-first-pass and they were the LHD project—the amphibious ship—and the air warfare destroyer. Carnegie Wylie had done a review and recommended to government that the air warfare destroyer be pursued first, recognising the limited maritime industry that existed in Australia to undertake what were essentially the two most advanced maritime surface ships ever to be acquired by the Navy.

At that stage we did not have a design, a shipbuilder or a combat system. In fact, the combat system had just been selected, the Aegis combat system from the US. We went through the first pass process and, taking industry's advice, we down-selected the combat system integrator and the shipbuilder—ASC as the shipbuilder and Raytheon as the combat system integrator—to work between first and second pass to define the project, the time it would take and the challenges of the project. Industry was fully funded to join us between that first and second pass process.

In parallel with that, the LHD project was also progressed. We asked Australian industry to give us offers which encompassed either a build in Australia or a partial build in Australia with an offshore build. We asked for industry's view of capacity to undertake that. It is very important to recognise that, because what we are talking about now effectively is an issue created by industry capacity in the broad. By the time we got to second pass we made a down-select between an existing design and a new design. It was our recommendation to the government of the time—that is, 2007—that the risks of going with a new design were too great for the country to ensure a reliable, on-time and on-budget delivery. We went for a modified existing design which was the F100 designed by Navantia. Four such ships have been built and a fifth is nearing completion. At that stage, we went to government and set a delivery schedule for the first ship in December 2014. I stress that this was not just a DMO or Defence mandated decision but a mutual decision that had come to a conclusion in

conjunction with industry. For the LHD project, noting industry capacity limitations, industry suggested a fundamental offshore build but with an onshore component because of industry capacity issues, fundamentally. That is the way both projects went through second pass and that is the path we have been on since 2007.

I do worry about our capacity as a nation to take on these challenging projects. While we have an issue at the moment which is substantial and one we must address, this neglects all the achievements since 2007. I mentioned those in passing a little while ago. We have built a shipyard in Adelaide; the South Australian government undertook that. ASC has also built additional capacity. We have a syncrolift there which is the largest in the Southern Hemisphere and can be extended. We have assembled a workforce of about 1,200 white-collar engineering management logistics people and about 800 production workers. We have an apprentice training system. I will just use this piece of steel I am holding as an example—not intended to be in the first ship, fortunately! This iron ore came from Western Australia, was turned into steel and milled at Port Kembla, and cut and shaped by Australian industry. There are about 20,000 of these units to go in each ship. If I was to convert these into the weight of the ship, there would be 30 million of them. Of course, we need a few other shapes relative to that to make a ship, but that is the sort of thing we have undertaken.

Now, we do have a challenge. Like most challenges with complex projects, it is a combination of factors, but the most challenging one at the moment is capacity in the Melbourne yard to complete AWD modules and take on the LHD project—the amphibious ship project—for which they are making the large superstructure that goes on top of the ship, and to deliver both projects on time. As I say, this is not brand new; it is not a revelation. This problem went public last year. We have known about it for some time. We have worked very hard and assiduously to look at options for government on the most appropriate way forward.

I liken this sort of thing to a four-legged stool. I do not know if you have ever done any home renovations; but, if you have ever tried to adjust a four-legged stool to get the right balance and height, you know it is very challenging. Our four-legged stool here is cost, capability, schedule and, of course, safety. I have been to this forum now for seven years, where we always want to promote Australian industry, particularly Australian industry in pursuit of our defence capability, and I am personally an advocate for that, but with that comes a national challenge: our industry is not always ready to take on every project immediately. Quite often, we have to build up our capability to complete these projects on time, and this is one of those cases. My question is: do we as a nation, do we as a department, stand by these tough times, come up with appropriate decisions and leave a better capability for the next generation, or do we just fold and say, 'The world has collapsed'?

What I would like to say on this project is that we have a serious matter that we are pursuing. At this stage, it looks like a 12-month delay in the delivery of the ships. But, against all the challenges that we have overcome, overall this project is in very good shape.

**Senator HUMPHRIES:** Let us go back through the elements of that. You say there is about a 12-month delay.

**Mr King:** Correct.

**Senator HUMPHRIES:** Reports in the media suggest that the delay is more like two years. Can you explain why they would be saying that?

**Mr King:** Yes. And I will pass to the program manager in a moment. There are a range of options for dealing with the problem. We could go with the status quo—that is, just pursue it as we have set up the work share at the moment. That is likely to result in a 24-month delay.

**Senator HUMPHRIES:** Do you mean the work share between Raytheon, BAE, ASC?

**Mr King:** No. Although we have those partners, Raytheon is essentially looking after the combat system engineering task. Unlike a lot of our previous major projects, the combat system engineering and the supply of the Aegis combat system from the USA are actually going exceedingly well, and are on budget and on schedule. I would have to say that, to me, the risk that has really evolved—and one that I did not think would be as big as it is—is the allocation of the work to build the platform between ASC, who is the principal shipbuilder and consolidator of the blocks; BAE in Melbourne, who took over that site from Tenix when they acquired the Tenix company; and Forgacs in Newcastle. It was always the intention that, at second pass, the shipbuilding work be split between three yards. That was to diversify the industry, to build up a network of shipbuilding capability across Australia, and that is what was executed. The difficulty we are having at the moment on the ship construction relates to the rate of module production at BAE's Williamstown facility in Melbourne. If we left it untouched—in other words, if we did not address the issues—then there is the potential for a 24-month schedule extension. By coming up with a range of options and the one that the minister announced last week, we believe the likely schedule impact is 12 months.

**Senator HUMPHRIES:** You think that is likely, but it could be as much as 24 months?

**Mr King:** No, the plan on that approach is 12 months.

**Senator HUMPHRIES:** Okay. So when the minister said last week:

The AWD Alliance has advised that this action—

that is the action to adjust the arrangements with BAE, I assume in the way that you just described—

will reduce the delay of the completion of Ship 1 by up to 12 months, and of all three AWDs by up to 12 months'

and I presume when he said up to 12 months he meant between no delay and 12 months today, was he referring to that range between what is expected to be the completion date for the ships and the new completion date, or was he talking about a further 12 months out from that additional 12 months you are talking about?

**Mr King:** I will ask the project manager to correct me if I am wrong in my answer but my understanding was that we foreshadowed that if we did nothing it would be 24 months, and by taking the action that the minister foreshadowed we would reduce that delayed by 12 months—in other words, a 12 months overall shift.

**Senator HUMPHRIES:** The minister said, though, that the action that was taken would reduce the delay by up to 12 months.

**Mr King:** Correct.

**Senator HUMPHRIES:** He is hedging his bets, isn't he? He is not saying there will only be a 12-month delay, as you were saying. He is indicating it could be therefore up to 24 months.

**Mr King:** I do not believe that was the intention.

**Senator HUMPHRIES:** Well, what did he mean by that statement?

**Senator Feeney:** I think his meaning is clear, and it is found in the answer you have just received. Instead of a two-year delay, the remedial action taken by government means there will be a 12-month delay.

**Senator HUMPHRIES:** Then why does he not say that this action will reduce the delay by 12 months, not say it will reduce the delay by up to 12 months?

**Senator Feeney:** I have no difficulty comprehending the wording. I think the meaning is plain.

**Senator IAN MACDONALD:** And your interpretation is correct, Senator Humphries.

**Senator HUMPHRIES:** It looks to me if you say 'up to 12 months' you mean it could be 12 months, it could be less than 12 months that the delay is reduced by. That is the ordinary meaning of the words as I would interpret them. So you are saying there is going to be a 12-month delay and you are standing by that statement.

**Mr King:** Correct.

**Senator HUMPHRIES:** What precisely is the arrangement with respect to BAE Systems? What are they now not going to do at Williamstown that the other two shipbuilders, in Newcastle and Adelaide, are going to be doing?

**Mr King:** I will ask Mr Cawley to answer that question.

**Mr Cawley:** Last year when it emerged that with initial shipbuilding production we were not achieving the productivity we were looking for, the team had been working with BAE about their workload, mindful of what BAE call their five-ship plan—two LHDs, three AWDs—and as we got to the end of the year the alliance took the decision to reallocate three blocks for each ship away from BAE to Forgacs. So at that time they had 12 blocks per ship; it was reduced to three blocks per ship.

**Senator HUMPHRIES:** That was at the end of last calendar year?

**Mr Cawley:** Yes. Those rearrangements took place in January. What we have done since then is work with BAE to further look at their five-ship plan and see what capacity they do have to do LHD and AWD in their shipyard. The way that pattern works out broadly is that the three AWDs are in sequence, as you would imagine, for block construction and the two LHDs sit right over the centre of that to create this triangle of work.

The discussions with BAE at the moment are that, on 9 May, BAE proposed they would need to reduce their workload on AWD blocks further. The proposal was with ship 1 to reduce from nine blocks to seven blocks, reallocating two.

**Senator HUMPHRIES:** How many blocks per ship?

**Mr Cawley:** Thirty-one in total, so nine blocks at BAE, reduced to seven. The proposal was also to look at the delivery dates for those so that there was harmony with integrating the ship in Adelaide. For the second ship, BAE proposed that some of the blocks would be reallocated to reduce their workload substantially at the time when peak work on LHD was occurring. There is a discussion to be had about the third ship's blocks as to what needs to be reallocated, which will be taken later in the project when it is clear what workload and what stability have been achieved across the three shipyards.

**Senator HUMPHRIES:** Are we saying that certain types of blocks required for the ships' superstructure are being built at only one of the three shipyards at any given point in time, so that you need the contribution of all three shipyards in order to get enough blocks to build one ship?

**Mr Cawley:** Yes, that is exactly right. Broadly, one-third of the ship is manufactured—fabricated—in each of the three shipyards. The keel blocks, heavy steel and large superstructure plate are being done in Melbourne; the aft end of the superstructure is being done at Forgacs; and the central superstructure, which contains the combat system, is being done in Adelaide. The plan was to do the same blocks for each ship so that you got a learning effect in each shipyard.

**Senator Feeney:** For the sake of completeness, there are also three sonar blocks that are being constructed overseas.

**Senator HUMPHRIES:** In Spain.

**Senator Feeney:** And in the UK.

**Mr Cawley:** Shipbuilders call a sonar assembly a block, and a mast they also called a block. The sonar assembly has a steel component which connects, essentially, the fibreglass. The fibreglass is being made in the UK by a company that makes it for most navies, and then the steel interface assembly is being made at Navantia.

**Senator IAN MACDONALD:** But five other blocks are going back to Navantia as well—is that right?

**Mr Cawley:** That is the plan announced last week. The alliance is going to allocate up to five blocks to Navantia to take that peak pressure off the Melbourne shipyard.

**Senator IAN MACDONALD:** As a matter of clarification, is this work that went to Williamstown and BAE the work that was publicly going to be awarded to a Cairns shipbuilding company before it was pulled at the last minute?

**Mr King:** Yes, it is that work.

**Senator IAN MACDONALD:** The reasons were fairly public—not valid in my view, but that is another question. How many blocks was Cairns going to do?

**Mr King:** The original number that Williamstown was going to do, so that is three times 12.

**Senator IAN MACDONALD:** That is 36.

**Mr King:** Yes, 36.

**Senator IAN MACDONALD:** They went to Williamstown, which by that time had already had the contract for the LHDs.

**Mr King:** That is correct.

**Senator IAN MACDONALD:** We now find a year or so later that BAE was not capable of doing all of those extra blocks in Williamstown within the time limit.

**Mr King:** It was not able to do all the extra blocks in the time frame; that is correct.

**Senator IAN MACDONALD:** Can you just remind me: 36 were going to be done in Cairns and they went to Williamstown?

**Mr King:** That block of work went to Williamstown; that is correct.

**Senator IAN MACDONALD:** Was it 36 blocks?

**Mr King:** That is correct—12 by three ships.

**Mr Cawley:** Correct.

**Senator IAN MACDONALD:** Of that, how many is Williamstown going to end up doing?

**Mr King:** That is indeterminate at this stage, because the final ship set allocation is yet to be finalised.

**Senator IAN MACDONALD:** How many are they definitely not going to be doing—the ones that have gone elsewhere?

**Mr Cawley:** There is a negotiation between the alliance and BAE Systems at the moment about which blocks are reallocated and which are not, but the BAE proposal is that on the first ship—which originally was 12 blocks, reduced to nine in January—they would complete seven.

**Senator IAN MACDONALD:** So that is five of the original ones.

**Mr Cawley:** For the second ship, BAE proposed to complete five, down from the nine of January, down from the 12 of 2009. As Warren said, a decision on the third ship—

**Senator IAN MACDONALD:** So that is seven, so five plus seven is 12 blocks for sure. Then the third ship? You started to say that; I am sorry.

**Mr Cawley:** BAE currently have an allocation of nine blocks, and the project will take a decision on that later.

**Senator IAN MACDONALD:** So at least 12 blocks are going away. I thought this was made fairly clear in the minister's press release as I recall. But I thought five others were going to Spain—or is that part of the 12?

**Mr Cawley:** For ship 2 blocks, BAE have an allocation of nine. The proposal is that four or five—up to five—of those blocks could go to Navantia.

**Senator IAN MACDONALD:** So it is only the five out of the first ship that are going either to Adelaide or to Forgacs?

**Mr Cawley:** Three have already gone to Forgacs. Two we are yet to make a final decision on.

**Senator IAN MACDONALD:** Has any thought been given to restarting negotiations with the Cairns shipbuilders? I ask this in the context—perhaps not a context that is particularly front of mind for Defence but it certainly is for the government—of the fact that Cairns has, regrettably, the highest unemployment profile of any region in Australia at the present time.

As we recall, the reason the then minister was forced to pull the Cairns project on the eve of the announcement was because the Queensland government withdrew, or did not supply, or in some other way were not being helpful, with the \$20 million guarantee that was needed. Now, I might just add as an aside, the Queensland government is spending \$100 million to try to correct the unemployment problem in Cairns, but that, again, is an aside. With that in mind, is any thought being given to perhaps restarting negotiations with the Cairns shipbuilders? In

view of BAE's problems one wonders whether Adelaide and Forgacs might be able to cope. I am sure they have said they can, but there are obviously difficulties.

**Mr King:** At this point there is no restriction on who we might engage with for this third ship, so the answer is that it could well be. The difficulty we run into is that work done probably by the RAND Corporation in America about 10 years ago showed that if you distribute the work beyond about three companies, and those companies do not have experience in the modules, you will actually reintroduce risk to cost and schedules. So we do not discount any company participating in the third ship in looking at where the work might go for the third ship, but we would have to be realistic about the skill sets and the experience.

One of the difficulties we have in the Australian maritime sector generally is that is rare you get into the efficient production level of a ship in anything under three ships. Because we buy in the Australian context small numbers of ships generally, unless we are in the patrol boat area, we rarely get the production efficiencies. One of the reasons, clearly, that Navantia is able to take on these five modules is that it is highly experienced in building this ship class. It is highly experienced with the drawings and it has a highly experienced existing workforce, and so you do not run into that cost and schedule risk issue anywhere near as much as you would by going to a greenfield site.

**Senator IAN MACDONALD:** I have just been over the Navantia site and they are certainly very experienced. I would be interested in your financial arrangements, actually, because I am conscious that Navantia are very, very anxious about where their next job is coming from.

**Mr King:** Absolutely.

**Senator IAN MACDONALD:** As I understand it, there is not a lot on the horizon so they would very grateful for your decision. Perhaps on notice you might indicate what the contracted price to BAE in Williamstown was versus what it might be for Navantia in Ferrol.

**Mr King:** We will clearly get back to you with that when it is known. There will be differences we will have to accommodate. The cost of building modules at Williamstown was on a shared-line basis. The most likely contract with Navantia will be a fixed price.

**Senator IAN MACDONALD:** So the Williamstown one was 'cost-plus', as they say in the housing industry?

**Mr King:** No, it was not cost plus; it was an incentive scheme, which was aimed to incentivise the company to be more efficient and share the benefits. But the downside of that is that, if you get additional costs, you share additional costs. So it was not a straight fixed price contract, but an incentivised contract.

**Senator IAN MACDONALD:** You are carefully keeping an eye on the capabilities of Adelaide, Williamstown and Forgacs, if I can call them that. Are you satisfied that, with the AWDs and the LHDs coming, those shipyards are going to be able to cope?

**Mr King:** We certainly monitor a number of parameters very closely. Construction of the LHD at Novantia is two months ahead of schedule. I would go close to saying that they have executed that program flawlessly for us—

**Senator IAN MACDONALD:** That was with my help in pointing out where they should have screwed something tighter!



**Mr King:** We are always grateful to everybody who wants to work on a project rather than comment on it!

**Dr Watt:** I think the answer to that is, 'Up to a point'!

**Senator FEENEY:** The HMAS *Macdonald* perhaps!

**Mr King:** I do wish more Australians wanted to do things rather than talk about it, but there we go.

**Senator IAN MACDONALD:** I am not sure how to take that! But we will move on.

**Mr King:** These things are very complex. I have never tried to underplay the complexity of what we take on in this nation. We have planned hard for it and there will be challenges in both of these projects. But I think it is a challenge that we have to take on in this country. I will say what we are monitoring—and we are watching. We could have approached this AWD problem by putting blinkers on and just hoping things would come right and hoping there would be a plan to fix it up. But we did not. We saw the issues. The project team, headed by Mr Cawley, and the alliance worked very hard at understanding all the issues and coming up with options for governments to consider. We very much appreciate both ministers' participation in helping us work through these options and talking to companies about these things. We monitor that capacity. We are concerned about the amount of work that has to be undertaken by ASC in bringing these modules together and integrating the ship—and that is one of the reasons why the Novanti issue, as a solution for fibre modules, was put to government. While Forgacs are doing an excellent job at the moment—their performance parameters are really first class—we are worried also that we could put one module to many in Forgacs and lose that capability.

We are also very conscious that BAE in Melbourne have a very large job to do when these LHDs come to Australia. These are 27,000-tonne ships and they are basically a microcosm of a battlefield. You have got the Navy, the Army and air control, and you have got landing craft in them. This is a compression of a whole battlefield—

**Senator IAN MACDONALD:** And you have even got aircraft that run off them—and I know they are not aircraft carriers.

**Mr King:** Not those type. And all of the systems that make that work have to come together. And then we have to pass it to Defence to bring all the military folk to use this very complex and capable ship. There are challenges and I do not want to underestimate that. Part of what we were doing in recommending that the government move these models to Novantia was to keep only a reasonable pressure on BAE to complete the LHD project.

**Senator IAN MACDONALD:** I hear what you are saying and I understand and accept it. I also hear what you have not said, and I think I understand that as well. The policy of building some of the ships in Australia is, I think appropriate. I just wish it was a bit more broadly based in Australia. And I have heard what you have said there. Without putting words in your mouth, and accepting that time has moved on for the Cairns shipyard, I understand that you are saying the door is not quite shut on where future models might be built.

**Mr King:** Correct.

**Senator HUMPHRIES:** So to summarise what you have said to us about BAE: you are concerned about its capacity to deliver the original number of blocks it was supposed to build.

Presumably the number of blocks has been reduced in order to allow it to catch up with what the other shipyards are doing in respect of delivery of blocks.

**Mr King:** That is correct. And I want to take to task a report that said something along the lines that the AWD project is paralysed at the moment. It is not paralysed. I will get Andrew Cawley to once again correct me if I am wrong, but my understanding is that BAE in Melbourne is running two shifts, six days a week. We are running 5½ and six days a week in both other shipyards. This is not paralysed; this is taking action to make sure things do not deteriorate.

**Dr Gumley:** I believe that BAE has acted very maturely in working with us to rectify this problem. They had the very important project of the LHDs. There have been many discussions. One is: do you do the superstructure of the LHDs in Spain? The answer is no. Because of the very large amount of systems integration that Mr King referred to, it makes far more sense technically and programmatically to do that work in Australia. BAE has acted responsibly on behalf of both projects, and we thank them for it.

**Senator HUMPHRIES:** That is good, I am pleased to hear it, but I am still interested in the reason that BAE has found itself unable to deliver the original amount of work it was supposed to. The report in the newspaper, which you have already touched on, Dr Gumley, says:

BAE blames the delays on what it says are poor design and construction data, which made it difficult to produce the types of detailed steel blocks required for construction ...

Is that a fair assessment of their professed reason for not being able to deliver?

**Dr Gumley:** I take issue with the 2,400 is a significant number. Typically when you build a ship you will have many—

**Senator HUMPHRIES:** Sorry, what do you mean 2,400? The number of blocks?

**Dr Gumley:** No, didn't the article talk about 2,400 faults or defects?

**Senator HUMPHRIES:** It does, but I was not referring to that; I was referring to what they say are the delays caused by 'poor design and construction data'.

**Dr Gumley:** Yes, and they use the 2,400 number as evidence for that. This is normal shipyard practice. To build a large warship, you would expect many tens of thousands of clarification questions. This is not unusual, this is not unexpected. When I saw that 2,400 number, I certainly did not panic. I said, 'This is normal for a shipbuilding project.' To my mind there are a number of reasons, but frankly I think it is just that BAE took a little bit too much work for the number of skilled people that they had and they have done the right thing by everybody in being prepared to distribute it.

**Senator HUMPHRIES:** Again you have recharacterised my question. My question still is: are they saying that there are design and construction data problems with what they have been given—presumably by Navantia translating that into on-the-ground building. Is that what they are saying is the problem?

**Dr Gumley:** Yes, that is a fair characterisation of what they are saying. Our characterisation is that you expect these sorts of clarifications required during a build project. It is a very complicated piece of work and it would be practically impossible not to have any issues. Mr Cawley, would you like to add to that?

**Mr Cawley:** The experience and the capacity issue comes to shipbuilding productivity, which is your ability to turn out tons of fabricated blocks. The inputs, the drawings, the inputs of materials, the inputs of workforce—it is a trade workforce, a supervising workforce, a production engineering workforce—its facilities and tools: in all of the shipyards for AWD there has been a substantial investment in facilities and machinery and tools, workforce recruiting is on the rise and it has a long way to go. The situation with BAE estimating what they might be able to do when they bid those two jobs is based upon their cost estimating ratios, their productivity ratios, which are a product of facilities, data, materials, and it has not got to the level that would need to to complete this work in time. It is not principally one cause. The word 'design' is in there. The fundamental engineering design of these ships is proven. Four are at sea and a fifth is under construction. The exchange of 2,400 technical queries is a system of exchanging questions and answers about anything on the project. It might be to do with drafting errors in a document pack. It might be to do with material supply—more or less is needed. It might be to do, as one was, with a clarification of which orientation a piece went into the block, because it was not entirely evident. The engineers do those checks, and it is done in a disciplined way and capped. Then there are PARs, as they are called, exchanged between the engineering and production of ASC.

**CHAIR:** Dr Gumley, I heard you say that you do not accept the justification put in the press by BAE—if it was BAE—for the delay. I hear Mr Cawley saying that perhaps the overall complexity of the work that is required over time was not properly comprehended by BAE at the time and that is the actual cause of the delay. Is that the net of what the two of you are saying?

**Dr Gumley:** Yes, I think that is close to the mark.

**CHAIR:** Does that also mean that, going back to when the contract was awarded and the system developed for its implementation, relevant officers within either Defence or DMO advising government at the time also did not comprehend the likely complexity and time issues of the project?

**Mr King:** I provided that advice. We did do an analysis, as you would expect. BAE were quite firm that they had the capacity. They had plans for the expansion of the site, the investment in the site and the investment in new plant machinery to sort port construction. We analysed all of that. We did think it was tight but not unreasonably, and that site under Tenix ownership and BAE had been arguably one of Australian history's most successful surface ship construction sites. They produced the ANZAC ships, as you know, with very little delay on the first couple of ships—although I would make the point that even on that project, which was a much less complicated ship, the first ship was 18 months or two years later than anticipated. But it is a very successful shipyard with a long history. I might add that I nearly got drummed out of Victoria—I am originally a Victorian—for not awarding the work there in the first place.

The alliance and ASC, who are the managing shipbuilder on the project, were comfortable that they had the skills, capacity and history to take on this task. We had done the analysis. The obvious truth is that, given the matters that Mr Cawley raised and all the things that have contributed to this, they do not have the capacity. It is a relatively small yard by today's standards, by the way. Ships are getting larger. It is demonstrated now that that cannot all come together in the required time frame. So my advice to government at the time was wrong.

**Mr Cawley:** They are not the only people who make an estimate of shipbuilding and subsequently do not get it exactly right. It is a very complex business. People often quote Korean shipyards as the forefront of shipbuilding in the world, and the shipyard that built the Korean AEGIS destroyers in the last 30 years has built 1,600 ships. That is huge. Their first ship was six months longer than they forecast. They are a challenge. But I would not want to leave you with an impression that things have not happened in BAE or any of the other shipyards. I was there the week before last. Three hundred-odd people were working on AWD and LHD and, as for the blocks, which got mentioned last year as being of a bad quality: I stood underneath that block the other day. It is huge. I would just fit in this room, and there are others like it. Today, the only thing of the first ship which has not commenced production is the mast. If you walk around the three shipyards, in pieces you will see the first AWD. Progress is not at the rate it needs to be at, but progress is being made. It is very impressive. We have seen improvement in all the yards. They are all learning. It is good work.

**CHAIR:** I am not so sure I would characterise it as good work. Up until the decision of Minister Smith and Minister Clare a few days ago, the likely delay in the build process was two years out of a task of six years. That is 33 per cent. It has now come back to 12 months. You outlined the complexity of the job, but I just do not accept that you can characterise work to date as a good process. It is a process, but it is not a good process. But it is not my job to do that.

**Senator HUMPHRIES:** So are you categorically rejecting that there is, as reportedly claimed by BAE, a problem with the design drawings that the Spanish company has produced that supposedly means that the drawings are too sloppy and incomplete to be relied upon for construction? Are you ruling that out as a factor in this delay?

**Dr Gumley:** No, I do not rule it out entirely. There will be an expert determination on the quality of those drawings.

**Senator HUMPHRIES:** By whom?

**Dr Gumley:** If we need to go to expert determination, we will find a shipbuilder to do that.

**Mr Cawley:** To be appointed by the two companies.

**Dr Gumley:** Yes. There is a dispute resolution process in the contract, and we will go through that process to see if there is a problem.

**Senator IAN MACDONALD:** The Spanish have their AWDs up and fighting, haven't they? They are part of the armada. What I am saying is that the drawings must be okay if the ships are in the water.

**Mr King:** I imagine—and I do not want to pre-empt whatever that commercial settlement is that sits between ASC and BAE—that the issue will be a matter of the interpretation of 'completeness'. You are absolutely correct: there are five ships built to those drawings suites, with four of them at sea. The question will be whether a competent shipyard can use those drawings at the standard produced or whether they were in some way form and to what extent they were not complete enough for an experienced shipyard to use. It will not be a matter of whether the drawings are substantially a drawing pack. They are. It will be whether they are suitable to use.

**Senator HUMPHRIES:** For the record, you are not alleging that this problem has been caused, as reported, by BAE's poor project management.

**Mr King:** What is your question again? I want to be careful with how I answer.

**Senator HUMPHRIES:** The report in the paper today says that ASC and DMO blame the problems for delay on poor project management and lack of naval shipbuilding expertise at BAE's Williamstown shipyards. You have already commented on the lack of naval shipbuilding expertise, but are you ruling out that you consider that there is poor project management on the part of BAE?

**Mr King:** They are not my words, by the way, but I believe, as Mr Cawley outlined, there are a number of contributing factors to this. I do believe that one of the contributing factors was that BAE management could have identified these issues and responded to it quicker than they did.

**CHAIR:** When did they first identify the issues back up the chain to you.

**Mr King:** I would have to check my record, but I think it was elevated to me about May last year.

**CHAIR:** I became aware of it through gossip in September-October last year.

**Mr King:** The first signs of that came to me by progress reports, but we then went to start a process of interacting with BAE to see what was going on.

**CHAIR:** When did you start raising the issue with BAE?

**Mr King:** I would have to check, but I think it was about the May time frame.

**Senator HUMPHRIES:** May last year?

**Mr King:** I think so.

**Mr Cawley:** In that period, most of the discussion was about the quality of the first block. It was not so much the programmatic of all the blocks.

**CHAIR:** Around the end of September or October last year I started to get reports from various industry representatives and forums that there were significant problems with the keels, joins and welds.

**Dr Gumley:** Right through the summer, BAE were working on a plan. They eventually presented to us on 28 February, I think, what they called the five-ship plan, how they were going to do the modules for the three AWDs and the work on the two LHDs. At that stage you could very clearly see from the project plan that they did not have enough resources to make both programs on time. During March and April we had very significant discussions about what we might do to remediate that problem.

**Senator HUMPHRIES:** That begs a very serious question: why has the AWD project not been on the projects of concern before now, given that 12 months ago you were aware of these sorts of problems?

**Mr King:** The projects of concern process is broadly related to projects that have not identified their own problems or have not worked on solutions to them. In this case the delay that we are talking about does not trigger any of the mandatory reportings that we are talking about. During all of that period it received the most intense management focus, from the CEO

DMO through to the project manager through the alliance, working on very complicated issues about how to have the minimum impact on the schedule.

**Senator HUMPHRIES:** Surely the very fact that you are in dispute resolution with some of the parties in the alliance demonstrates that you do not have agreement on the causes of the delay, and that ambiguity or that dispute about the causes means it should have been on the projects of concern?

**Mr King:** I make a point of necessary clarification. The dispute is between ASC, a member of the alliance, and its subcontract with BAE to build the ship. It is not a matter of dispute between DMO and the alliance. We are working with the alliance.

**Senator HUMPHRIES:** It is still a matter of dispute between the parties to the alliance.

**Mr King:** Some of the parties, indeed.

**Senator HUMPHRIES:** You have indicated exactly what is causing this problem is not settled. If it is, as BAE allege, a problem with the way in which the designs were supplied, it is a serious concern. Surely that is the kind of concern that ought to be captured by projects of concern?

**Mr King:** I want to put that in context again: we do not agree. I do not know that BAE have ever claimed that that is the entire reason for their problem. They have said that they are concerned about some of the drawing qualities. Our position is that we have two other shipbuilders participating in this program who are making progress and not suffering from the same problems and we have a world-class design authority that has built five of these ships that are not suffering the same problems. For that matter, we acknowledge that BAE have highlighted that as one of the issues. We do not concede that they are a significant contributor to the degree that people might claim in the press to be the project problem.

**Senator HUMPHRIES:** Doesn't the fact that the project is now, on your own admission, being delayed by 12 months and could be, as I read the minister's statement, delayed by up to 24 months, make it eligible to be considered a project of concern?

**Dr Gumley:** The project of concern triggers are: first, cost and if it is going to go over budget. The answer to that is, from what we know now, it is not. The second is schedule. This is an Australianised military off-the-shelf product. You need a 20 per cent schedule slip to get on the projects of concern list. At one year divided by 11 or 12—that is, the project duration—it is about nine per cent, not 20 per cent, so it does not do that trigger. There is no indication of any capability impairment. That leaves the fourth qualitative factor of contractor commitment. We have found after a couple of months of deep discussions, the very fact that BAE have done what they have done indicates that there is contractor commitment to finish the project properly. At this stage, it does not trigger any of the projects of concern gates.

**Dr Watt:** But if you are worried that the project is not getting the close management that it needs to work through this, I think Dr Gumley, Mr King and Mr Cawley would all say this has been very closely managed from the Commonwealth's point of view.

**Senator HUMPHRIES:** I am glad to hear that. I am surprised, given the size of the project and what is reported to be an acrimonious relationship between parties here. I accept you would deny that but it is what is reported. Let us face it: if it had not been for the report in the *Australian* last week, we would not have heard about this from the minister last week, would we?

**Dr Watt:** I do not think that is necessarily correct.

**Senator HUMPHRIES:** Really.

**Dr Watt:** As I am sure the minister said—I know the minister said—he has been aware of this issue for quite a while and the issue has been worked on by the alliance, including the DMO, for a long period of time, looking for a solution.

**Senator HUMPHRIES:** But not disclosed to this committee or publicly at all. In terms of this most recent delay—

**Dr Watt:** It had not been disclosed up until last week.

**Senator HUMPHRIES:** it has been in the pipeline for months.

**Senator FEENEY:** The absence of a government announcement does not mean the absence of government scrutiny or management.

**Dr Watt:** That is correct.

**Senator HUMPHRIES:** But there is also a process for this committee to give scrutiny as well, isn't there?

**Mr King:** We have mentioned in the past challenges with the blocks in Melbourne. What we did not know was the size of that impact and the options that were open to us to deal with that. I do not think the press article had anything to do with this. There are two things that effective projects do not execute to: they do not execute to papers or even to Senate estimates and they do not execute to fiscal years. They are engineering projects that have ongoing work, ongoing discovery and ongoing remediation plans. The best thing about this approach is we do not have acrimony between the parties. We have matters that we have to resolve. They are complex and the project is complex, but we have been very open about those challenges and we have been very open about the suggested remediation to the project or to at least control any deterioration of the project.

**Senator IAN MACDONALD:** Mr King, you very responsibly and somewhat courageously indicated that perhaps you were wrong in giving BAE all of that work. Hindsight is a great thing. I wonder in hindsight if perhaps more effort should not have been made to try and resolve the issues with NQEA and the Queensland government in the Cairns shipbuilding thing. As I understand it, the NQEA people had been brought to Newcastle by the then minister, ready for the announcement, and late in the night of the eve of the announcement NQEA was told that the Queensland government had withdrawn its 'support'. As I understand, the announcement was then made that the other places would get it and NQEA and Cairns would not. If my time line is correct, it suggests to me that the decision to give those contracts for those blocks was made fairly quickly on the overnight that the NQEA people were there to take part in the hoopla of the contract signing. The next morning they found they were not involved because of something the Queensland government had or had not done.

**Mr King:** I was certainly involved at that time. I do not believe it was the Queensland government's actions.

**Senator IAN MACDONALD:** But is it true that they were brought to Newcastle to take part in the signing on the next day?

**Mr King:** I do not recollect that they were in Newcastle the night before, but I would have to check. Can I tell you what the real trigger was there. I have only been in the Public Service a relatively short period of time. I spent a lot of my time in either the military or industry. Industry claim a lot of things but one thing some companies do to us—and I think it is time we take this up with industry—is re-engineer their bids after they have been offered. I sat on the board of the AWD project when we down-selected the module candidates. The offer from NQEA involved certain capital security from the company.

**Senator IAN MACDONALD:** A guarantee of \$20 million from the Queensland government, I understand.

**Mr King:** No, there was their own capital basis. I was very conscious of the scale of this project—not just me, but other board members—and the enormity of the undertaking that would be taken on by a relatively small company building very key blocks to this ship. They changed elements of their corporate structure between being awarded the contract and the announcement that was to take place to the extent that in my opinion it invalidated the offer unless certain other guarantees could be in place. Of course, as you point out, the Queensland government on that very short notice were not in a position to offer those guarantees. This was not a matter that was brought on by the government or by Defence; it was brought on by a company restructuring.

**Senator IAN MACDONALD:** That is interesting, and I would like to pursue that if we had time. But I do not think we have. I understood you to say — perhaps it was a slip of the tongue — that the company had been awarded the contract and then had changed its corporate structure.

**Mr King:** It was indicated as the preferred builder. You are correct. We were between being selected as the preferred tenderer to the —

**Senator IAN MACDONALD:** I hear what you say; this is quite important. There may be people in this room who are not in a position to give evidence who might be able to confirm or deny this: if my memory serves me well, it was Newcastle, or it may have been Sydney or Melbourne, where the event was to be. That is interesting and I would like you to perhaps check your records later to see what it was. My point is this: if that is even closely in point then the decision not to give it to the Cairns shipyard but to give it to someone else, in this case BAE in Williamstown, must have been made fairly quickly. On my understanding of the events, that happened almost overnight.

**Mr King:** No, that is not correct. The NQEA was selected as the preferred builder for those modules that were eventually awarded to BAE over BAE. So there was a range of competitors for those modules. If my memory serves me correctly, at that point there were two valid suppliers in the tender, and NQEA was the preferred supplier. NQEA then, between their selection as preferred and the scheduling of the then ministerial announcement of that down-select, chose to change their corporate structures to the point where it invalidated, in our opinion, their offer without some other support arrangements which needed to be put in place within days. So the announcement that next day was not who was now the preferred supplier for those modules; in fact it took several months to go through the process of eventually selecting BAE to undertake those modules. There was no overnight change. The point I would make, though, is this: BAE had already been selected as competent and everything else; it just had not been selected as the preferred supplier.



**Senator IAN MACDONALD:** So it was not even in the preferred supplier status for a smaller number?

**Mr King:** No.

**Senator IAN MACDONALD:** Then this added to it.

**Mr King:** That is correct.

**Senator IAN MACDONALD:** So the whole process of selecting who was to get the NQEA work, you say, took several months after that.

**Mr King:** Correct. We had been through a process. The modules were broken into different groups. ASC right from their first tender were to do the core groups, the ones that have the combat system and the complex phases in them. Then there were three other allocations of blocks, which I think we called A, B and C. They were groups of blocks. The clear winner on the group of blocks on the superstructure level was Forgacs in terms of technical competence, ability, facilities and everything else. The preferred tenderer—I keep saying 'winner'—over BAE was NQEA to do these keel blocks. I have to remember the exact time, but certainly within a few days of the minister announcing that the alliance had had this preferred selection of NQEA, NQEA chose to restructure its enterprise and could not get in place in time the various guarantees, because it was within days. At that point there was no announcement that BAE had won those blocks instead. In fact, what happened was the tender was then re-evaluated against these changed circumstances, and that took a period of time.

**Senator IAN MACDONALD:** On that scenario you are saying to me that NQEA voluntarily withdrew.

**Mr King:** No. They changed their corporate structures which made them—

**Senator IAN MACDONALD:** Ineligible you are saying.

**Mr King:** Yes, it invalidated their offer. But, having said that, in view of these changed circumstances the alliance, of which I was chairman of the board, then spent several months—it was not overnight by any stretch of the imagination—re-evaluating who was the preferred tenderer for this group of blocks.

**Senator IAN MACDONALD:** So within that two or three months NQEA could have come back to you and said: 'We have taken our corporate structure back to what it was. We now have the \$20 million guarantee'—if not from the Queensland government but I understand one of the banks was happy to do it; that was their problem not yours. They could have come back to you at any time within those three months and said they were back in the game. Did you have any discussions with them in that three-month period? I am only saying this with the benefit of hindsight because, with what has happened at Williamstown, perhaps we would have all been better served if we had persevered and they had got them because their record with the patrol boats, which they built for many years, was not bad.

**Mr King:** The trouble, and I am not being flippant, is that we do not have a parallel universe to know what the consequence of that decision might have been.

**Senator IAN MACDONALD:** As I said, hindsight is great.

**Mr King:** For example, they might have had workforce problems. There were a number of complications with their offer in any case.

**Senator IAN MACDONALD:** Hang on, you had preferred them.

**CHAIR:** Are you still wanting to have an extended discussion at this time of night on a contract that was let in excess of four years ago? I am happy to accommodate and we can go to 6.30, but I would have thought that the opposition would have had other priorities in Defence. If you want to go into a contract four years ago then go for your life. We are happy to do it.

**Senator IAN MACDONALD:** Mr Chairman, I am not sure you have been following the thing.

**CHAIR:** I have been following it.

**Senator IAN MACDONALD:** You would be very much aware that Cairns has the largest unemployment rate of any region in Australia.

**CHAIR:** You can go to any number of committees and say that. We are talking about a contract that was four years ago that was let under your government.

**Senator IAN MACDONALD:** That is simply not correct. Ask down the table under whose government it was.

**CHAIR:** If you want to do that, you can go for another 40 minutes. You have wasted 30 minutes already.

**Senator IAN MACDONALD:** Thank you, Mr Chairman. Your intervention has been very useful. Thank you very much.

**CHAIR:** You keep wasting time. Everyone is happy to discuss this four-year-old contract?

**Senator IAN MACDONALD:** You may not think it is important and perhaps your mates in the Queensland government prefer it not to be discussed, but I think it is important. Without your intervention I would have been finished by now. I just mention that for my colleagues' benefit.

**CHAIR:** Senator Feeney is smiling.

**Senator IAN MACDONALD:** You were saying, Mr King?

**Mr King:** When you evaluate any tenders in these complex projects it is not like buying, in Defence parlance, a C17 off a production line, where you have mature processes, a known product, known testing and evaluation and known costs. When you are taking on these tenders in these complex Australian indigenous capabilities there are always issues with each tender.

**Senator IAN MACDONALD:** I accept that.

**Mr King:** There were a number of issues with the NQEA bid that we really gave the company an enormous amount of latitude to improve upon from their initial offer. For example, they had very uncertain tenure over some of their facilities they had on offer and they had very uncertain access to the routes they needed to launch blocks. We gave them a lot of time and a lot of latitude to correct all that. But, at that point in time, they were the preferred solution, after looking at capacity issues and everything else, that I took to the then minister and recommended that the preferred block suppliers be both NQEA in Queensland and Forgacs in Newcastle. Between that down select and advising the minister and setting up a public forum—and I do not remember whether the NQEA folk actually came to the night before night. The announcement was in Newcastle; I remember that and I was there for it. This restructuring then took place over a very short number of days or hours, which created a

very big difficulty. In view of those circumstances, the alliance then went into a considered process of who now was the preferred builder of those blocks. It took months going through that process but eventually BAE was the preferred supplier.

**Senator IAN MACDONALD:** Mr King, I will leave it there. I have interrupted Senator Humphries yet again but it is a matter that is very important. If anything you have told me today is not accurate on rechecking, would you get back to the committee?

**Mr King:** Absolutely.

**Senator IAN MACDONALD:** I have to say that, just for the record, I was told that the then minister was very good in the way he handled it. He was slightly embarrassed at these people having been brought down with the intention of signing in the full glare of the television lights. I think the then minister might himself—and I am going from a poor memory here—have broken the news and explained the situation. So there is certainly not a criticism there.

My current interest is twofold. If there is an opportunity, even if it is ever so remote, that it might go back it is of interest to me. My other and perhaps more relevant issue is the timing of the decision to allocate that to BAe at Williamstown, which is what Senator Humphries was talking to you about. Thank you for that information. I do not think it is quite four years old, although it is a couple of years old; I would appreciate you refreshing your memory and, if any of those recollections are not correct—you would probably appreciate that I will send the *Hansard* off straightaway to NQEA to get a correlation of the recollections. If there is anything that you would be able to clarify would you send them on.

**Mr King:** Senator, I would naturally clarify any errors. If they have misguided you in any way I will happily do that. Can I say that we were embarrassed, and I was very embarrassed to have to advise the minister of the change. My view, and this I will not have to correct, is that the change in circumstances was brought about solely by the company's own self-initiated action and by nobody else. I was embarrassed to be in that position.

**Senator JOHNSTON:** Dr Gumley, may I have Brigadier Phelps back here. I want to follow up on some questions with regard to clothing.

**Dr Watt:** While Brigadier Phelps is coming to the table, Chair, would it be possible to have some idea of whom we need here after dinner tonight?

**Senator JOHNSTON:** CDF, mainly, and General Alexander, and I have questions mainly related to Afghanistan and military justice.

**CHAIR:** Just to clarify, do you think that we will be in overview for most of the night?

**Senator JOHNSTON:** I think so.

**Senator IAN MACDONALD:** I have a number of estate related issues, but they are not terribly earth shattering.

**CHAIR:** The short answer is, Dr Watt, we are going to concentrate the bulk of the evening on overview and matters arising out of your statement and CDF's statement, so we request that both of you be here.

**Prof. Clark:** I would like to respond to the question from Senator Johnston: how much has the CSIRO been given by Defence to research the TBAS? Under capability and technology demonstrator, or CTD, project L149 lightweight ballistic armour, completed in

June 2007, a consortium led by Australian Defence Apparel, ADA, involving CSIRO and Victorian Centre for Advanced Materials Manufacturing received \$1.44 million to develop a concept for improved lightweight body armour manufacture. The lightweight armour plate technology developed under this CTD continues to be refined.

**Senator JOHNSTON:** That was in 2007.

**Prof. Clark:** Yes, that was in June 2007. The Defence Materials Technology Centre, DMTC, is supporting the development of a prototype plant which is based at CSIRO Clayton. This technology may be considered for future inclusion in Australian armour assistance such as TBAS. DSTO is not directly involved in the establishment of this manufacturing capability; it is DMTC. The pilot plant develops an advanced form of ceramic plates. Development of an in-country manufacturing capability to develop these lighter, stronger plates promises to provide increased opportunities to address the trade-off between protection and burden in the evolution of body armour systems for the ADF.

**Senator JOHNSTON:** How much capability development money did they receive?

**Prof. Clark:** The capability and technology demonstrator program, completed in June 2007, was \$1.44 million. I am advised that the amount invested by DMTC itself in the production plant is \$609,000 in total of which \$100,000 or \$200,000 comes from Defence. In this case DMO is supporting the DMTC. Regarding this plant, commercial considerations prevent us from providing further details of the advanced technology or its manufacturing process.

**Senator JOHNSTON:** Thank you. Going back to this purchase from Crye. We have two tranches of money, one being \$3.1 million for the fabric pattern. What is the other one for—the IP?

**Brig. Phelps:** That is correct. That is to buy the licence to manufacture the uniforms in Australia.

**Senator JOHNSTON:** It is to buy the licence to manufacture uniforms made of this material in Australia?

**Brig. Phelps:** No, there are two distinct bodies of work—one contract but two broad areas. One is to buy the licences to manufacture four Crye garments: two different sets of trousers, one under armour shirt and one general field shirt. That licence is irrespective of whatever camouflage pattern we would choose to use on that uniform. We could go out once we get the data on that and manufacture a DPCU for those uniforms.

**Senator JOHNSTON:** So it is the garment design we have purchased.

**Brig. Phelps:** Yes, the garment design and the licence to manufacture that. The second half is a separate body of work for Crye to develop for us an Australian multicam pattern. We will own that pattern as opposed to the previous work, which we have a licence for.

**Senator JOHNSTON:** Where does the fabric for the first contract come from?

**Brig. Phelps:** If you mean the contracts for the garments that we have currently purchased—

**Senator JOHNSTON:** No. You have the licence.

**Brig. Phelps:** We do not yet have the licence. We will have it shortly once it is delivered.

**Senator JOHNSTON:** You have a contract to buy the licence to manufacture a garment.

**Brig. Phelps:** Correct.

**Senator JOHNSTON:** Where is the fabric coming from for that?

**Brig. Phelps:** In accordance with the government's announcements at the land warfare conference last year, the garments will be manufactured in Australia.

**Senator JOHNSTON:** The fabric will be manufactured in Australia?

**Brig. Phelps:** No. The uniforms will be manufactured in Australia.

**Senator JOHNSTON:** That is, they will be stitched together in Australia.

**Brig. Phelps:** There are two areas of that. The cut, make and stitch will definitely be done in Australia. The government has also said the manufacture of the material from which the uniforms are to be made will be done in Australia. That is the advice that I previously mentioned about what 'manufacturing in Australia' means. It is with government for consideration. It can be importing parts of the material and dyeing and treating in Australia, or it can be right down to weaving the material in Australia.

**Senator JOHNSTON:** So if I buy fabric from China and dye it in Australia, does that fulfil the requirement for Australian made?

**Brig. Phelps:** Those are the issues that are under consideration by government now.

**Senator JOHNSTON:** I really hope you are not going to sit here and tell me in the second half of this year, in the October estimates, that if we bring it all in from China and dye it here it is Australian. Tell me you are not going to tell me that.

**Brig. Phelps:** We have advice with government that is under consideration now.

**Senator JOHNSTON:** When did you seek the advice from government? Last Friday?

**Brig. Phelps:** No, I have provided advice to government last Friday on what the options are for that. That is with government now.

**Senator JOHNSTON:** So you are saying that if we bring the Chinese fabric in and dye it here, that is one of the options open to government to declare it is an Australian manufactured good?

**Brig. Phelps:** We have consulted wider than just with the Department of Defence. We have gone to industry—DIISR—and we have looked at whole-of-government definitions of 'made in Australia'—

**Senator JOHNSTON:** Why have you done that?

**Brig. Phelps:** To ensure that we have a whole-of-government approach with this so that we are consistent with our other negotiations on our other trade agreements.

**Senator JOHNSTON:** You are looking for an out, are you? You are looking for a wide canvas of various definitions and opinions so that you can justify an offshore purchase.

**Senator Feeney:** Hang on a minute. The whole reason government purchases the licence is so that Australian companies can tender to produce the work in Australia. If we were avoiding that we would simply buy the product from overseas.

**Senator JOHNSTON:** You have already tried to do that and have fallen on your face doing that. Here we are trying to dress it up with weasel words. We have given the

government options. I am being told that if we bring Chinese fabric in and then dye it in Australia it will fit the bill.

**Senator Feeney:** No, that is not what you are being told. What you are being told is that there is advice to government and there are a number of options in that advice to government.

**Senator JOHNSTON:** And one of them is that.

**Senator Feeney:** I have not seen the advice, so I imagine that, being the diligent servant that he is, there are a lot of options in front of government. But there is no need to panic about any of them just yet.

**Senator JOHNSTON:** Don't you think it is a bit of common sense? 'Manufactured in Australia' means the fabric is actually produced from raw material and manufactured in a mill to produce the fabric, and that happens on shore in Australia. That is not too difficult, is it?

**Senator Feeney:** It is not too difficult, and that is why this government goes through the trouble of purchasing a licence.

**Senator JOHNSTON:** Sure—and you have already tried to manufacture in China.

**Senator Feeney:** You cannot persist in attacking us for something we are doing. We are as one.

**Senator JOHNSTON:** Let's continue with the attack, because I think it gets even better. I hope I do not disappoint you.

**Senator Feeney:** Me too.

**Senator JOHNSTON:** The \$3.1 million is for the fabric design.

**Brig. Phelps:** For the pattern design.

**Senator JOHNSTON:** Did we have any technical advice on the intellectual property and patent designs before we paid \$3.1 million?

**Brig. Phelps:** What I do know is that the intellectual property in multicam is owned by Crye.

**Senator JOHNSTON:** The intellectual property in this particular type of multicam is owned by Crye. But, if we produce our own multicam with significant changes, are we in breach of multicam's IP?

**Senator JOHNSTON:** Are we in breach of multicam's IP?

**Brig. Phelps:** No, because we are buying the IP off Crye. We will own the IP. It is ours to do with then—

**Senator JOHNSTON:** For \$3.1 million.

**Brig. Phelps:** Yes.

**Senator JOHNSTON:** All I am asking is: did we get some advice from experts in the IP area to tell us that this is a legitimate value for the particular pattern licence we are getting?

**Brig. Phelps:** We have assessed it against other work that we have—

**Senator JOHNSTON:** Who is 'we'?

**Brig. Phelps:** My staff have assessed that against other work that other countries have done. We are not just getting the pattern; we are getting prototype garments, we are getting significant testing done—

**Senator JOHNSTON:** That is in the other contract, though, isn't it?

**Brig. Phelps:** No, that is under the Australian multicam pattern component of the contract. There is a lot of testing and a lot of prototype garments for us to prove that the final pattern that we accept from Crye meets our requirements.

**Senator JOHNSTON:** The technical advances, which we will not go into, are all in the fabric, are they not?

**Brig. Phelps:** It depends on what you are talking about by 'technical advances'.

**Senator JOHNSTON:** Infra-red and all of that sort of stuff.

**Brig. Phelps:** Infra-red tends to be in the treatment of the fabrics and the treatment that goes into them—

**Senator JOHNSTON:** In their manufacture.

**Brig. Phelps:** When they are manufactured, yes.

**Senator JOHNSTON:** Thank you. Was Australian industry consulted on its capacity to provide multicam?

**Brig. Phelps:** We had some general discussions with Australian industry.

**Senator JOHNSTON:** You set up a task force, didn't you?

**Brig. Phelps:** I do not recall that I have set up a task force. I have my own staff who are doing it.

**Senator JOHNSTON:** I think you set up a task force. 'Australian task force was set up to design an Australian version.' Surely you remember this. A group of manufacturers got together and set up a task force. They, in fact, met how many times? Do you know?

**Brig. Phelps:** I have no idea what you are talking about.

**Senator JOHNSTON:** They met once and then, unbeknownst to the task force, they were told about the \$7 million expenditure. Are you aware of comments by Minister Clare, who was shown the capability to manufacture this sort of multicam?

**Brig. Phelps:** No. Shown by whom?

**Senator JOHNSTON:** Shown by manufacturers in Australia.

**Brig. Phelps:** I am not aware. I have accompanied Minister Clare on one visit to an Australian manufacturer of DPCU material. They have demonstrated their capacity to manufacture materials of varying types and complexities.

**Senator JOHNSTON:** So did we consult them about this contract and what they could do?

**Brig. Phelps:** My understanding is that my staff consulted with them generally on the capacity of Australian industry to manufacture a seven-base-colour combat material.

**Senator JOHNSTON:** What technical advice and independent expertise do you have to support this \$7 million piece of expenditure.

**Brig. Phelps:** I will have to take that on notice.

**Senator JOHNSTON:** Why do you need to take that on notice? In other words, I want an expert opinion verifying that the seven million bucks is legitimate. Have you got one?

**Brig. Phelps:** I do not have independent advice. I have the advice that we have looked into. We have been trialling the Crye cam uniform in theatre. All the feedback to date is that the cut and style of that uniform is superior to the DPCU.

**Senator JOHNSTON:** You would not know unless you had a bit of a contest and put it out to Australian industry to have a go, and you have not done that. You have just gone: 'Crye looks good. We'll have it. Seven million? Here's the cheque.'

**Brig. Phelps:** We have done that on the basis of feedback that we have received from soldiers in operations.

**Senator JOHNSTON:** I know about that.

**Brig. Phelps:** We wish to use that as the baseline upon which we move forward from here.

**Senator JOHNSTON:** So when you wish to use something you just go get it.

**Brig. Phelps:** When it is operationally urgent, as in this case, yes, we did.

**Senator JOHNSTON:** So this was operationally urgent and there was no consultation with Australian industry as to what they could provide to match it?

**Brig. Phelps:** No.

**Senator JOHNSTON:** You don't know anything about the minister's task force?

**Dr Gumley:** Senator, one of the purposes of this procurement approach was to ensure government owns the intellectual property. We were not about to go out and set up a monopoly where we are beholden to that monopoly for many years to come. This gives the purchaser far more commercial rights so that we can tender out these designs to get manufacturers to make to the government design. I think on a value for money basis that is going to pay itself over many times into the future.

**Senator Feeney:** And perhaps create opportunities for Australian business.

**Dr Gumley:** And for more than one Australian business.

**Senator JOHNSTON:** All right. I am just interested in the process because we have been manufacturing garments in Australia now forever, I think. We have always manufactured both the garments and the fabric here in Australia—correct?

**Brig. Phelps:** To the best of my knowledge, yes.

**Senator JOHNSTON:** You put some options to government regarding Australian ownership and its definition.

**Brig. Phelps:** No, Australian manufacture and its definition.

**Senator JOHNSTON:** Sorry, Australian manufacture and its definition?

**Brig. Phelps:** Yes.

**Senator JOHNSTON:** How many options did you put?

**Brig. Phelps:** That is advice to government.

**Senator JOHNSTON:** I do not want to know the actual advice, I just want to know how much advice did you give—how many?

**Brig. Phelps:** There are two broad options.

**Senator JOHNSTON:** Two?



**Brig. Phelps:** Yes.

**Senator JOHNSTON:** I take it one means that Australian manufacture means manufactured in Australia and the other means manufactured somewhere else but treated in Australia and declared Australian manufacture—but you could not answer that?

**Brig. Phelps:** No, both the options that we have put to government, consistent with broader government definitions, constitute manufactured in Australia.

**Senator JOHNSTON:** Do you know who can do the dyeing? If the fabric comes in from overseas do we have a capacity to carry out the colour treatment?

**Brig. Phelps:** Yes, we do. There are three companies that can do dye treat in Australia.

**Senator JOHNSTON:** How long have you been aware of those three companies?

**Brig. Phelps:** For a number of years.

**Senator JOHNSTON:** Have you contacted them in any shape or form?

**Brig. Phelps:** Yes.

**Senator JOHNSTON:** Currently with respect to Crye product?

**Brig. Phelps:** No-one is in contract for Crye.

**Dr Watt:** Senator, there is a point I would make to you. I do not pretend to be an expert in when something is classified 'made in Australia' and when it is not, but I do believe that these things are subject to a lot of discussion by experts and that something does not have to be 100 per cent made in Australia to be called 'made in Australia'. There are rules of origin that I think go on for miles and miles and miles in all trade agreements. As I said, I think it is unfair to say it has to be 100 per cent grown here, done here, everything done here, to be called 'made in Australia'.

**Senator JOHNSTON:** All I am concerned about, Secretary, is that the department seems to be pretty keen to provide the government with several options, many of which exclude, preclude and undermine the viability of Australian manufacturers. Not true?

**Dr Watt:** To be fair, as you yourself would acknowledge, and as we found with the air warfare destroyer discussion and others, sometimes if you want something that is quick and readily available it is quicker to get it from somewhere else. That is not an absolute, but it is true.

**Senator Feeney:** That is certainly a good segue, Senator, for you to applaud the fact that the Australian government in this instance has purchased the IP so that we can set up Australian manufacturers to compete for the work.

**Senator JOHNSTON:** It all depends on the definition, Minister.

**Dr Gumley:** I think it is very important what Senator Feeney just said, that Australian manufacturers can do the work. We do not want to get into such a narrow definition that you are down to one supplier. That is not good for security or diversity of supply.

**Senator JOHNSTON:** All right. Thanks, Brigadier.

**Brig. Phelps:** I would like to answer a question on notice. You asked earlier who manufactured the webbing for the TBAS. TBAS comprises the basic carrier vest and is part of a larger ensemble where we have a number of add-on pouches. There are three Australian companies involved in that. Australian Defence Apparel from Bendigo produces the vest and

a number of pouches. Special Operations Research and Development, SORD, which is based in Coburg, Victoria, produces a heavy belt and a number of the pouches. Platypus Outdoors Group from Hallam in Victoria produces assault bags and a number of pouches.

I would also like to correct something I said earlier. In relation to the ballistic and laser ocular protection system, I said the ballistic glasses were manufactured in Australia. I need to correct that. The prime contract is with Frontline Safety Australia Pty Ltd; however, the actual manufacturer of the goggles and glasses is Wiley X, which is incorporated in the US. A subcontractor to Wiley X—Foster Tech, who are also in the US—actually manufactures the laser lenses for those goggles.

**Senator JOHNSTON:** Thank you. Are you aware that the *Herald Sun* ran a poll with respect to Australian manufactured camouflage fabric and garments?

**Brig. Phelps:** No, I am not.

**Senator JOHNSTON:** And 93 per cent of the poll were disapproving if they were manufactured anywhere other than Australia. I say that to you, but really it is for the benefit of the minister, given the decisions he has to make.

**Senator Feeney:** Of course, we are not a poll driven government. There has been discussion about that in recent times.

**Senator JOHNSTON:** I will leave it to you to decide why I mentioned it.

**Senator Feeney:** Thank you.

**Senator LUDLAM:** This question relates specifically to DMO because I presume you are the ones procuring or finding cluster munitions. Can you confirm for us that Defence wants to be able to purchase and retain live cluster munitions for training and I presume disarmament purposes?

**CHAIR:** That is a Defence question.

**Senator LUDLAM:** If that is the case, is it something you have been asked to procure, provide or locate?

**Lt Gen. Hurley:** I have come along in my VCDF guise rather than in my cluster munitions guise. Someone behind me might have some notes, but I do not have them on me. I recall in the hearing that we did report to the committee that we hold a small number of cluster munitions and subelements for training purposes.

**Senator LUDLAM:** Do officers at the table have the *Cost of defence: ASPI Defence budget brief 2011-12*?

**Dr Gumley:** Yes.

**Senator LUDLAM:** I ask you to turn to page 115, figure 3.14 and some of the commentary that surrounds that.

**Senator Feeney:** So we are looking at the section entitled 'The feasibility of plans for Force 2030'?

**Senator LUDLAM:** That is right, and the graph at the bottom of page 115. In the paragraph above that, ASPI indicates, 'Although Defence no longer discloses its long-term investment plans, an official provided a snapshot of planned DMO spending as at February

2011.' I am interested to know whether the official provided those snapshots, as ASPI calls them, in an official capacity.

**Dr Gumley:** I provided that at a conference. We took the forward estimates data and showed the four years out, and a bit of an extrapolation beyond that. What I was doing at that stage was just using some administrative data to indicate how lumpy some of the future demand could be. If I recall, I also said at the conference that there would probably be some smoothing as we do future second-pass approvals because you do not really want to create a massive peak in demand for industry because they would not be able to cope with it. So it was used as a series of 'what if' discussions.

**Senator LUDLAM:** Thank you; that is helpful. The graph that I am referring to would seem to indicate some kind of peak because there is a 107 per cent spike mostly made up of unapproved major capital programs out to 2016-17 financial year. Given that there is apparently another white paper on the way by 2014, is that spike actually realistic? On what basis have those conclusions being drawn?

**Dr Watt:** There is another white paper due under the terms of the 2009 white paper in 2014 from the government. The government announced that it would have a white paper every five years. That is probably a good practice in an area like defence. It is very hard for any of us sitting here to say exactly what the next white paper will find. In five years we have moved on. Strategic service answers do shift a little bit here and there. Unless the white paper changes either the strategic outlook or our response to the strategic outlook, I would say that the force structure may change a little bit but you would not expect it to change a lot. There are several presumptions there: strategic outlook changes, response changes, best set of appropriate platforms and capabilities to meet that. They can change. When you set something like a defence white paper you would hope not that you got it in every respect right in five years time, because that is asking an enormous amount, but that you got the broad trajectory and sense of direction right.

**Senator LUDLAM:** I will take this up after the dinner break when we have the CDF and the other officers back at the table. I understand that there has been a fair bit of discussion today along the lines of: we have got no chance at all of meeting the objectives that were set out in the defence white paper.

**Senator FEENEY:** I do not think that is how we would characterise—

**Dr Watt:** I do not think it is. I think you can say that no matter who is at the table that view will not change.

**Senator LUDLAM:** Thank you. I will take that up after the dinner break.

**Senator HUMPHRIES:** I want to ask about the answer I received to a question last time about handling of cabinet documents by DMO. The answer to question W21 says that in September 2010 Defence conducted its most recent stocktake of 1,836 accountable cabinet documents. This question was directed to DMO but the answer does not seem to specifically refer to DMO. Perhaps you could clarify whether the reference to documents here is documents held by DMO or by the whole of the department. It says that it conducted a stocktake in September 2010. The stocktake identified that 32 documents could not be located, 15 of which are believed to have been destroyed. Is that a reference to 32 documents held by DMO or 32 documents held by the department or both?

**Dr Watt:** Based on the way the answer is constructed, I would take it that it refers to the department as a whole. But I can confirm that for you.

**Senator HUMPHRIES:** Can you give us information about the types of documents that cannot be located?

**Dr Watt:** Sitting here right now, no. I will see what I can do.

**Senator HUMPHRIES:** Do you have any information about how the 15 cabinet documents—

**Dr Watt:** Again, sitting here now, no. Again, I will see what I can do.

**Senator HUMPHRIES:** You cannot do anything until I give you the question, so the question is: can you indicate to us how the 15 cabinet documents are believed to have been destroyed? How do cabinet documents held by a department get destroyed? Presumably accidentally.

**Dr Watt:** Presumably.

**Senator HUMPHRIES:** And can you give us an idea of the date range of those 32 missing documents?

**Dr Watt:** I am happy to have a look at it. In the end, whether we can clarify it in the next 24 hours or not, I do not know. We might have to take that on notice. We will see what we can do. If not, we will consider it on notice.

**Senator HUMPHRIES:** Could you also take on notice whether, before these documents referred to, the department has previously lost cabinet documents. Are there any concerns about whether these documents might in fact have left the custody of someone in the Department of Defence and might in fact be in places that represent a security risk? What steps is the department taking to locate those documents or to ascertain the way in which the 15 destroyed documents have been destroyed?

**Dr Watt:** I am happy to do that, Senator.

**Senator HUMPHRIES:** Thank you. I have another question and I think this is the appropriate place to ask it. When are we going to see the outcome of the Rizzo review?

**Dr Watt:** I would have to check the exact date Mr Rizzo is due to report. I do not think that is all that far away—a matter of weeks not months. Then, of course, the report is subject to consideration by government, and it would only be after that consideration by government that the government would make the report public.

**Senator HUMPHRIES:** So although the report might be available in the next few weeks we almost certainly will not see it for some time after that?

**Dr Watt:** Perhaps not a few weeks but in the next several weeks. Few always seems to be two or three. Several means several.

**Senator HUMPHRIES:** So we have no information about when the document might be available for us to see?

**Dr Watt:** Not at this stage, no.

**Senator HUMPHRIES:** What about the Black review? The government has the Black review as of January?

**Dr Watt:** The government has had the Black review since early this year. It is subject to government consideration. We obviously hope it will be soon, but it needs proper and careful consideration.

**Senator HUMPHRIES:** Is the government using what is described in the review to educate decisions it is making, for example, in the most recent budget?

**Dr Watt:** The Black review is something that it is not easy to tag to individual decisions, so I would say that it was not a big influence on the budget. It is more a fundamental restructure of Defence accountably rather than something that deals with a particular accountability or decision. But when we have finished implementing Black it will certainly help us in our decision making and our accountability—all those decisions.

**Senator HUMPHRIES:** Could I close off and finish the discussion by clarifying for the record what we are being told about AWD. I understand you are telling us that, despite the delays in AWD being completed and the ships being delivered, you do not expect any blow-out at this point in the cost of the project. Can you also confirm what I think you said before, Dr Gumley, which is that the report in the *Australian* today of there being 2,400 faults discovered in the data used to build the hulls of the ships is an inaccurate report?

**Dr Gumley:** No, I did not say that it is an inaccurate report; I said it has to be used in context with the amount of clarification that you would need in a major project.

**Senator HUMPHRIES:** I see. Is the report accurate in that respect?

**Dr Gumley:** I do not know, but if the number was corrected to 2,400—and I do not know that, personally—then I would still not be alarmed by it because normally you have tens of thousands of clarifications on a major project.

**Senator Feeney:** Senator Humphries, I think it is important to note that I think Dr Gumley was contextualising that number rather than dismissing it.

**Senator HUMPHRIES:** Okay, fine. Can you confirm that the cost is not blowing out?

**Mr King:** There is no cost blow-out at this time.

**Senator HUMPHRIES:** Good.

#### **Proceedings suspended from 18:30 to 19:32**

**Senator Feeney:** I can advise the committee that during the dinner break I had the opportunity to speak with the Minister for Defence Materiel. He made it very clear to me and asked that I make it very clear to this committee that the government considers the manufacture of the standard combat uniform in Australia to mean that the fabric is woven in Australia and the garment is stitched together in Australia. I trust that will be of assistance to the committee.

**CHAIR:** Thank you, Senator.

**Senator JOHNSTON:** CDF, are you familiar with the Defence Support Group *Manual of Infrastructure Engineering*?

**Air Chief Marshal Houston:** No, not in detail.

**Senator JOHNSTON:** I would not have thought that you were, but apparently it is quite a significant manual and in the section dealing with artificial lighting, wherein there is a cost

recovery regime for the use of artificial lighting set out in some detail—I will read the whole thing to you and I am sure you can get the gist of where I am going on this—it says:

Financial assessment is required to justify the selection and economic basis for the chosen design solution. Financial assessment is also required when considering the merit of upgrading an existing installation or implementing energy efficiency measures in existing facilities.

Financial assessment must be undertaken on a through life basis and must include the lighting system installation costs and all recurring costs such as energy usage, energy impacts to other services such as HVAC and the ongoing operating and maintenance costs.

Financial assessment must demonstrate:

a) Payback period for the works is within 5 years. Defence uses \$70 per tonne when considering green house gas reductions;

Where does the \$70 per tonne figure come from?

**Dr Watt:** I will have to take that on notice. We do not know, sitting here now.

**Senator JOHNSTON:** Are you not aware of that?

**Air Chief Marshal Houston:** I am aware that we consider environmental factors in our infrastructure planning, but we need to take that on notice. I was not aware of that precise figure.

**Senator JOHNSTON:** Just to assist you when you take it on notice, this document is dated 15 September 2010, so it is obviously a reasonably new manual. But I would have thought that that means that there is an inherent inbuilt cost of significantly greater proportion than would otherwise be the case even at \$20 to \$30 a tonne.

**Dr Watt:** We will take it on notice and have a look.

**Senator JOHNSTON:** Okay, let us talk about the notice. I want to know where the figure comes from. I want to know who signed off on the figure. I want to know all of the costs that flow from using the figure—that is, how much of the budget has been geared to that figure. I want to know what the consequences of that figure are in terms of the payback period and any and all professional expert advice received in arriving at that figure, the date of the reports going towards it et cetera, so we get to the bottom of this. There are two payback evaluation methods: a simple payback, set out in 13.5.1(a); and 13.5.1(b), net present value calculations. I suppose you can also take on notice any other documentation, manuals or cost evaluations that base a carbon price per tonne at all, what those numbers are and where they have come from, who derived them.

CDF, can I go to your opening statement, specifically on the health situation with respect to the machine that was found to be not within specification. I think it is an autoclave machine or a steriliser. Can we find out what happened with respect to that.

**Air Chief Marshal Houston:** I will get General Alexander to come forward. He is intimate with the detail of that.

**Senator JOHNSTON:** General, first of all, what was the location of this machine? Was it Minhad?

**Major Gen. Alexander:** Yes, the facility was the health facility at Al Minhad. That is a role 1 facility; it is like a general practice.

**Senator JOHNSTON:** Does it have an operating capability?

**Major Gen. Alexander:** No, it does not have any operating theatre.

**Senator JOHNSTON:** So it cannot do an appendix operation, for instance?

**Major Gen. Alexander:** No.

**Senator JOHNSTON:** Can it do minor surgery?

**Major Gen. Alexander:** It can do minor surgical procedures that would be conducted by a general practitioner or by a nurse or a medic.

**Senator JOHNSTON:** Just to help me with what that is, if I have got a little spot on my arm or leg that I think is a sunspot, it can cut that out?

**Major Gen. Alexander:** That is correct, those sorts of minor procedures.

**Senator JOHNSTON:** Ingrown toenails, those sorts of things?

**Major Gen. Alexander:** Yes, or if, say, there was a incident where somebody cut themselves and needed stitches. That is really why we have that capability at the centre, for minor incidents and accidents rather than for elective procedures. It would not usually do those.

**Senator JOHNSTON:** What is the problem we have? Do not let me put words in your mouth.

**Major Gen. Alexander:** At the time of the changeover of health staff—this was in September 2010—the health staff determined that there was a lapse in the procedures that are normally used in the sterilisation process.

**Senator JOHNSTON:** Please define 'lapse in procedure'.

**Major Gen. Alexander:** Sterilisation is a process that involves a number of steps, but one of the final steps—after you have precleaned, cleaned and wrapped the instruments—is to place a sterilisation tape inside the wrapping so that, when it is subjected to the sterilisation heat process, that strip changes colour. It was determined that the—

**Senator JOHNSTON:** To show that it has been sterilised.

**Major Gen. Alexander:** Yes, correct. Those particular tapes have an expiry date. The staff that had come in had determined the tapes were outside the expiry date. So, whilst the sterilisation procedure had been done in accordance with normal sterilisation procedures, the tape that was inside was expired, by date, and therefore we cannot guarantee to 100 per cent that the sterilisation process was in accordance with normal clinical governance.

**Senator JOHNSTON:** Over what period?

**Major Gen. Alexander:** The period was between February 2009—through subsequent examination of records that we had access to—and August 2010.

**Senator JOHNSTON:** The fact that the tapes were outside the expiry date meant that they would not change colour.

**Major Gen. Alexander:** No, they may well have changed colour; still—

**Senator JOHNSTON:** Without sterilisation.

**Major Gen. Alexander:** No. The whole issue of having them outside of date is that they may well have changed colour in accordance with how they are designed, and I would suspect

that that would have happened; however, because they were outside the use-by date we say that that is not acceptable.

**Senator JOHNSTON:** All right.

**Major Gen. Alexander:** It is such a set procedure that if anything lapses inside that cascade of events—commencing with precleaning and cleaning, right through to the final sterilisation—we say that there has been a breach in the clinical governance process.

**Senator JOHNSTON:** Is there a particular procedure where the acknowledgement of the changed colour tape is written down anywhere?

**Major Gen. Alexander:** One of the weaknesses, when we did a clinical audit and looked at this in detail, was that there was weakness in the record keeping inside the facility in relation to this. When we first discovered this we really tried to determine how best to handle it and tried to determine what the risk was. I thought it was very important and imperative to really get a critical feel for what the risk was. We had to bring that steriliser back to Australia and examine it in detail, back with the manufacturer, to determine that it was working in accordance with its design specifications. If we could bring that back to Australia and then go through that process, that would give me a better understanding or feeling that, whilst the tape expiry date may have failed, the machine was still working in accordance with the specifications; therefore, the risk of anything having gone wrong would have remained low.

**Senator JOHNSTON:** Did you bring it back?

**Major Gen. Alexander:** Yes. It was tested and found to be in accordance with specifications, and it worked perfectly.

**Senator JOHNSTON:** It is called an autoclave, is it not?

**Major Gen. Alexander:** Yes, that is correct.

**Senator JOHNSTON:** What records do we have to show that the autoclave was used, notwithstanding the issue with the tapes?

**Major Gen. Alexander:** We do not have complete records in relation to the use of the autoclave. We have gone back to try and ascertain where those records are, but we have not been successful in finding a full record of all the autoclaves, all the individuals that may have had minor procedures undertaken. This is the reason that we did what we did.

**Senator JOHNSTON:** So for the minor procedures we have no accurate of what procedures were undertaken?

**Major Gen. Alexander:** Not a record in the facility or archived records within the area of operations.

**Senator JOHNSTON:** Do we have a reliable known rate of use prior to the period? We have not been able to tie down how many people have been through and been treated.

**Major Gen. Alexander:** That is really the issue that we have. We looked at various options to determine how to find that. The first and obvious one was to go through records of the facility and determine whether there were even records of individuals who had attended over the 18-month period. We had some of those records, but there was no guarantee that they were a 100 per cent accurate record of attendance inside the facility. That is especially the case on operations where individuals may walk in and out of facilities for Panadol, bandages et cetera.



The other thing is that we now record each and every person entering a medical facility in Australia electronically. Every single person has an appointment made. We know and we can check each person and then go to the records. We do not have that ability in this case because they were manual records and gaps have been found in the manual records. We then went to the ops log. Can we 100 per cent guarantee on the ops log each and every individual has been captured so we can do an audit of the entirety of those individuals' health records back here in Australia? We looked at costing that as an option as well. We could not guarantee 100 per cent accuracy of those records. Therefore whilst the risk is considered low, we also felt it was imperative and the best way to notify—particularly because there may have been individuals other than uniformed individuals such as civilians and members of parliament who have gone through that facility—was to do an open disclosure of this situation which, in most cases in Australia, would not be necessary. We can interrogate records, then go to those health records and do the search.

Another thing is that each and every individual that is in the uniform has been tested for Hep B, Hep C and HIV and found to be negative for all those. Again, we felt that the risk for our individuals was low. With all those factors in place, we felt that when we determined in mid-December that the steriliser was working in accordance with procedures, we had the option of going public at that time. It was determined by senior leadership that that was not a good time to go public because we were going through a period when all our facilities were being stood down. Therefore we could have caused alarm at a time when we could not manage or have people to respond to that concern. The determination was made, because the risk was low, to wait until 2011 to release the information. In 2011, we continued to interrogate records to determine whether there was an option of getting 100 per cent compliance on either databases in theatre or otherwise so as not to have to make a true and open disclosure as widely as we have. We determined that that was not possible.

**Senator JOHNSTON:** Have we written to everybody who has been through the base?

**Major Gen. Alexander:** No, we have not written to everybody. We have written to other departments notifying them that this has happened. Within Defence we have issued a DEFGRAM telling the entire organisation. We have gone out with a signal to all units and we have gone out internally health-wise to say this has happened and to say, 'Be prepared and be ready.'

**Senator JOHNSTON:** There is no evidence to suggest that anybody has infected or contracted any blood-borne infection, virus or malady of any description, giving rise to this. It is just a safety-first precautionary measure because we have a question mark over one small part of the cycle.

**Major Gen. Alexander:** That is normal clinical practice. We want to be absolutely open about that and that is what we have done, but there have been no known infections; in fact, we have had, since we went public over a week ago, one inquiry, one person requesting further information.

**Senator JOHNSTON:** Thank you, General, I appreciate your frankness. CDF, with respect to the commandos, I note your comments. The status of the third one I am a little confused about. Where is that going? That is ongoing and going to be a hearing?

**Air Chief Marshal Houston:** You are talking about the 12 February incident?

**Senator JOHNSTON:** Yes.

**Air Chief Marshal Houston:** I guess what we have got is a set of circumstances where the general court martial was convened to hear the two charges. That ended on 20 May with the issuing of a ruling by the Chief Judge Advocate. The ruling upheld the applications by the accused persons that the charges do not disclose a service offence or were otherwise wrong in law.

The Chief Judge Advocate indicated he would refer all the charges back to the DMP, the Director of Military Prosecutions, and at that time the court martial was dissolved; however, the Chief Judge Advocate indicated we would delay the referral for a period of time so as to permit the DMP time to consider options for future action.

**Senator JOHNSTON:** What is that period of time?

**Air Chief Marshal Houston:** I cannot be definitive about the time because we are talking weeks, not any longer than that.

**Senator JOHNSTON:** But in his order he would have specified a time, did he not?

**Air Chief Marshal Houston:** No, I understand he did not, but I will come back to you if there is any further definition on that. The possible options for the DMP in response to the judge advocate's ruling include seeking a higher court review of the rulings, the reframing of the charges or the preferring of new charges. At this time, the DMP has not indicated her intent. Of course the general court martial to hear the charges against the third member is not affected by the Chief Judge Advocate's ruling.

**Senator JOHNSTON:** Because that is the charge relating to disobeying a general order, I think—is that correct?

**Air Chief Marshal Houston:** The charges are different, yes.

**Senator JOHNSTON:** Which is a service offence.

**Air Chief Marshal Houston:** There is a service offence involved, yes.

**Senator JOHNSTON:** With respect to the DMP's future activity, are there any time limitations on where this goes with respect to these other two?

**Air Chief Marshal Houston:** I would hope that this will be dealt with fairly swiftly, but clearly the DMP needs time to consider the matter. I would hope that she is swift in her consideration and her determination.

**Senator JOHNSTON:** The usual course is that, following a dismissal upon submission, the respondent to such an application has 28 days to appeal to a higher jurisdiction. Are we aware of whether there is a 28-day period here?

**Air Chief Marshal Houston:** I would like to take that on notice. I am not aware of a 28-day limit, but I would like to take that on notice.

**Senator JOHNSTON:** Okay. Obviously it would be important to not just the two formally accused but to everybody interested as to what the time frame is.

**Air Chief Marshal Houston:** I will get Mr Cunliffe to join me, because he may be able to shed some light on whether there is a 28-day limit or not.

**Mr Cunliffe:** The directions provided by the Chief Judge Advocate have not actually specified a period. It appears more as if he has provided a window, without specifying what

that period is, for the Director of Military Prosecutions to respond to the ruling that he has provided. Potentially there is a formal process which he actually flags in terms of the legislative scheme, but strictly speaking he has not yet taken it through those steps. At this stage our understanding is that the Director of Military Prosecutions is studying the matter, but I do not have any clarity on how long there is. Presumably at some point, if the Chief Judge Advocate felt the time taken was too long, he would move formally to make the directions that are open to him and that have been identified in his reasons—which would be provisions, as I read it, under subsection 8 of section 141—which would then formally refer the matter back to the Director of Military Prosecutions and provide certain steps open to her, including potentially framing alternative charges, and, failing that, the matter would have the formal steps happen which the legislation provides.

**Senator JOHNSTON:** So what exactly has he done? Has he adjourned the matter pending her application?

**Air Chief Marshal Houston:** No. He has dissolved the court martial and referred the matter back to the DMP for her consideration.

**Senator JOHNSTON:** So he has not even adjourned the matter. She has to recommence proceedings should she so wish, so the ball is entirely in the DMP's court?

**Air Chief Marshal Houston:** As I said, she has three options: firstly, seeking a higher court review of the rulings; secondly, reframing the charges; or, thirdly, preferring new charges.

**Senator JOHNSTON:** The problem I have with that is that, whilst on the one hand it appears quite decisive, the matter is now residing with the DMP, and what charges into the future may be laid and when are in the ether.

**Air Chief Marshal Houston:** She is an independent individual, nothing to do with me. She works for the minister. Essentially her decision-making process is set out in her prosecutor guidelines, which are a matter of public record. I guess if you wanted to check on her performance in this regard that is where you would go, but I am satisfied on the advice I have that everything that has happened here is going according to Hoyle.

**Senator JOHNSTON:** When you say 'going according to Hoyle', is she going to do something else, or is she going to let the matter reside as determined by the Chief Judge Advocate?

**Air Chief Marshal Houston:** She has complete discretion in this matter. The matter has been referred back to her. He has referred the charges back to her for her consideration. She has those three options, and we await her determination. There is another thing I can do for you. I have a transcript of the proceedings where all of this was decided. I would like to table that for the consideration of the committee.

**Senator JOHNSTON:** I would very much appreciate it. I am sure all of the committee would appreciate that transcript. Thank you.

With regard to the two matters pertinent to the court martial that has been dissolved, what is the status of the legal fees of those two particular individuals? Have they been paid?

**Air Chief Marshal Houston:** As has been made very clear, the individuals who have been charged have access to whatever legal assistance they need, and the Commonwealth will pick up the cost of whatever representation they choose to pursue.

**Senator JOHNSTON:** We do not have a record of what we have paid to this point?

**Air Chief Marshal Houston:** We probably do. I will take that on notice, if I may.

**Senator JOHNSTON:** Please. Is that interim or has there been a final set of bills rendered to this point?

**Air Chief Marshal Houston:** I think it would not be a final bill—

**Senator JOHNSTON:** We do not know.

**Air Chief Marshal Houston:** because the matter is still ongoing until we hear what the determination of the DMP is.

**Mr Cunliffe:** It is probably important to identify that this assistance is provided through the Directorate of Defence Counsel Services. Unlike a conventional court proceeding, where the person may incur the costs, the costs are determined progressively and then met through those offices. So the assistance that has been provided has predominantly been through ADF legal officers who have been provided through those measures.

**Senator JOHNSTON:** I was given to understand that there was reservist counsel involved.

**Mr Cunliffe:** Yes, reservist legal officers but members of the ADF legal reserve. There was also some other support, but it has all been agreed progressively. CDF has said he will take notice, but my understanding is that they have not been required to incur costs directly. It has all been provided through those offices. But I will clarify that.

**Senator TROOD:** CDF, in your statement this morning you referred to the charges against the third member, who has yet to be disposed of. I want to clarify: is that person the person who was served later than the others and who was overseas at the time the proceedings were begun against the other two members?

**Air Chief Marshal Houston:** No, he was not. He was served with his charges. He was one of the first two who were served charges. The third member was one of those dealt with under the court martial that has just had the predirection hearings conducted.

**Senator TROOD:** Thank you.

**Senator FAULKNER:** This is a question I flagged a little earlier with CDF and Chief of Army. It goes to quite a considerable amount of press coverage back in mid-April in relation to social media campaigns that had publicly not only identified but persecuted homosexual Defence personnel. I want to make clear at the outset that, in asking these questions, of course I have no criticism of the gay members of the Australian Defence Force. I have absolute sympathy for the situation they faced. I can assure you of that. The issues I want to go to are the process issues that surround it. I was particularly concerned to see the front page of the *Age* on 13 April, which stated quite baldly:

Senior ADF leaders including army chief Ken Gillespie and former defence minister John Faulkner are aware of a formal complaint made in August last year about the anti-gay Facebook page.

I can say it was also followed up in the same terms by the same newspaper. That was a page-1 lead story. It was on page 3 of the *Age* newspaper the next day. It managed also in similar

terms to make page 1 of the *Sydney Morning Herald* on 13 April, the *Western Australian* on 13 April—unfortunately, with a photograph of me. This was quite prominent media coverage, and I am sure, General Gillespie, that you would recall this.

**Lt Gen. Gillespie:** Yes, I do.

**Senator FAULKNER:** When I read it, obviously I was concerned about some of the process issues because, contrary to what I read in the newspaper, in fact I was not aware of a formal complaint—or, for that matter, an informal complaint or even the issue at all—until I read it in the newspaper article. So I wanted to get to the bottom of it, if I could. For the benefit of the committee, I flagged this through the processes of the committee with Defence, so they knew I would ask some questions about this. I hope you received that message, General Gillespie.

**Lt Gen. Gillespie:** I certainly did.

**Senator FAULKNER:** Could you outline to the committee when Defence became aware of this?

**Lt Gen. Gillespie:** Certainly. As you know, this is one of the cases that is going to be handed to a legal panel for review in this process.

**Senator FAULKNER:** Yes. I only want to go to some process issues here. I can assure you of that. I indicated in a broader comment before I asked these questions that I certainly do not want to address the substantive issues. I do not want my questioning to be misinterpreted as criticism of any gay members of the Australian Defence Force. I am using that language and I am using it clearly so that in no way is my questioning misunderstood. My questioning is about process only. Of course I have a personal concern about how on earth my own name became involved in this in this circumstance. Perhaps you could indicate when Defence or Army became aware of it.

**Lt Gen. Gillespie:** Dates of the caretaker period, which were 19 July to 11 September—

**Senator FAULKNER:** Yes. I flagged this with Dr Watt earlier on because I had indicated that I had some questions that perhaps went to process issues within the caretaker period.

**Lt Gen. Gillespie:** To my knowledge ADF first became aware of this issue on 5 August. My belief is that it became known to the ADF through service police channels when they became aware of a homophobic Facebook site. The issue was managed inside Army with the service police throughout August. That included attempts by us to remove the Facebook site. That was referred to the service police—

**Senator FAULKNER:** Was it removed?

**Lt Gen. Gillespie:** The Facebook site was removed the day after we had asked for it to be removed.

**Senator FAULKNER:** Are you able to say what date the Facebook site was removed?

**Lt Gen. Gillespie:** On 12 August.

**Senator FAULKNER:** So in Defence the first awareness was on 5 August and it was removed on 12 August.

**Lt Gen. Gillespie:** But it became clear to us also when we checked the site that the Facebook site contained a number of YouTube video clips. Our attempt to have YouTube remove those clips was unsuccessful.

**Senator FAULKNER:** Were any of the ADF serving personnel who were identified on the Facebook site informed that the site was being removed?

**Lt Gen. Gillespie:** Not at that stage, no. The people who were most intimately involved knew that the site had been removed. Facebook reacted very quickly to our concerns. The issue proceeded throughout August until 16 August when the Australian Defence Force Investigative Service commenced an investigation into the allegations that had been made on the fifth and they were also referred to the New South Wales Police Service for investigation.

**Senator FAULKNER:** Are those investigations ongoing? Are you aware whether they have been completed or are ongoing?

**Lt Gen. Gillespie:** They are ongoing. As you might recall, an ex-ADF member was summoned by the New South Wales police to appear in court. I think that is going to happen next month.

**Senator FAULKNER:** Because they are ongoing investigations, I do not want to ask anything further about that. I suppose the critical date there is that that was referred to the ADF Investigative Service and other authorities on 16 August.

**Lt Gen. Gillespie:** There are a whole range of activities here. I am just picking out some highlights in the process, because there was quite a bit of action. The first time I became directly involved was on 1 October when an Army member emailed me directly with his concerns, and I replied to that email on the same day. I think the next important date out of a whole lot of dates I have here is 29 October, which was when a member of the public also wrote to Minister Snowdon talking about the threats to the gay community in the military. To my knowledge that was the first that a ministerial office knew of the activities. You will understand from your time—

**Senator FAULKNER:** My problem is I did not recall it. That is the whole point.

**Lt Gen. Gillespie:** No, sorry. The point I was trying to make was that we thought this issue was being managed efficiently and, therefore, there was no need to elevate it to the minister for support in that process. So it was being managed inside Army with ADFIS and the New South Wales police until Minister Snowdon tasked us formally through the process to respond to a ministerial office on 29 October.

**Senator FAULKNER:** I do not want you to misinterpret this at all. There is no criticism by me of Army in relation to that at all. You would be aware that this originally occurred in the caretaker period, which, as you indicated, commenced on 19 July and concluded on 11 September.

**Lt Gen. Gillespie:** That is correct.

**Senator FAULKNER:** There is no record of ministers being briefed during that period?

**Lt Gen. Gillespie:** To my knowledge there is no record.

**Senator FAULKNER:** Is there any record in Army or defence anywhere that this matter was communicated to the minister's office?

**Lt Gen. Gillespie:** Not until 29 October when there was formal tasking out of Minister Snowdon's office.

**Senator FAULKNER:** CDF, do you believe it is reasonable for me to say that any decision I made as defence minister during the caretaker period from 19 July until Minister Smith was sworn in was made jointly with my colleague the shadow minister, Senator Johnston, who is behind me at the table? Can you confirm that for the benefit of the committee?

**Lt Gen. Gillespie:** I can confirm that that was indeed the case.

**Senator FAULKNER:** I think it is fair to say that not only the letter but absolutely the spirit of the caretaker conventions operated during that period. I was going to ask Dr Watt this but he is not at the table at the moment.

**Lt Gen. Gillespie:** That is true. In fact I can recall one of the staff from the senator on the other side mentioning that they were very pleased with the way the caretaker arrangements were working.

**Senator FAULKNER:** Mind you, it is hard to raise an issue with the shadow minister during the caretaker period if it has not been raised with you.

**Air Chief Marshal Houston:** Precisely. Dr Watt and I worked all the way through the caretaker period with both you and Senator Johnston. That was the way business was done for a fairly extended period of time.

**Senator FAULKNER:** This was canvassed earlier at this hearing. For political reasons, as we know, it was a particularly long caretaker period until the government was formed. We all understand that that was the case.

**Dr Watt:** I am sorry, Senator, I was at the back of the room when you raised the issue.

**Senator FAULKNER:** I was talking about the conventions during the caretaker period in relation to the handling of correspondence. What is the defence protocol in these matters? In this case it is a hypothetical question in relation to the issue I am raising because it did not come to the minister's attention. Perhaps you could outline to the committee what the protocols are.

**Dr Watt:** Normally, matters of concern that we had to raise with the defence minister we also raised with the shadow spokesman. That is standard protocol. I think we adhere to that unscrupulously through the caretaker period.

**Senator FAULKNER:** I think that was done, too. As I said, I have no criticism of gay members of the ADF who were vilified in this way. I have no criticism and no reason to have any criticism of the way this was handled internally from what I have heard from General Gillespie. But I do have concerns about the matter being published in this way without any contact with me by any of the journalists concerned. I assume that they were not even aware that it was during the caretaker period. I assume they were not aware that no formal contact, as we have heard, had been made with any minister until October. I assume that I will be receiving an apology in due course.

**Senator FEENEY:** On the last, we cannot reassure you.

**Senator FAULKNER:** I thank witnesses for clarifying that matter. I might well make a personal explanation about this issue in the Senate given the inaccurate and grievous claims that have been made.

**Senator FEENEY:** And the damage your reputation.

**Senator FAULKNER:** In response to the parliamentary secretary's comment, unfortunately, the reason I have had to raise this, Senator Feeney, is that I did receive an amount of correspondence highly critical of my inaction on this issue during that period of time. This is the sort of consequence—and, this does not go to Defence because, of course, by the time this is published I am not the defence minister and it has come to me as a senator. There is no basis for this at all and I respectfully say to members of the fourth estate that these things should be checked more carefully. In the first instance, go to the person who is identified in the article. I would have been able to set them straight because I did know what the caretaker period meant in terms of conventions. I certainly was not aware of any such contact and it would not have been critical if it had been made of the minister. It is quite appropriate that it was not made. Obviously, therefore, I was not aware of it. It was the caretaker period so particular protocols apply to dealing with these matters. Really, it would have been appropriate to have been contacted. You raised that question, Senator Feeney. I should refer to you the dozen or so communications I have had that have been highly critical of my inaction and allegedly homophobic behaviour at that time. It is extremely unsatisfactory in the circumstances.

**CHAIR:** Thank you, Senator Faulkner.

**Senator JOHNSTON:** CDF, I come back to the Military Court of Australia, as I think the new legislation entitles it. As you know, we came through *Lane v Morrison* and reconstituted courts martial, and there was some urgency throughout August and September of 2009 as a result of the High Court decision. We presented a bill in June and July of 2010. The Senate Legal and Constitutional Affairs Legislation Committee was conducting an inquiry into that bill. The new government was formed in September last year. Here we are almost in June of this year and we have not seen any bill. Why is that?

**Air Chief Marshal Houston:** I will refer this to my legal adviser, Mr Cunliffe.

**Mr Cunliffe:** There was a body of work to be done for the transitional legislation, which is necessary, of course, to accompany any proposed final bill. There has also been considerable work done in relation to some issues that ministers have identified. Strictly speaking, the introduction of this legislation is of course a matter for the Attorney-General, but it is a matter on which we have been working closely with the Attorney-General's Department and on which Mr Smith has been working closely with the Attorney-General. Ministers had some concerns. We have sought to progressively work through those concerns and ultimately deliver reports to the minister. I think on the final issue identified we have a further response to the minister which is due probably in the next week or so, and I hope we will then be in a position where some clarification and the legislation can progress. I hasten to add that, ultimately, it is a decision for the Attorney-General and for ministers and the government.

**Senator JOHNSTON:** The minister made some sort of statement somewhere—I think it might have been in the parliament—that there are a number of serious and complex issues. I



find that very difficult to contemplate given that we have had a false start, if you like—that is, the legislation has been presented and has been before the parliament. When you say 'transitional issues', tell me what they are, if you would be so kind.

**Mr Cunliffe:** To have the legislation in place—let us assume the legislation is agreed by the parliament—we will reach a point where matters will have progressed to certain stages through the court-martial system or will not have and we have appellant matters, a range of issues which are necessary to take account of. That was one part of the body of work. The other issues are much more of a structural nature.

**Senator JOHNSTON:** Let us deal with the first one: the transition between current matters and how they are dealt with pursuant to the terms of the new legislation. The longer we leave it the worse it is going to get—is that not the case?

**Mr Cunliffe:** With respect, I do not think it is the case. I think there will always be matters that are progressed to a certain point, as with any court or para-court structure. Some matters will have had preliminary hearings, some matters will have been started and some matters will have gone on appeal or review. In fact, there is a moving body of matters.

**Senator JOHNSTON:** There might be some matters that are delayed one way or the other in anticipation of the new regime, potentially, wouldn't you think?

**Mr Cunliffe:** I cannot see that.

**Senator JOHNSTON:** You might have a jury trial.

**Mr Cunliffe:** With respect, I am not aware of there being any evidence of that is probably the best way to describe it.

**Senator JOHNSTON:** That is good; let us hope there is no evidence of that. Are you worried about how we move and dispose of commenced matters in the face of the start date of the new legislation?

**Mr Cunliffe:** There was a further body of work—if I can repeat that—which is necessary to be done to deal with all the transitional issues. The first legislative package was the new model of the court but it did not address these further issues. I will ask the Director General of ADF Legal Service, who has been more closely involved in the detail of that, if you wish. As you will see in due course, there is a large measure of material which is necessary by the time you pull the system apart and make sure all the pieces of wiring join up, which is obviously necessary because we do not get to any point where we have things that lead nowhere. That is the first step. The other issues go more broadly to issues of construct, matters that have concerned ministers more recently. They are not the transitional issues.

**Senator JOHNSTON:** So we have issues that concern the Attorney-General and we have issues that concern the Minister for Defence.

**Mr Cunliffe:** I do not know that I would particularise them to the individuals but I would say that, jointly in discussions, some issues have been identified, and we have been attempting to work through and provide policy options in relation to those matters.

**Senator JOHNSTON:** How many of us are working through this?

**Mr Cunliffe:** We have a small team within our division who are working on it from our side; then there are people from the Attorney-General's Department who are also working on it. As to the number, it is certainly a larger number in total than when you asked me before

about whether we had a tiger team. I do not know whether it is still large enough to qualify for that title.

**Air Cdre Cronan:** I have a team of three of my ADF lawyers working pretty much on this issue. They are working in concert with three or four lawyers from the Attorney-General's Department.

**Mr Cunliffe:** At certain points we have also been working closely with the officers from the Office of Parliamentary Counsel in the legislation and drafting process, so the all-up group is much larger. Unlike the previous discussion, the primary duty of some of these people has been working on this matter.

**Senator JOHNSTON:** So we have seven lawyers working away on it?

**Air Cdre Cronan:** That would be correct: three from our office and four from the Attorney-General's Department. As Mr Cunliffe said, there have been a range of liaison with other lawyers as well, particularly from the Attorney-General's Department in relation to the Criminal Justice Division from time to time, as certain issues have been traversed with them. So it has been a collaborative effort between both departments and it has worked very well to get us to this point.

**Senator JOHNSTON:** How long have we had this team running?

**Air Cdre Cronan:** The initial team was put together after the Lane v Morrison decision came down. Once we got the interim legislation back in play, which I think was in October 2009—

**Senator JOHNSTON:** August 2009 was the decision?

**Air Cdre Cronan:** Sorry, August 2009; the legislation came in September 2009; and this team in terms of where we are going from long-term solution from about October 2009.

**Senator JOHNSTON:** When are we going to be resolved?

**Mr Cunliffe:** That is difficult to divine and it is really a question which I think I have to revert to indicating is a matter ultimately for ministers. I hope soon, but obviously the ultimate decision on that is not mine.

**Senator JOHNSTON:** You have got, hopefully, the final piece of advice, did you say, going to the ministers next week?

**Mr Cunliffe:** I hope there are no further issues which this piece of material will give rise to. It may be that this material will give rise to some further drafting. That is obviously an issue which, again, I cannot be confident of the outcome.

**Senator JOHNSTON:** Okay. Thank you very much.

**Senator TROOD:** Had his sought any external legal advice on this subject?

**Mr Cunliffe:** The advice we have sought has been predominately advice involving the Solicitor-General for the Commonwealth; not external in that respect.

**Senator TROOD:** Not external to government?

**Mr Cunliffe:** Not external to government. Predominately these issues are covered by the Attorney-General's Legal Services Directions in that what we are talking about is constitutional law, and the Attorney-General's Legal Services Directions guard jealously the

role of providing constitutional legal advice. And, if I can say so, I feel entirely comfortable having the Solicitor-General to advise us on that.

**Senator TROOD:** I would hope that we had this advice inside the government.

**Mr Cunliffe:** Sorry?

**Senator TROOD:** I would hope that we, indeed, have this advice inside the government.

**Mr Cunliffe:** Yes, we do.

**Senator JOHNSTON:** I have some small matters. Unless anyone else has got anything rather more detailed and pressing.

**CHAIR:** Why don't you finish off your rats and mice and then we will see whoever else has questions.

**Senator IAN MACDONALD:** I have some rats and mice.

**CHAIR:** Senator Ludlam has some rats and mice as well.

**Senator KROGER:** I have some questions on Afghanistan.

**Senator FAULKNER:** This is just wrapping up Overview, is it?

**CHAIR:** Yes.

**Senator JOHNSTON:** I have one for the secretary and possibly for CDF, but rather more focusing upon APS members. It is to do with the remote posting allowance. As you know, Harold E. Holt is at Exmouth in Western Australia. I am told there were 12 full-time, one part-time APS members working at Harold E. Holt and one other part-time member working with the Pilbara Regiment. The cost of living in Exmouth is one of the highest costs of living in Australia; it has the second most expensive fuel prices in Australia; the cost of buying a home has risen from \$140,000-\$450,000 in the last three years; and rental comes at \$600 a week. Paraphrasing all that, the military remote allowance is currently \$13,250. The APS allowance is \$5,270. Military members get two government funded respite trips whereas the APS members only get one. Military members get to go home; APS members go to the nearest capital city. For people living in Exmouth who are APS members, Secretary, that would seem quite unfair.

**Dr Watt:** I am happy to take the question on notice. I do not have the answer for you now, unless Mr Minns happens to have it, and I know I saw him in that far corner. He might come to the table. The only point I would make is that APS allowances are not necessarily benchmarked to ADF allowances.

**Senator JOHNSTON:** No, I accept that.

**Dr Watt:** There is commonality across the APS, and it may be—I am not suggesting this is the case, but it may be in this case—that we are in common with other members of the APS but not in common with the ADF. But I am happy to take the question on notice if we cannot answer it here and now and get you an answer.

**Senator JOHNSTON:** All right.

**Dr Watt:** It is a detailed one. From the question you have read out, you obviously have someone who is very interested in the answer.

**Senator JOHNSTON:** As you would expect. When you travel around, you get these people coming up to you with well-thought-out quandaries that affect them personally. I accept that the military can—

**Dr Watt:** My answer is hypothetical.

**Senator JOHNSTON:** I accept that the military comparison is probably in some respects not a legitimate, realistic comparison, but it does strike me that the living conditions and workloads for both, in the circumstances of that town, would be rather similar in many respects.

**Dr Watt:** They may well be; I am not denying that. As I said, our APS allowances tend to link with other APS allowances more than with the military. That is something I will have to look into. I do not know if Mr Grzeskowiak has any suggestions. It looks as if he does not.

**Mr Grzeskowiak:** The secretary is absolutely right: we have a different construct for our allowances between the military and civilians. We are much more aligned with civilian allowances from other agencies. Our classifications of what is remote in a job and living sense are not exactly the same for ADF and APS. There are a lot of similarities, of course, but we are much more aligned with the DEEWR list of what qualifies as remote.

**Dr Watt:** So we are quite happy to see if we can get an answer for you, Senator. We will also make a point, as well as providing you with an answer, of communicating with our workforce in Exmouth to explain the reason directly to them—and elsewhere.

**Senator JOHNSTON:** I am really obliged to you for that. I am not sure that I know what the question is, but I think it is along the lines of: what is the maximum APS remote posting allowance? I think it is payable annually; correct me if I am wrong. How do we determine the maximum; what is the basis for that? Is Exmouth on the maximum and, if not, why not?

**Dr Watt:** You might want to go on, Senator, and add: is this a matter of commonality of APS allowances or is this a Defence-only allowance? That is probably one of the first things we should answer.

**Senator JOHNSTON:** I think that is good.

**Dr Watt:** And, if so, what is the review mechanism for the allowance?

**Senator JOHNSTON:** Yes. I think my constituents in Exmouth and Mr Haase's constituents in Exmouth—he is the local federal member—will be very pleased to receive that answer on notice in due course.

**Dr Watt:** We will be happy to do that.

**Senator JOHNSTON:** Thank you, Mr Minns and Mr Grzeskowiak, for your attendance. Mr Minns, we have had a huge input from you!

**Dr Watt:** There is plenty of opportunity yet; there is another three hours to go.

**Senator JOHNSTON:** The other thing—it is also an Exmouth issue—is that the Learmonth defence and Air Force facility is also home to a number of civil contractors, and Bristow Helicopters is servicing a very large number of oil and gas operations off the coast from that location. It has apparently had an application in for the construction of a hangar on that facility. Many other operations get permission to construct various infrastructure so long as Defence directs where it will cause least inconvenience et cetera. Whoever is managing this—I do not know which section it is—apparently works in 30-day cycles upon application.

We are now three months over the second 30-day period, and Bristow is getting very concerned that its operation needs this hangar urgently.

**Dr Watt:** I will get Mr Lewis to come forward.

**Senator JOHNSTON:** Mr Lewis, you are the man.

**Mr Lewis:** Thank you for alerting the Chief of Air Force about this question a little bit earlier. If you had asked me that question cold this morning, I would have had no information at all.

**Senator JOHNSTON:** We are here to help.

**Mr Lewis:** The Shire of Exmouth did make application to Defence to sublease part of the civil airport site to Bristow Helicopters, which includes construction of a hangar, in October 2010. The head lease between Defence and Exmouth shire allows for sublease arrangements. In November 2010 Defence made application for an extension to the request for a sublease, which was granted until early January 2011. Defence advised the shire that the January date could not be met due to the sublease proposal requiring some further review. I will come to the issues in a tick. Some internal consultation happened over that period.

**Senator JOHNSTON:** I now understand where the 30 days comes from. It is a lease term.

**Mr Lewis:** Yes, which needs to be refreshed.

**Senator JOHNSTON:** I did not realise that.

**Mr Lewis:** It cannot be dealt with in the 30-day period. That consultation did take a while, but there were a number of issues to be resolved. It has been identified that the current civil air movements at Learmonth may already exceed the agreed cap of six civil arrivals per day. The Exmouth shire has not nominated how many helicopter movements are expected under the new proposal, although they have applied for a waiver of these movements.

**Senator JOHNSTON:** Could you pause there. The civil movements include ordinary fixed-wing aircraft?

**Mr Lewis:** They do.

**Senator JOHNSTON:** That is a very low number, I have to tell you.

**Mr Lewis:** Apparently that is the lease that is in place now, but obviously that could be subject to review. I have some other points here, but, having got across the issues through the course of today, my sense of it is that there are issues that do need to be resolved between principally the council and the firm in relation to indemnity, because there may be an exposure, potentially, for the council under the proposed sublease arrangements and there is the need to resolve the movements issue. Other than that, it seems to me that it should be capable of being resolved at very short notice.

**Senator JOHNSTON:** That is very good. I appreciate that, and I am sure Bristow will appreciate that, because I am sure that the indemnity issue is something they are quite skilled at, as they would have to be.

**Mr Lewis:** Yes, indeed.

**Senator JOHNSTON:** What does concern me from what you have said is that the lease is applicable to six civilian aircraft movements per day. How old was the lease? The lease is 12 months old?

**Mr Lewis:** I am not sure that I have enough detail on that, but I would be delighted to take it on notice and give you further detail. I do not think the intent would be to overly restrict providers either, so, if the cap needed to be lifted beyond six, I do not think that would be an issue either.

**Air Chief Marshal Houston:** We might see if the Chief of Air Force has anything to offer.

**Senator JOHNSTON:** All right. It is not often we call on Air Force.

**Air Chief Marshal Houston:** They value the workout, Senator!

**Air Marshal Binskin:** We would work with the local operators, in this case represented by the council, to come up with an appropriate number of movements per day. The liability issue comes into it if we activate the base for operations. The civil operators rely on that number of movements a day to be financially viable, and if we have to restrict them then they need to understand that those restrictions would be on. I would agree with you that six is probably overly restrictive for normal operations.

**Senator JOHNSTON:** I just think that that part of the world is expanding from any number of perspectives, including a defence perspective, where support from civilian movement of aircraft would be supporting Defence, if I may say so.

**Air Marshal Binskin:** Probably not. I am not too sure. From an Air Force perspective, there would not be a lot of civilian support, but I am not sure about the Exmouth site.

**Senator JOHNSTON:** That is what I am talking about. The base and other support, directly or indirectly, via civilian aircraft, and then the oil and gas sector are taking off up there at a pretty wild rate, so it would not surprise me if the terms and conditions of our contractual documents have not kept pace.

**Air Marshal Binskin:** I think that is where Deputy Secretary Defence Support was coming from. It is a liability and indemnity issue that will need to be worked through as part of the lease and the sublease.

**Senator JOHNSTON:** Very good. Mr Lewis, if I can come back to you: I have got people in Exmouth who are streaming this. What can you tell them about the time frame?

**Mr Lewis:** The advice I have is that Defence reverted to the council late last week.

**Senator JOHNSTON:** Late last week?

**Mr Lewis:** Yes.

**Senator JOHNSTON:** Hallelujah! That is good; righto, so the ball is in the council's court?

**Mr Lewis:** I believe so, according to my notes.

**Senator JOHNSTON:** They will be pleased that I am bringing that to everybody's attention. Thank you very much, Mr Lewis, I appreciate your time and your efforts.

**Senator IAN MACDONALD:** Mr Chairman, I just want to find out where I would find in the budget papers what money is spent on cadets.

**Dr Watt:** We have got our CFO—we hope we have our CFO, Senator. I think the answer is I do not think you will find a separate line item in the PBS but I will confirm that. I think we are going to have to get you some numbers.

**Mr Prior:** There is not a separate line item, but we can bring that information to the table.

**Senator IAN MACDONALD:** I have reports from parents that they are now being asked to contribute even greater amounts to keep their local cadet units up and running. Has funding for cadets increased or decreased over the last, say, two to three years? If you cannot tell me that—

**Dr Watt:** We have just the person for you.

**Senator IAN MACDONALD:** Good.

**Lt Gen. Hurley:** I am just the person to tell you; I cannot confirm it right now. Although I am responsible for cadet policy overall, the cadets are actually run by each of the three services so they will be services based. I do not have a consolidated figure here, but we will see what we can bring together for you fairly quickly.

**Senator IAN MACDONALD:** General, is your understanding that money has been going up and down? The complaint from parents is that they seem to be paying more and more for fairly routine support for the cadets. I would hate for you to tell me that that is not correct.

**Lt Gen. Hurley:** I could not comment. Personally, I have not received any complaints through the head of Cadet, Reserve and Employ Support Division about that. There may be some in the services if they exist, but I have not heard that complaint at all.

**Senator IAN MACDONALD:** Perhaps I will leave it. If you can tell me what money is provided from all sources and perhaps, if it were not too much trouble, if you could go back over, say, three years just to give a bit of an indication of whether it is increasing, decreasing and whether the complaints being made to me are accurate.

Minister, this might be for you—thank you for your answer to my question on notice about parliamentarians visiting cadet units. You have given me a rather fulsome reply that I could inquire further into but I will not except to ask—

**Senator Feeney:** You are going to punish me for being thorough, Senator.

**Senator IAN MACDONALD:** You say for ceremonial invitations from cadet units to parliamentarians, parliamentarians do not need to get the permission of the defence minister or from you. Do the cadet units have to get permission from someone to invite parliamentarians?

**Senator Feeney:** As I recall this issue, you first drew it to my attention at our last estimates because you feared that we had sought to require cadets to seek the permission of the minister, I think, before inviting parliamentarians. I think I have been able to dispel that myth and, insofar as I am aware—and I will correct the record if I am mistaken—cadets, as commonsense would dictate, would have the capacity to invite whomever they see as appropriate to their events.

**Senator IAN MACDONALD:** And they do not need permission from anyone up the chain to do that?

**Senator FEENEY:** No. I guess cadets fall into my area of responsibility and I can certainly categorically assure that no cadet organisation has been required to ask me and I have not asked any cadet organisation to seek permission from me with regard to inviting a politician from any part of Australia from any political party from attending their events.

**Senator IAN MACDONALD:** Thank you for that, Minister. I will emblazon that *Hansard* report and send it to cadet units so that they know that they do not have to seek permission from higher authorities before they invite people. I want to move on very quickly to a range of things. Are preparations going okay for Talisman Sabre?

**CHAIR:** Before we go to that, we are on overview and account matters and we are dealing with minor items arising out of the secretary's and CDF's statements. We are not into a wide-ranging discussion of other matters.

**Senator IAN MACDONALD:** I thought north-west Western Australia might have been—

**CHAIR:** No, we are sticking to the agenda. We are on the secretary's and the CDF's opening statements and matters arising therefrom, not having a wide-ranging discussion.

**Senator IAN MACDONALD:** Thank you, Mr Chairman, and I am pleased my colleague could talk about Learmonth, but I am not quite sure where that came into the statements.

**CHAIR:** I do not know either but this is the ruling now. We are dealing with the secretary's and the CDF's opening statements and I do not recall them making any reference to Operation Talisman Sabre.

**Senator IAN MACDONALD:** If that is your ruling, Mr Chairman, there is not much I can do about it. It seems to be rather discriminately applied.

**CHAIR:** It is applied the same way every session. We are not going to have a discussion; I have made a ruling.

**Senator IAN MACDONALD:** I acknowledge that, but I say it is discriminately applied. I am pleased my colleague could talk about Learmonth but I cannot see where that was in the statements.

**CHAIR:** Do we have further matters arising out of the opening statements?

**Senator KROGER:** CDF, I want to follow up a couple matters on ISAF progress in Afghanistan. As you know, I had the great opportunity to visit there recently. I want to commend those involved in taking us around and giving us an opportunity to see firsthand what is happening on the ground. It was a great opportunity. From that visit there are a couple of things I want to explore. One is about the ISAF medical facility in Kandahar. I understand the withdrawal of the Canadians means that the Canadian medical staff will be withdrawn from that facility. Firstly, can you provide me, if you have it, with an update of who provides medical personnel in that facility. Secondly, what effect will the Canadians withdrawing have on that facility?

**Air Chief Marshal Houston:** I visited the same facility back in April. The facility is manned principally by the United States, with small contributions from other nations. As you probably saw, the core of the organisation is provided by the United States.

**Senator KROGER:** It is the one place we did not visit, hence my asking.

**Air Chief Marshal Houston:** It is a very high quality facility. I was deeply impressed and I thanked them for the support they had given us. You would probably be aware that the people who were involved in the helicopter crash about this time last year were all taken there. It is true to say that without the intervention of the staff there we might have lost more than the three that we did. It is a magnificent facility and magnificent people man it,



principally from the United States at the moment. I did talk to them about where they get their surgical staff from. They seem pretty content with the American support they are getting. I asked questions about whether there would be a need for us to provide—obviously, if we were able to provide, that would be appreciated—but it was not an imperative to them.

**Senator KROGER:** Has a request been made of us seeking support—

**Air Chief Marshal Houston:** No, not at all. Not formally; not at all.

**Senator KROGER:** Is it something we would consider? The view of some on the ground was that, firstly, it is an opportunity for us to make a big contribution and, secondly, it would be of great value in terms of the expertise it would provide us in working in that facility. Has consideration been given to that?

**Air Chief Marshal Houston:** I also spent a lot of time at our own hospital at Tarin Kowt. We have a large number of people within that facility. They provide the primary reception capability when a casualty comes in. It is our people who deal with the casualty in the first instance before the person moves through and is dealt with by primarily people from other nations that are providing the surgical capability. Of course, that tends to be a rotational thing. From time to time we have Singaporeans providing that capability and we have Americans providing it. Thus far, we have not provided that surgical capability. Because we are largely based in Oruzgan with our people coming in the first instance to Tarin Kowt our resources have tended to go in there.

Having said that, I was deeply impressed with that facility at Kandahar. It is clearly state of the art. It has an incredibly good capability. I guess there is the option sometime in the future to provide a surgical team, noting that we use reservists as part of our surgical capability. We do not have an in-house surgical capability. In the future the Surgeon General ADF will probably have a look at that facility and see if it is possible for some of our reservists to go in there as a small team. I will ask General Alexander to elaborate on some of the aspects of our contribution in that area.

**Major Gen. Alexander:** The Kandahar facility has just been rebuilt. It is a role 3 facility. It has greater capability and enhanced facilities compared to what we have in Tarin Kowt, which is a role 2 enhanced facility. The role 2 enhanced Tarin Kowt facility is orientated towards resuscitative surgery, so the aim of that facility is to do life-saving and limb-saving surgery on the casualties. The casualties are then transferred to Kandahar, which is currently a US led facility but other countries provide teams. They may be surgical teams, specialist surgical teams or individuals. That capability is much more enhanced. They have specialist teams, including neurosurgical, head and neck, plastic surgery and burns teams, to ensure that all those specialist areas are covered before casualties are further evacuated, which in Australian, US and Canadian cases is usually back to Landstuhl in Germany. It is a very robust system. There have in the past been relationships where individuals have partnered with the US in Kandahar and with the Dutch in Tarin Kowt. There will be opportunities in the future to do that also. We have been invited to be part of the NATO surgeons meetings that now occur on a regular basis where we discuss opportunities to actually deploy our teams on these particular operations. I think there will be opportunities because one thing the US have indicated is that they are less inclined to have teams coming in and rotating for short durations. They find that the complexity of operations and surgical support into Kandahar is now such that it takes quite a number of weeks if not months—six to eight weeks—for them

to come up to speed so that they really do contribute to the overall effectiveness, so if we are putting in teams or individuals that are only able to stay there for four to eight weeks that is not really value adding as much to their capability as they would like. Certainly at times when they have individual requirements we can fulfil them, but we have indicated to our people that if reservists wish to deploy or have the opportunity to deploy into Kandahar and Tarin Kowt they need to be willing to deploy for longer periods. That is a discussion we are having and further detailing over the next few weeks with NATO and COMEDS.

The other option which has come through government policy is strategic alliances that we currently are developing in Australia. The first one, which is currently in the final stages of having contracts written between Defence and Queensland Health, is to employ a full-time surgical team within Queensland Health, at the Royal Brisbane and Women's Hospital. The funding for that is coming from Defence. We will pay for the team, but part of the contract arrangements with that team will be that they will be available to deploy as a team, for a minimum of three months, to military operations. I anticipate that contract is going to be signed over the next four weeks, then we will go out and recruit a full-time team. We have already had some interest in this from surgeons. The team will be an anaesthetist, an intensivist, an emergency medicine physician, a general surgeon with emphasis on trauma and an orthopaedic surgeon who will come in and work full time for us but inside a major teaching hospital, where they can maintain their trauma skills. The other piece of this puzzle is that we are developing a relationship so our uniformed personnel, our doctors and nurses and medics who are currently working for us full time, can then do training inside that facility under the supervision of our full-time team.

**Senator KROGER:** The intention would be that you would have, presumably, more than one so-called team so that they were rotating.

**Major Gen. Alexander:** Correct. This is the first one and we are looking to expand that around the country.

**Senator KROGER:** What period is the rotation now for the doctors and so on who are in TK at the moment, given that they are reservists? You do not have an unlimited number of them. What are their terms?

**Major Gen. Alexander:** At the moment the doctors in TK are full time general duties doctors within Defence. They are our full-time doctors who on the whole have undergone general practice training and also emergency management of severe trauma training. Right at this time we do not have a surgical team in Tarin Kowt. They are general duties doctors there and they are full-timers; they go in for the same duration as the rest of the Army rotation and all the other services.

**Senator KROGER:** They do an eight-month rotation?

**Major Gen. Alexander:** Correct.

**Air Chief Marshal Houston:** When I visited Kandahar Role 3, we had a young Air Force doctor there, again a permanent person, who had been there for quite a while and was doing a great job as part of the team, which was, as I mentioned, dominated by the Americans.

**Senator KROGER:** How has it been advanced through a Queensland teaching facility? Why there, as opposed to somewhere else?

**Major Gen. Alexander:** We have a centre of gravity in South-East Queensland. We developed, quite a number of years ago, the Centre for Military and Veterans' Health, which is a partnership between the University of Queensland, the University of Adelaide and Charles Darwin University. That brought together a significant military asset that sits within the Royal Brisbane and Women's Hospital campus—because that is where the University of Queensland is. Because we are concentrating a lot of Army elements and Air Force elements into South-East Queensland, the requirements for ongoing training will be quite substantial in that area. That is why it was chosen as the first port.

**Senator KROGER:** In relation to the road project in TK, I understand that approval for that to go ahead was given some time ago. I noticed in the budget that construction and maintenance are provided for, so it is actually in the budget. When is that anticipated to proceed?

**Air Chief Marshal Houston:** There is a road that has been built. This was originally a Dutch project that went from TK to the Chora Valley. You probably saw it while you are there. That is ongoing; in fact, it still has a way to go. Is that the road you are interested in?

**Senator KROGER:** Yes, I am.

**Air Chief Marshal Houston:** If I could take that on notice. Progress has been pretty good, but it still has some way to go. I will give you all the detail when I come back to you.

**Senator KROGER:** It seems to be at a standstill at the moment.

**CHAIR:** Thank you. We will take our evening tea break and then return, and the pecking order will be Senator Ferguson and then Senator Trood and then whoever else puts their hand up. The committee is suspended.

#### **Proceedings suspended from 21:06 to 21.22**

**Senator FERGUSON:** CDF, I want to ask you a couple of questions about your statement of this morning. At the conclusion of your statement you talked about the success and the commission of inquiry implementation and your culture reviews. I will just repeat what you said:

I believe we have made considerable progress in recent years in improving ADF culture, but we cannot afford to lose focus as we seek to constantly improve. The reviews will address a number of areas, including the treatment of women and the use of alcohol.

At various intervals over the last 10 or 14 years that I have been on this committee, there have been a number of inquiries in relation to either sexual harassment or sexual abuse. I think at the conclusion of each of those inquiries there has been a statement saying: 'We believe that some good progress has been made.' You said this morning, 'I believe we have made considerable progress in recent years.' CDF, how can we believe, after the events of the last 10 or 12 years, that the culture is improving?

**Air Chief Marshal Houston:** I guess in terms of a qualitative assessment, I have been around for 10 years and I remember what was running 10 years ago and what is running now, and I think we have come a long, long way. I think there are a number of programs running at the moment, if I might use the Navy for a moment. New Generation Navy is basically gaining traction. I go out and I visit ships, and whilst we have the circumstances that we have reported to you on in terms of *HMAS Success*, I do not see that as the rule. I see that as the exception. In recent times I have visited other ships. Indeed, very recently I was aboard *HMAS Sydney*. I

have also had extensive discussion with the crew from *HMAS Warramunga*. I was deeply impressed with the leadership that I saw on those ships.

Fundamentally, when we look at circumstances such as *Success*, as I indicated to you last time we met, what that represents is a failure of leadership and a misuse of alcohol. If you read the 400 pages, that is the sort of conclusion that any reasonable person would come to. Now, at the same time *Success* was doing a cruise through south-east Asia, *Warramunga* went a short time afterwards and had an incredibly successful visit to the same area and indeed some of the same ports. What was very evident was that they had no incidents. When I met with the crew I talked with them about the need for leadership right down to the lowest level of the ship. I also talked about the use of alcohol. I also talked to the middle level leadership. I talked to the warrant officer of the ship and his chief petty officers, and they were unanimous in their support for New Generation Navy and the sort of messages that I had passed to the crew. Indeed, their performance is an impeccable one. They came second, if you like, in the Duke of Gloucester ratings last year. As I said, they had a very successful trip to China and other places in south-east Asia. Indeed, their engagement with the Chinese was absolutely first class.

I feel very strongly that Navy has come a long way and I would invite you to go out and have a look at the Navy for yourself. The Navy is doing great things with their cultural renewal program. There is a very heavy emphasis on culture, a very heavy emphasis on leadership and a very heavy emphasis on signature behaviours. The current Chief of Navy, I think, has done a magnificent job in that regard. I do not think he has had enough recognition for the great job he has done. That is Navy.

If we have a look at the Army, we have conducted in my time as CDF 58 operations; we have deployed 69,000 people on operations. I would say that our performance, if you take it in its total sense, has been absolutely superb. That is because our people have the right culture. They are highly professional, they are courageous, they work wonderfully together in teams. I am not just talking about Army; I am talking about Navy and Air Force. Do we have 100 per cent perfect behaviour all of the time? No, we do not. But the results are very impressive indeed. And that comes from having the right professional culture. There tends to be a tendency within commentariat to focus on one set of issues and blow them out of proportion from what they actually are. I go back to a couple of other issues where our people have supposedly — well, I will not go there.

**Senator FERGUSON:** CDF, I hope you are not suggesting that in the case of *Success* things have been blown out of all proportion.

**Air Chief Marshal Houston:** No, not at all. Nobody was stronger than me; nobody was stronger than the Chief of Navy. You check the record and you will see that.

**Senator FERGUSON:** I have no qualms, particularly about the Air Force and, to a lesser extent, the Army, but on each of the occasions when there has been a report of a situation within the Navy over the past 10 or 14 years we have been told that this is an isolated incident. In fact, I wonder how long we can continue to be told that it is an isolated incident—and I understand people living in close quarters and all those difficulties—when it would appear to the general public, I think, that an incident keeps cropping up every few years. It generally occurs within Navy—I have got to say that—and I find it hard to believe that the culture has changed while these incidents continue to arise.

**Air Chief Marshal Houston:** In terms of *Success*, I would just refer you to the transcript of the press conference that was conducted by me and Chief of Navy. We were anything but defending what happened there. In fact, we were the first to accept the fact that there were major issues there. In my case, I basically hammered the issue on leadership and hammered the issue on the misuse of alcohol.

We are doing something about it; the Chief of Navy is doing things about it. As a defence force we are doing something about alcohol. We are working with the Australian Drug Foundation, and that has been ongoing for some time, to try to identify why we have misuse of alcohol in the ADF. As I have said, I have had a lot of feedback from people right across our society. They tell me that this is not something that is restricted to the Australian Defence Force.

I know I had differences with Senator Kroger last time we met, but I think that binge drinking is an issue for all Australians, because a lot of our young people are getting terribly hurt in regrettable incidents as a consequence of the misuse of alcohol. It is something that we want to get a grip on at the top end of the Defence Force, but I do not think it is just us who has to do this; I think we have a problem in our society with the way we use alcohol. Binge drinking is something that gets people into trouble.

Fundamentally, if you look at a lot of our statistics—and I know there are some around; I know the Chief of Army has some statistics—misuse of alcohol is a factor in a majority of the misdemeanours that happen over time. I will just leave it there for the time being.

Would you like the Chief of Navy to respond to—

**Senator FERGUSON:** Only if he wants to.

**Vice Adm. Crane:** The only thing I would add to that is that true, deep, strategic change takes time. There is a great temptation to react in short-term measures and to claim victory. We are not about to do that, and our New Generation Navy program is about long-term deep reform and change, particularly in the cultural space, led through the leadership continuum.

As the CDF said, two years into that program we are now beginning to see real change. In fact, I see a great demand from my people for that change to continue. I am very positive—I have seen very good signs—but it is going to take time. I absolutely recognise your concern, and that is why I am very conscious that we have to make sure that we continue with this program over a full period of time and not claim victory too early.

**Senator FERGUSON:** Chief, you might be pleased that I chaired a debate at ADFA a couple of weeks ago on the subject of 'Why should alcohol be banned from the defence forces?' I am pleased to say that the negative side won.

**Senator KROGER:** On that, if we were to take the CDF up on his offer to come and see what is happening firsthand, what would we now see on *Success*? What is the mood like on *Success* at the moment?

**Vice Adm. Crane:** The mood is one that is very positive; it is looking forward. As you might imagine, as a member of a ship's company, when the name of your ship is being carried in the press in the way in which this ship's name has been over the last, realistically, 18 months, it does have an effect. In fact, I am joining *Success* as she enters Sydney on Friday this week. My intent is to join her on Thursday afternoon and spend the night at sea, talking with the ship's company on *Success* and being with them when they arrive in Sydney. Allan

due Toit was with the ship's company in Singapore very recently, and he reports to me that the feeling on board is positive and looking forward. They are feeling the effects of the last 18 months, and I would expect them to. In fact, if they told me they were not, I would not believe them. I would expect some sort of effect, but I am told the feeling is very positive and I am about to find that out for myself.

**Senator KROGER:** On the leadership at various levels, the CDF has said that there is leadership that is required at all levels throughout the chain of command. They have been reporting back. How have they been dealing with the management of that mood on *Success* in the last 12 months?

**Vice Adm. Crane:** As I have been briefed, the senior warrant officer on board, with his senior sailors, as well as the junior and mid-seniority officers on board HMAS *Success*, have stepped up. I understand that somewhere between eight and 10 per cent, maybe fewer, of the people who were in *Success* during the period of this incident are still there. The rest have moved on, so there has been a natural flowthrough of people. I think the ship recognised—like every other one of our ships in the fleet at the moment—that there is a body of work to be done, a job of work to be done, and that is being led, I am pleased to say, by our warrant officers and our senior sailors, and they have really stepped up.

I think that is what you would see and, as the CDF indicated, I would certainly offer the invitation and welcome any of the senators of the committee who wish to come and see for themselves the enormous spirit that is out there and how well our people do. I am very proud of every one of them. Some of the behaviour can sometimes disappoint you but I am very proud of the people.

**Senator KROGER:** That is very encouraging; it is great to hear. In relation to the drug policy that was discussed at the last estimates—I think we discussed the policy that was being developed with the Australian Drug Foundation—where are we at with that? Has that been concluded? Is there a policy?

**Air Chief Marshal Houston:** That work is still ongoing. One of the reviews that the minister has announced, as directed, is the one that we are doing into the use of alcohol and, again, Paul Alexander can elaborate on those aspects.

**Major Gen. Alexander:** From November last year, there was development of an ADF alcohol management strategy. That came about due to senior leadership, CDF and the service chiefs, looking at the issues in relation to alcohol and determining that we needed to actually get a greater understanding of the reason why our individuals undertake risky behaviour in relation to alcohol and to get some sort of clarity around those cultural issues and then to put in place management strategies, obviously, to deal with it. That was commenced in November. It is a 12-month program, so it is through to November this year. At the moment we are at the stage where they are commissioned to do an Evans review, a best practice review. They will look at the literature both within Australia and worldwide in relation to alcohol, particularly focusing on young adult alcohol use and also to see the evidence base in relation to other military systems. They will then hold focus groups, which at the moment is being done throughout Australia. The Australian Drug Foundation, which is doing this work on our behalf, has visited all three service bases—Fleet Base East, Fleet Base West, air force bases, army bases—and really engaged on all levels. That particular process is ongoing as we speak.

As a result of the requirement to do an independent advisory panel review of alcohol, more recently an independent advisory panel on alcohol has been stood up and they have independent terms of reference to also critically look at the issues in relation to alcohol. That is an independent panel reporting directly to the minister. But because we had ongoing work with the Australian Drug Foundation, a large part of the initial contact with that new independent panel was really to determine and to ensure that all of the work that we are currently doing in relation to alcohol management was synergised with this independent advisory panel. The Australian Drug Foundation met very early on with Professor Margaret Hamilton, who heads the independent advisory panel—she is a leading Australian expert in relation to alcohol and other drugs, and has graciously come on board to be our panel chair—to ensure that all information that is currently being gathered is accessible to this independent advisory panel, and I think we are going to get a really good outcome from both bodies of work. The bottom line is to really get to the essence of cultural issues and to get a better understanding of why individuals behave the way they do, which is, in many respects, contrary to the culture of the services, and then to determine how we can best influence those particular behaviours in the longer term.

**Senator FERGUSON:** I am not sure whether I should be directing this question to you, CDF, or to the parliamentary secretary. Some three years ago, prior to your reappointment as CDF, by March no announcement had been made and there was some concern expressed because of the knock-on effect that occurs with promotions within the Defence Force. We are now five weeks or so from your retirement and we still do not have an announcement of your replacement or the other chief's replacement, and I am told quite reliably that the knock-on effect of promotions within the Defence Force could affect up to 80 different families within the CDF. I guess the question is twofold: (1) is my figure of 80 families somewhere near correct and—I guess I should ask the parliamentary secretary this—(2) how soon should we expect an announcement to be made? I think five weeks is the shortest time, in my experience in this parliament, that we have not known who the new CDF will be.

**Air Chief Marshal Houston:** Contrary to some of the reporting in the media, there has been extensive discussions with the minister; they have been very harmonious, very collaborative, very collegiate. The minister is basically being very thorough in his approach to the selection of the new team. I would anticipate, and he has said publicly, that the government will make an announcement in June. That is the position he has taken publicly. In terms of the knock-on effect, it is true that once we have a large change there is a cascading effect that goes down through the organisation. But I might add, that it is not unusual for appointments to go down almost to the wire. When I was appointed the Chief of Air Force, as I recall—and I would have to check precisely—the announcement for me to take over as Chief of Air Force was made in early June and I took over the job on 19 June. I think it was just under three weeks from the time the announcement was made.

**Senator FERGUSON:** I remember it well, because you came down and saw me at Base Edinburgh for the parliamentary exchange program.

**Air Chief Marshal Houston:** I did. You and Senator Ludwig were the first two politicians I engaged with. In fact we had dinner together. It was the start of the parliamentary exchange program, as I recall.

**Senator FERGUSON:** That is correct.

**Air Chief Marshal Houston:** There was a very short period of time and, if you have a look over the past, that has happened from time to time. I think last time around we had a CDF that was continuing in the job. I was extended and then the rest of the team was recommended reasonably early on and, basically, the selections were made fairly quickly so we got an announcement in about March. But that, dare I say it, was the exception rather than the rule. Most often, decisions are made, usually within a month to two months before the actual person takes up the appointment.

**Senator FERGUSON:** I would have thought two months more than one month, and I am pleased the minister will make an announcement in June, because we have only got one day left in May. I am wondering whether the parliamentary secretary might like to make a comment.

**Senator FEENEY:** I do not really have very much to add to that. I am going to disappoint you, Senator, I am not going to announce or reveal—

**Senator FERGUSON:** I am not disappointed; I expected this answer.

**Senator FEENEY:** No, indeed. So I really have nothing to add. The minister will make an announcement in June. He has indicated that publicly and I, like your good self, will await the announcement with anticipation.

**Senator FERGUSON:** CDF, is it true to say that there are up to 80 families who will be affected by any knock-on effect?

**Air Chief Marshal Houston:** Any time we have a large change in the leadership there will be a cascading effect down. I do not know what the number is but a large number of people will have their careers affected by the decisions that are about to be made.

**CHAIR:** Secretary, did you have something to add?

**Dr Watt:** Can I just make a point about Senator Ferguson's comments. I think it is important to stress, as the CDF said, that the minister has been highly consultative in relation to these issues. He has obviously taken advice from the CDF and from the secretary.

**Senator FERGUSON:** He could have done it earlier.

**Dr Watt:** Nevertheless, consultation does take a bit of time, Senator.

**Senator FERGUSON:** He could have started in February.

**Dr Watt:** He has been highly consultative and, as the CDF said, the consultations, certainly insofar as he and I are aware of them, have been harmonious.

**Senator TROOD:** CDF, in your remarks this morning you gave us an encouraging account, as you have done in the past, of the work that the task force is doing in relation to training the Afghan 4th Brigade. I am wondering, in the light of the progress that you have reported, whether or not you have reason to review the time that Australian forces might actually remain in Afghanistan, or are we on the same kind of schedule that you were contemplating last time you spoke to us about this?

**Air Chief Marshal Houston:** Senator, I think that last time I said one to three years was what I anticipated and I think that aligns quite well with the fact that we are on track to finish the job in terms of training the 4th Brigade to take over security of the province by 2014. Now I think you see 2012-2014 as being the window within which we think we will achieve that mission. Have we changed? No, not really. I think we are progressing very, very well, but



there will be occasions when we have the odd disappointment. The 2nd Kandak was assessed by the ISAF team that came in to assess progress in Oruzgan as being one of the best that they had seen in the whole of Afghanistan. But for a shortage of manning in a couple of areas, it would have been rated independent which means that it would have been capable of operating completely autonomously. More and more we are seeing the Afghans able to do the more basic security tasks that they will have to perform when they take over the job. I am very comfortable with how we are doing. There is still a way to go and, while the 2nd Kandak is doing just fine, there are other Kandaks that will need a lot more work. I think that is where we are at.

The brigade headquarters is coming along well. One of the things I saw when I was over in Afghanistan in April was the OCC-P—that is, Operations Coordination Centre-Provincial. I saw a really impressive outcome there compared to the last time I visited it. Fundamentally it is working very well as a consequence of some exceptionally good mentoring by our people. We now have every mission in the province signed off by the governor, the chief of police and the commander of the 4th Brigade. That is progress indeed. Everything that happens in Oruzgan now is authorised by the authorities in the province. If we can build on that sort of progress we are going to get there.

**Senator TROOD:** In light of all that, have you made any plans for the possible withdrawal of Australian forces at this stage?

**Air Chief Marshal Houston:** No, we have not looked at any withdrawal. The minister has made it very clear that there will be no withdrawal, as I mentioned in my address, until after transition. We still have a way to go until we get to that point. As we get further downstream, there will still be other requirements within Afghanistan for defence forces such as ours. One of the things that we will do more of in the future is institutional training. We have a very good reputation for institutional training as a consequence of the work we have done with the Afghanistan National Army Artillery Training School and the training centre in Kabul. I visited the training centre and the artillery school while I was over there in late April. I was very impressed with what I saw. Indeed, Lieutenant General Caldwell, who runs the NATO training mission in Afghanistan, said that the work we were doing at the artillery school was the model for institutional training in Afghanistan. That was very pleasing. He said that to me before I went to the school and when I went to the school I could see exactly what he was getting at. It was very impressive to see young Australian diggers getting out there and training the Afghans in how to run artillery.

**Senator TROOD:** What, if any, impact will a withdrawal of American forces have on Australian deployments there if the United States government's decides to proceed with its plans to withdraw forces around the middle of the year?

**Air Chief Marshal Houston:** I discussed this with the American commanders in theatre and I also discussed it while I was in Washington a couple of weeks ago. There will be a withdrawal midyear to meet the President's undertaking that he made back in December 2009. The extent that drawdown is yet to be defined—essentially, we will wait and see what the force level staff—but I had an assurance from all of the commanders in theatre that it would not affect what we are doing in Oruzgan. Simply put, the American enablers that support us in Oruzgan would continue into the future and beyond the adjustment that the President has undertaken to perform in the middle of the year.

**Senator TROOD:** Does that undertaking go to the fact that the United States will not be withdrawing any forces from Oruzgan?

**Air Chief Marshal Houston:** No, I did not get into any detail, but my understanding is that it is unlikely that any of the forces that will be drawn down will come out of Oruzgan.

**Senator TROOD:** In the budget papers there is a figure of \$111.7 million over two years in relation to additional costs for transitional leadership from the Netherlands in Oruzgan province for 2010-11. I am just not clear whether that \$111.7 million is an additional amount to the amount that was foreshadowed in the additional budget papers earlier in the year, which was \$108 million.

**Air Chief Marshal Houston:** I will leave the CFO to address how it relates to that. But what I can tell you is that the transition required us to take over some facilities that had been owned and operated by the Dutch—for example, some of the hardened accommodation was taken over by us, and there were other items that were required to be taken over. We took them over. In terms of the accounting, I would defer to the chief financial officer.

**Senator TROOD:** He has gone to get some more statistics, has he? That is fine. While he is doing that, I also asked a question on notice—and this is one question to which I did receive, eventually, an answer, Parliamentary Secretary, and I am still waiting for the answer to my question earlier in the day. I hope you are on to that.

**Senator Feeney:** Indeed.

**Senator TROOD:** I think your answer is W54, which is about troop numbers in Afghanistan. I ask about the 1,550, CDF, and you have responded that it is an average. Can you tell me what the highest number has been that contributed to that average?

**Air Chief Marshal Houston:** The highest number that contributes to that average?

**Senator TROOD:** Yes.

**Air Chief Marshal Houston:** Let me just tell you how it works. The numbers vary day by day for a number of reasons. The number of people in Afghanistan on a daily basis varies with leave periods and visitors who go in. We have all sorts of variations along the way. I cannot tell you precisely what the maximum number we have had at any given time would be. I am prepared to take it on notice. Perhaps I should also provide you with a little more information to give you some idea of how we run this. What I like about this current system is that it gives us flexibility that is impossible to achieve when a cap is struck. A cap is really detrimental to running a flexible operation. Some of our allies are working very strictly to caps and it is very difficult for them when adjustments have to be made for operational reasons.

**Senator TROOD:** My understanding is that the budget measures show \$111.7 million over 2010-11 in relation to the transition from the leadership in Oruzgan. I thought there was a figure of \$108 million in the additional budget measures earlier in the year. Are they cumulative figures? Is the \$111 million subsuming the \$108 million?

**Mr Prior:** I just want to be clear where you are getting the \$111 million from. I know where you are getting the \$108 million from. I can see that in the additional estimates documentation.

**Senator TROOD:** I do not have a reference to the page, unfortunately.

**Mr Prior:** In the additional estimates the new measures announced were \$108.5 million, as you said. Any announcements in terms of measures in subsequent documents, like our portfolio budget statement, would be a different measure to the previous one. That way there is clarity. Each new measure is separately identified. There is a table produced in each budget update. That table talks about the net additional costs of operations for each operation. It is cumulative. Each time we produce that table it is the most recent cumulative total for each operation.

**Dr Watt:** Is your number from the yellow book or from the budget documents proper?

**Senator TROOD:** Unfortunately, I do not have the reference. I have a page here with the figure on it. I can track that down. Mr Prior, can you point me to that table?

**Mr Prior:** It is in the additional estimates. On page 20 table 13 will show you the \$108.5 million. Page 21 of that document has a description of what that \$108.5 million is for. As you say, it is about the changing role and transition from the Dutch.

**Dr Watt:** Because the estimate will evolve over the year, a few million dollars would be expected rather than unexpected.

**Senator TROOD:** That is fine.

**Senator LUDLAM:** I would like to traverse a couple of different areas. I will start with a simple one. A defence task force did an investigation into the release of WikiLeaks Afghanistan related documents from 25 July to 26 October 2010 and found that the leaked materials did not clearly have a significant adverse impact on Australia's national interest or security. Is Defence still examining the documents relating to the Iraq War? I think there were about 400,000 documents dropped subsequent to that study. Is there an ongoing investigation into that or has it concluded?

**Air Chief Marshal Houston:** I do not know anything about us looking at documents that relate to the Iraq War—if I could take that on notice and come back to you.

**Senator LUDLAM:** If you could.

**Mr Jennings:** I can answer that. Yes, there was an investigation into the Iraq documents that were put up on the WikiLeaks site and, as you say, there were some 470,000 of them from memory. That investigation was conducted at the end of last year and completed during the course of the caretaker period, as a matter of fact. Essentially, what we did for the purpose of that investigation was to search on a range of terms against the 470,000 documents which identified for us all of the documentation which related to Australia, the ADF presence in Iraq or related items. On the basis of that, we concluded that there were no operational implications which arose from the material which related to the Australian involvement in Iraq. In effect, we closed off on that investigation last year.

**Senator LUDLAM:** It sounds quite similar to your findings—and I have got a press release here from 26 October 2010 where you were making very similar conclusions from your analysis of the Afghanistan documents. What was the nature of the warning that you got or the cooperation you got from the United States government; and were you given assistance of any kind of advance warning that that material was about to be made public?

**Mr Jennings:** I would need to take on notice the question of advance warning. I do not have a memory of anything significant from the US government in relation to that. What we

did know, because it had been public for some months before it actually went up onto the WikiLeaks site, was that WikiLeaks had expressed an intent to release this material, so there was a widespread expectation of that material coming online and we were certainly prepared for it in advance of its release.

In terms of the assistance we received from the US during the course of the investigation, we were assisted inasmuch as the US provided us with a more easily searchable database of the material that was leaked. I do not know if you actually saw the material as it was presented on the WikiLeaks site but it was, in effect, impossible to search on their site in large order terms the 470,000 documents, but we were able to access a database that was more searchable and that was what we essentially used for our investigations.

**Senator LUDLAM:** Thank you for that. Is Defence still participating in the WikiLeaks task force—it was called a virtual task force last week? Have you got any formal role in that?

**Mr Jennings:** Yes, we do.

**CHAIR:** Just hold on there, Mr Jennings, we have applied a policy very rigorously of sticking to matters arising out of opening statements. There was nothing in the opening statements by either CDF or the secretary relating to WikiLeaks. There is an appropriate place to raise WikiLeaks but it is not at 10 o'clock at night when we are on opening statements.

**Senator LUDLAM:** It is only 10:00 o'clock at night because I have been waiting around all day.

**CHAIR:** That is right: everyone has been waiting, but we are on opening statements, not roving all over the place.

**Senator LUDLAM:** Was Afghanistan mentioned in the opening statement?

**CHAIR:** Afghanistan, yes,

**Senator LUDLAM:** I thought it might be; I will move on. ASPI have conducted a number of public opinion polls on what Australians think about the Australian force commitment to Afghanistan. I realise that you do not conduct any part of your operations there on the basis of opinion polls but I am wondering, first of all, whether you analyse them at all; whether it has any bearing at all, for example, in when you are helping personnel reintegrate after a tour in that country?

**Air Chief Marshal Houston:** We are aware of the surveys and we obviously take a look at them but, in terms of using them to work on our people who come back from Afghanistan, no, we do not do anything like that. We get them and have a look at them.

**Mr Jennings:** And take note of them. We look at that information but I do not really think it has a bearing on policy proposals that we might put to government.

**Senator LUDLAM:** And specifically on the question of when people come home?

**Mr Jennings:** I do not believe so.

**Senator LUDLAM:** I want to go to the way that our aid budget is spent in Afghanistan. I will put some of these questions to AusAID but I am specifically interested in the way the ADF is obviously very intimately involved in the disbursement of aid funds in the area where Australia is operating. A piece by Brendan Nicholson in the *Australian* on 25 May outlined that \$252 million was spent on Afghan aid projects over the last four years in Afghanistan and, of that, about \$215 million was spent on the net additional cost of ADF personnel,

support and associated costs. What I am trying to do is untangle exactly which part of the aid budget is directly disbursed by the ADF. Is it even possible to untangle whether those figures are correct or not?

**Mr Jennings:** The ADF does not disburse aid. It certainly does not disburse any aid which would be accounted in the AusAID budget. That is not a function which the ADF undertakes in Afghanistan.

**Senator LUDLAM:** Okay, so you would dispute the figure. The point of that article—and I realise that you do not have it in front of you—was that about \$215 million was being spent more or less directly by the ADF and not necessarily by aid organisations in the traditional sense.

**Mr Jennings:** The only thing I can think of which might conceivably be a part of that presentation is the contribution Defence makes to the Afghan Army Trust Fund, a fund designed to provide additional capability in the training of the Afghan National Army. But there is no aid funding disbursed through the services of the Australian Defence Force.

**Dr Watt:** My memory of the article has, I am afraid, faded. The Australian government has foreshadowed a contribution over five years to the Afghan National Army Trust Fund of US\$200 million. That number is not all that far from Mr Nicholson's number. He may be referring to that; I am not sure. Equally, the ADF and the Australian government spend money in Afghanistan on facilities, for example. I am not sure whether that is what Mr Nicholson has in mind. We would be happy to take the question on notice and see if we can get you an answer. But, as Mr Jennings said, we are not usually involved in the disbursement of aid expenditure, though that does not rule out some peripheral involvement by us. The other thing is that the expenditure we disburse does not usually fall under the definition of aid.

**Senator LUDLAM:** No. That is what I thought.

**Mr Jennings:** We would be happy to take it on notice and see if we can sort it out.

**Senator LUDLAM:** I would appreciate that. And you are right: that figure of US\$200 million does sound like it is going to land pretty close to the figure of \$215 million cited in the article.

**Mr Jennings:** It could be. It depends on the exchange rate that we operated at. We are happy to look at it.

**Senator LUDLAM:** Can you update us on what, if any, risk assessment is undertaken prior to reconstruction project implementation by Australian government agencies operating in Afghanistan, particularly projects initiated and implemented by the Australian Mentoring Task Force, formerly known as the Provincial Reconstruction Task Force?

**Lt Gen. Hurley:** At the present time the mentoring task force is not undertaking any reconstruction or development. That is primarily handled by the provincial reconstruction team at the moment. In precise detail, are you asking whether we do any formal risk assessment in terms of impact on community or about the risk of the threat to our people undertaking the job? I am not quite sure what aspect of risk you are talking about.

**Senator LUDLAM:** For example, to ensure that civilian populations are protected against reprisal or attack, so I guess I am looking for an overarching risk assessment, yes—threats to Australians but in the broader context.

**Lt Gen. Hurley:** In terms of the way they are operating at present, any projects are done in deep consultation with the local community leadership and personnel in the region and so forth to ensure that we have buy-in from the local community, they understand what is required and we are listening to what they need to be done. So, in that sense, it is about making sure that whatever work we do can be done within a community that is receptive of the activity that is being considered and appropriate protection can be provided for personnel doing the work. There are a series of those things happening up and down from the road construction to activities in the Chora Valley and throughout the region. I think people go to great lengths to ensure that what we are doing is community supported, which is one of the best risk mitigations we can have.

**Senator LUDLAM:** The example I have is a 2009 study by CARE, the Afghan Ministry of Education and the World Bank entitled *Knowledge on fire: attacks on education in Afghanistan*. It demonstrated that schools that were conducted by military provincial reconstruction teams were more vulnerable to attack than other schools. Are you aware of that piece of work or the phenomenon that it documents?

**Lt Gen. Hurley:** Not personally, no.

**Senator LUDLAM:** That is one example that I have to hand of what risk management or risk assessment might contribute to the decision to fund and build one project or another.

**Lt Gen. Hurley:** I cannot comment on it other than to say there are thousands and thousands of children in Afghanistan at school now who were not at school before 2009. It may be so that they become more of a target, but it is not preventing the Afghan people from turning up to the schools.

**Senator LUDLAM:** But they are more likely to be attacked when they get there.

**Lt Gen. Hurley:** That is someone else's assessment; I cannot comment on that. I do not know the basis for it and I have not seen their statistics.

**Senator LUDLAM:** I commend that report to you then. Recognising that you obviously have not read it—

**Lt Gen. Hurley:** Would you give me the title again.

**Senator LUDLAM:** It is called *Knowledge on fire: attacks on education in Afghanistan*. It is a study from 2009 by CARE, the Afghan Ministry of Education and the World Bank. It is two years old now.

**Lt Gen. Hurley:** Thank you.

**Senator LUDLAM:** Can you clarify whether funds from the US Central Commander's Emergency Response Program to Oruzgan Province are allocated and in fact spent in the province? Is that program familiar to you?

**Lt Gen. Hurley:** We will have to take that on notice. I do not have any detail here.

**Senator LUDLAM:** If you could. While you are taking that on notice I am interested to know whether those funds are made available to Australian Defence Force personnel or to anybody that we have in Oruzgan.

**Dr Watt:** Is this a US program?

**Senator LUDLAM:** It is, called the US Central Commander's Emergency Response Program—CERP. I put a couple of questions before to DMO on oil use in Defence and they were a bit unwilling to help out, so I am hoping you can. We had quite an extensive discussion in 2009 about Defence fuel consumption and what that does to your budget bottom line. You indicated at the time that Defence used about 450 million litres of various categories of fuel per year, which is about one per cent of the nation's total fuel usage and amounts to about 1.6 million tonnes of CO<sub>2</sub> just in Australia. You were not willing to estimate what our overseas emissions were. I wonder if you can update the committee on Defence's fuel use, both in terms of the dollar bottom line and the number of litres, with similar figures that you provided a couple of years ago.

**Dr Watt:** I will ask our CFO if he can help you.

**Senator LUDLAM:** He probably thought he was done for the day, but here is a tricky one.

**Dr Watt:** A good CFO's work is never done.

**Mr Prior:** Unfortunately, I do not have the litrage at hand with me tonight. In terms of the dollars, I do not have the exact number in front of me at the moment either. From recollection, it is in the order of \$400 million to \$500 million a year that we spend in total. I would have to get the precise figures for you.

**Senator LUDLAM:** If you could.

**Dr Watt:** We are happy to come back to you with any updated numbers that are available. That might help.

**Senator LUDLAM:** Thank you. I would appreciate that. Last time I think there was some unwillingness to go into too much detail in case that exposed some secret business about the kind of fuel that we used, but you did give us a broad breakdown of category of fuel. And I would appreciate it if you could give us the cost. Also, I assume CO<sub>2</sub> emissions are going on notice for the morning.

**Dr Watt:** We will look at that.

**Senator LUDLAM:** I am interested to know whether there is any kind of fuel efficiency drive or whether this issue hits home at all, with the fact that world oil prices are on the rise.

**CHAIR:** No, Senator, not on opening statements.

**Senator LUDLAM:** Is fuel use not an appropriate subject for budget estimates?

**CHAIR:** It might be, but not on opening statements. Opening statements are those statements addressed to the committee by the CDF and the secretary. My memory is there was no reference to fuel usage.

**Senator LUDLAM:** I encourage the CDF to make some reference to fuel usage in his next opening statement. Chair, I wonder whether this is an appropriate time to also ask the questions on cluster munitions I sought to ask earlier in the day.

**CHAIR:** Cluster munitions is expressly identified in program 3.1.

**Senator LUDLAM:** I cannot wait. I will come back to those tomorrow.

**CHAIR:** We will come to it tomorrow. The secretary's office will advise your office when we get close to 3.1. I know you do have an interest, Senator.

**Dr Watt:** I think the truth is that I will not have any idea when we are close to 3.1. We do tend to move around a bit.

**CHAIR:** We do, but we try to stick to the agenda. Senator Macdonald, do you have questions?

**Senator IAN MACDONALD:** Dr Watt, you mentioned in your statement the *Largs Bay* and developing a compelling business case and you talked about the ship's arrival in Australia. Were the tenders ever made public by the United Kingdom government when Australia was announced as the successful tenderer?

**Dr Watt:** Not that I am aware.

**Senator IAN MACDONALD:** You have no knowledge of what—

**Dr Watt:** I am not aware they were made public.

**Senator IAN MACDONALD:** Do you know who the other countries bidding were?

**Dr Watt:** We have the usual market rumours—let's put it that way—of who the other countries were. Whether we have definitive answers on every case, I am not entirely sure. We have the usual rumours. We have Mr King here. I am sure he will know all the usual rumours.

**Senator IAN MACDONALD:** You have been very helpful tonight, Mr King.

**Mr King:** I am glad to be of help. I heard you mention *Largs Bay* but not the detail of the question.

**Senator IAN MACDONALD:** I was wondering if at the time that Australia's successful bid was announced it was indicated what the other bids were.

**Mr King:** No, the UK have not disclosed what the other bids were.

**Senator IAN MACDONALD:** Are you officially aware, apart from newspaper reports, of who the other bidders were?

**Mr King:** Not officially, we have informal advice about who bid, but the UK has not announced the formal bids or what both bids constituted.

**Senator IAN MACDONALD:** Do you know if we won the tender purely on a financial basis or whether there was a bit of a feeling that the RAN is really an offshoot of the RN historically, we are good fellows and—

**CHAIR:** Senator!

**Senator Feeney:** You just started a lot of arguments there, Senator!

**Dr Watt:** It is really impossible for us, as we are not part of the tender evaluation panel, to have a strong sense of how the bids were finally decided. Clearly, the UK tender documents said it would take more into account than just price. That was never clear—

**Senator Feeney:** I think you could reasonably say that being a Commonwealth country and an ally of the United Kingdom did not disadvantage us in the bid.

**Dr Watt:** On the other hand, we suspect that a number of the other bidders, though perhaps not Commonwealth countries, would have been able to make similar claims to have some advantage for the UK selling them a very attractive asset. We assume that it was not just price. We have always assumed that you had to be competitive to be in the hunt, no matter



how strong your other advantages were because, after all, the UK was selling it in order to raise money.

**Senator IAN MACDONALD:** I was really asking was it told to you officially or were you just told, 'Congratulations fellows, you have won the contract.'

**Dr Watt:** It was neither officially nor unofficially, it is fair to say.

**Mr King:** We were simply advised that ours was the successful tender. Naturally as a nation that was very keen to acquire this asset, we used all avenues including the offer to secure the ship. We have not been informed, officially or unofficially, the reasons for that selection.

**Senator IAN MACDONALD:** Is that figure of \$100 million public?

**Dr Watt:** Yes, it is.

**Senator IAN MACDONALD:** Are you able to tell the committee how you arrived at that figure?

**Mr King:** I can disclose that in broad detail. As I mentioned earlier, I have a business background so I quite enjoyed the idea of being in the other camp again—that is, searching to win a tender. We did a competitor analysis of the countries most likely to bid. I personally attended the bidders conference and made notes about the figure, which other countries attending the conference and the types of questions they asked. We called in two independent agencies of ours.

The UK declared the book value of the ship. We also had the numbers on what the ship cost to construct originally. We did an evaluation of the other likely competitive countries. We had a flexible offer that allowed a base price. This was done in conjunction with an independent company called Teekay—an international company that regularly deals in shipping—to strike a minimum value we thought we could acquire the ship at and which represented extraordinarily good value for an acquisition. In fact, we acquired the ship at that price.

**Senator IAN MACDONALD:** You have not heard anyone authoritative say that you paid too much for it?

**Mr King:** No.

**Dr Watt:** Nor have we heard anyone say we paid too little for it.

**Mr King:** Such a statement would be ill-founded. You are in a marketplace to acquire an asset. The price we put on the table was less than half of its book value and a third of its build value.

**Senator IAN MACDONALD:** I appreciate that. Who else attended the bidding conference?

**Mr King:** Brazil, Chile and India all attended the bidding conference. Canada did not attend the bid conference but launched a very large team of 22 people to visit the ship and to develop a proposal to bid for the ship. But we do not know ultimately—

**Senator IAN MACDONALD:** You do not know if they did make a bid?

**Mr King:** On that basis we understand, but not from the UK, that they probably did not make a bid.

**Senator IAN MACDONALD:** They did not?

**Mr King:** In the end.

**Senator IAN MACDONALD:** But they looked at it.

**Mr King:** One of the great advantages we had was the support that the department had from the government to do all the approval processes that were necessary to be able to make a formal bid in what was a very short period of time between the bidders conference and the receipt of bids.

**Senator IAN MACDONALD:** Thank you for that. I am not sure I can take that aspect further. Dr Watt, you said in your statement that you expect the ship to arrive in Australia by the end of 2011?

**Mr King:** All the planning is to make that happen. The basis of our bid was to acquire the ship in what we called 'hot condition'. The ship was still an operational ship when we made the bid for it and it was under certification of Lloyds. Part of the reason that we made the offer that we did and the time lines that we put on it was in order not to have it power down and come out of certification. That has been achieved. The ship has now been moved to the refitting entity in Falmouth in the UK, and the Lloyds recertification—it is a five-year cycle of recertification, which was about to expire—has commenced without a breach of the certification. So we now enter into a period of recertification and some known refit work that had to be done because it was at the end of the five-year cycle. That planning is proceeding on schedule. The aim is to put it into the Navy's hands in order for the crew to become familiar with its operation and to take it through operational sea training in the UK, where of course they are very familiar with the ship class and how it should be used, and to bring it to Australia in December this year.

**Senator IAN MACDONALD:** You said it was an operational ship. What refitting is necessary?

**Mr King:** There is a planned program for these ships: every year some work, and every five years a major piece of work. They also discovered, which was declared to us as part of the bidding conference, that there were a number of modifications that they had learned from the four ships of the class that they highly recommended be undertaken. One of those in particular is relevant to our operation, and that is operations in warm water and warm climates. These are routine works that are identified in a ship class life, fully declared to us.

**Senator IAN MACDONALD:** Obviously we are paying for the refit.

**Mr King:** Yes, we are.

**Senator IAN MACDONALD:** What is the estimate of the cost of refitting?

**Mr King:** We are still negotiating with the UK on those costs.

**Senator IAN MACDONALD:** With the refitters?

**Mr King:** No. The approach we have taken is that this ship class is operated at a new benchmark of efficiency by the UK and they are very, very happy with the arrangements and the costs of refitting and operating these ships. The important thing to note about these ships is that they are not being disposed of because they are not a good ship; they are being disposed of as an economic measure.

**Senator IAN MACDONALD:** Because the UK government needs the money.

**Mr King:** Yes, and they are incredibly happy with the way the ships are cycled through. What we are negotiating—and we were literally doing it last week; we have nearly signed that final package of work—is to have the UK element that disposes of Royal Navy ships, the DSA, operate as our agent to contract that work under the conditions that they have pre-established with their commercial entity, which is a company called A&P, and to get the best commercial outcome we can. That is currently under negotiations. I can say at present that is better than the budget we had allowed for.

**Senator IAN MACDONALD:** That was my next question: what is the budget?

**Mr King:** Since the negotiations are still going on between the DSA and the commercial shipyard I would prefer not to disclose the number.

**Senator IAN MACDONALD:** Have we paid the \$100 million yet?

**Mr King:** Our offer was in three instalments. The first instalment was on signing the letter of intent. That has been paid.

**Senator IAN MACDONALD:** How much was that?

**Mr King:** It was one-third of £65 million, which converts approximately to \$100 million; in fact, we have made a little bit on currency exchange since then. What we did as part of the condition of our offer, drawing on the experience of buying the original amphibious ships, was that we got an independent agency to do an initial survey of the ship to determine that it was in good material state. But as a condition of our offer we required a sea trial to be conducted between acceptance of our offer and before we made the second payment in order to confirm that the material state that this company, on our behalf, had observed alongside was also demonstrated at sea. So, for example, we wanted to see that the engines operated properly and that it could do a speed trial. All the claims that had been made in the offer at the bidders conference were established, and that sea trial was conducted in the middle of April. That sea trial was most successful and did confirm the stage, so we have made a second payment. The third payment will be made shortly, which is—

**Senator IAN MACDONALD:** Is that another third?

**Mr King:** Another third. The final, third payment of the ship acquisition will be made on the signing of the detailed contract of sale. We had the UK DSA team out here last week, and our team was led by Mr Harry Dunstall, the commercial manager in DMO. I was informed on Friday that we have all but finalised that final signature. The package of work we are adding to that is the package of work best undertaken in the UK to keep the ship in class, and key modifications for which the UK have the design and the materiel and which are best undertaken in the UK.

**Senator IAN MACDONALD:** And you are getting the UK government agencies to act as your agent to negotiate that contract with a UK firm.

**Mr King:** Correct, because they have this company that does all ships of the class under a very effective and efficient contract. The UK, acting as a friend, is negotiating that final package of work with that commercial company at the moment, at our request.

**Senator IAN MACDONALD:** When do you expect that you will know the final damage?

**Mr King:** I would think within a matter of weeks.

**Senator IAN MACDONALD:** Perhaps on notice, noting when the answers to questions come in, you might let the committee know once it is no longer commercially sensitive.

**Mr King:** Sure.

**Senator IAN MACDONALD:** But let me just get you to discount—

**Dr Watt:** Excuse me, Senator. If we wait till these things are no longer commercially sensitive, that might take us some time; you appreciate that.

**Senator IAN MACDONALD:** I would have assumed that once you had made the deal on the price—

**Dr Watt:** Once we have made a deal on the price, fine; then it may no longer be commercially sensitive. But, if we do not make a clean deal on the price, we could be here for a while; that is the only thing. As long as you are aware of that—

**Senator IAN MACDONALD:** I am not understanding you, Dr Watt.

**Dr Watt:** Let me be explicit: if everything goes quickly, we will get you an answer in quick time. If, for some reason, we are not able to close the deal as quickly as we currently think then the answer may be a long time in coming, depending on what happens.

**Senator IAN MACDONALD:** But you expect the ship here.

**Dr Watt:** That is correct, but we have a much shorter deadline than the ship's arrival to answer each question. That is the only point I am making. I am conscious of the deadline.

**Senator IAN MACDONALD:** Without putting too fine a point on it, the deadline on questions from the last estimates would give you plenty of time—or not the deadline but the actuality of answering the questions.

**Dr Watt:** Without putting too fine a point on it, Senator, you would like us to do better and we are trying.

**Senator IAN MACDONALD:** That is another argument. When was the last estimates? It was in February. We are now in June. You have three months, I would think from your past record, to answer questions, and I would hope that the deal for the repairs or refitting would be done within three months.

**Dr Watt:** So would we, but again we are trying to beat our past record.

**Senator IAN MACDONALD:** On the questions or on the refitting?

**Dr Watt:** On the questions.

**Senator IAN MACDONALD:** Okay. Anyhow, if you have answered the questions and by that time the deal has not been done then that is fine, but perhaps I could ask this: when the deal is done, no matter what time, could you write to this committee and tell us what it is.

**Dr Watt:** We would be happy to do that.

**Senator IAN MACDONALD:** Okay. Just to allay any misunderstandings, the cost of refitting would be nowhere near the purchase price of the ship?

**Dr Watt:** Correct.

**Senator IAN MACDONALD:** Were the sea trials you spoke about conducted by the existing RFA crew or by an Australian crew?

**Mr King:** It is currently an RFA asset, of course, so they operated the ship—they have liability for the ship. We also had a range of naval people on there, including the new commanding officer designated for the ship. We also had a Defence Force trials team and we were also assisted by a commercial trials team from Teekay.

**Senator IAN MACDONALD:** Who is actually going to sail the ship out here? Who is going to man it?

**Mr King:** The Royal Australian Navy.

**Senator IAN MACDONALD:** A complete RAN crew?

**Mr King:** It will be, assisted by specialists from the RFA.

**Senator IAN MACDONALD:** Where are we getting the crew for the ship? Will they be off the *Kanimbla* and *Manoora* and those sorts of—

**Mr King:** I would have to defer to the Chief of Navy for that.

**Senator IAN MACDONALD:** Yes, of course.

**Vice Adm. Crane:** Predominantly, the crew will come from HMAS *Manoora*, which was decommissioned last Friday. Essentially, most of the crew will come from *Manoora*, and they will start to head over in the very near future. Indeed, some are already there.

**Senator IAN MACDONALD:** Just for my understanding, what is the size of the crew of the *Manoora* as against the crew of the *Largs Bay*, in numbers?

**Vice Adm. Crane:** *Largs Bay* final numbers are still being looked at, as we get further information on the operation of the ship. But, in the broad, there are about 120, so it is about half the size.

**Senator IAN MACDONALD:** Sorry?

**Vice Adm. Crane:** About half the size—half the ship company's element in *Largs Bay* as opposed to *Manoora*.

**Senator IAN MACDONALD:** So *Manoora* was twice the size.

**Vice Adm. Crane:** Yes, broadly.

**Senator IAN MACDONALD:** What of the RFA? What numbers did they have to run the ship?

**Vice Adm. Crane:** Senator, it depends on how you view the ship's company. We are operating the vessel slightly differently. The RFA crew is a core crew; they simply steam the ship from A to B and then bring on other elements, either marines or Navy, to operate well docks and those sorts of things. We will probably take a different approach and include them within the ship's company. So I think the RFA number was in the order of 60.

**Mr King:** The RFA crew—this is the crew that drive the ship, as the Chief of Navy says—number 65, nominally, and then they have what they call the augmentee crew, which are the Navy or marine specialists, and that is 65, but that is nominal. So their total what we would call our Navy crew is about 130.

**Senator IAN MACDONALD:** Okay. So, Admiral Crane, you do not have any problems in manning that ship?

**Vice Adm. Crane:** No, not in the short term. As you would be well aware, we are in the process of developing an amphibious capability transition plan which will see us through from now to the delivery of the second LHD. There will be some transition challenges for manpower in the future; but in the short term, in terms of manning up the ex-RFA *Largs Bay*, no, I do not have any difficulty.

**Senator IAN MACDONALD:** Can I be helpful and give you a tip that some of the current *Largs Bay* crew would be happy to work for you, Admiral Crane! I mention that just in passing.

**Vice Adm. Crane:** I might add that some of the current crew with *Largs Bay* will remain with *Largs Bay* for some time as part of the training package for our people. So, when we bring the ship out to Australia, some of the specialists will remain on board as advisers to our people in a training capacity.

**Senator IAN MACDONALD:** There are a couple of Australians actually on it.

**Vice Adm. Crane:** Yes.

**Senator IAN MACDONALD:** Are the personnel who will remain on board part of the purchase price?

**Mr King:** The funding for them is not part of the purchase price but is being negotiated in this additional package for the acquisition of the ship and the capability.

**Senator IAN MACDONALD:** Okay. If you could separate that when you provide the answer on the crew. When the *Largs Bay* arrives, where is it going to be based?

**Vice Adm. Crane:** Senator, it will be based at Fleet Base East in Garden Island in Sydney.

**Senator IAN MACDONALD:** It is a transport ship; how is it envisaged that it will be used? What is it going to be used for?

**Vice Adm. Crane:** It is what is known as a landing ship dock auxiliary, and its primary function is to augment the front-end amphibious capability, so you would move your upfront amphibious capability first and then this is the sort of ship that would bring on follow-on support, be it logistic support, additional equipment, that type of thing. That is the primary role of this particular ship. In our case, as Mr King has indicated, we do not intend any changes to this *Largs Bay* as it comes out, we will simply make the modifications that we need to and keep it within certification. Its role when it gets out here will predominantly be in humanitarian assistance, disaster relief or low threat types of operations. That is the plan.

**Senator IAN MACDONALD:** Those activities would be using ADF personnel, from whatever service.

**Vice Adm. Crane:** That is correct, yes.

**Senator IAN MACDONALD:** What are the advantages of basing it at Garden Island as opposed to anywhere else?

**Vice Adm. Crane:** Fleet Base East in Garden Island represents the support centre for our Royal Australian Navy fleet on the east coast. It is centrally located, has the industry support, the training support and the housing support. It also has the exercise areas off the coast where we regularly exercise and it is ideally placed for working up ships to operational capability. I might add that the LHDs, when they arrive, will also be home ported at Fleet Base East in Garden Island, in Sydney.

**Senator IAN MACDONALD:** Will there need to be any work done at Garden Island for these vessels? Where will the AWDs be based, just by the way?

**Vice Adm. Crane:** They will be based at Fleet Base East, in Sydney, as well.

**Senator IAN MACDONALD:** Is there any need for onshore facilities to be upgraded?

**Vice Adm. Crane:** For all three?

**Senator IAN MACDONALD:** *Largs Bay*, I guess, we are talking about now.

**Vice Adm. Crane:** Not at this stage for *Largs Bay*, for what we envisage for *Largs Bay*. Our approach was to keep any changes to an absolute minimum. We do not foresee any changes to Fleet Base East in Garden Island for *Largs Bay*. In relation to the LHDs and the air warfare destroyers there will be significant changes, which are already programmed.

**Senator IAN MACDONALD:** I am reading from a newspaper report—of course, the ultimate source for people in opposition—in the *Daily Telegraph* of 6 April. It says:

Costs for the overhaul of the ageing facility—

Talking about the bases—

have not been finalised or cleared by parliament, the spokeswoman said.

You are confirming that is the case.

**Vice Adm. Crane:** I am not familiar with that particular article. I suspect that was referring to—

**Senator IAN MACDONALD:** It is talking about the LHDs.

**Dr Watt:** We might have someone who can help you.

**Senator IAN MACDONALD:** Okay.

**Mr Lewis:** I am not sure I can. What was the article?

**Senator IAN MACDONALD:** It was 6 April in the *Daily Telegraph*. I will just quote a little bit of it:

Defence is planning to provide new and upgraded wharfside facilities to support berthing and sustainment for three new Hobart class air warfare destroyers and two new Canberra class Landing Helicopter Dock Ships,' a defence spokeswoman confirmed. 'As part of its vital operational support ...

It then went on to say:

Costs for the overhaul of the ageing facility have not been finalised or cleared by parliament, the spokeswoman said.

**Mr Lewis:** I think that advice is right: if it is the Garden Island redevelopment project, that is still being worked through inside Defence. We have not gone yet to the minister or to the cabinet, let alone PWC.

**Senator IAN MACDONALD:** So you are saying that it is not needed for *Largs Bay*?

**Mr Lewis:** No, but it will be for the AWDs and LHDs.

**Senator IAN MACDONALD:** And you expect the first of those to come on stream next year, is it?

**Vice Adm. Crane:** No, the first of the LHDs is due at the end of 2013.

**Senator IAN MACDONALD:** And the AWDs, if we ever get them built?

**Vice Adm. Crane:** It is now 2015.

**Senator IAN MACDONALD:** So the money for the upgrade of the facilities is not in the forward estimates? Can it be identified in any of any costings of the ADF?

**Mr Lewis:** It is not yet part of the approved program, but we are working on it right now. We are doing a lot of work in relation to the design—what needs to be done at Garden Island to facilitate the AWDs in the LHDs. That will come forward for consideration by government. I cannot give you a precise time on that.

**Senator IAN MACDONALD:** Vice Admiral Crane, did you just say to me that work had already started on upgrading Garden Island?

**Vice Adm. Crane:** No.

**Senator IAN MACDONALD:** Don't let me put words in your mouth. Did anyone say that? When is the work likely to commence on Garden Island?

**Senator Feeney:** I think the evidence just given is that that material is being prepared and government has not yet made any decisions.

**Senator IAN MACDONALD:** I appreciate that minister. What I am saying is that you have dates for these ships to arrive. How long before they arrive will you need to have the upgrade work completed?

**Mr Lewis:** It will be consistent with that schedule. I just do not have the details with me. I can certainly get that overnight and have it for you tomorrow.

**Senator IAN MACDONALD:** I did not catch your beginning.

**Mr Lewis:** It will be consistent with the schedule for the delivery of the ships, but I do not have a precise time lines as to our schedule for getting through government and then through the PWC.

**Senator IAN MACDONALD:** I see. Has Defence done any sort of study on whether Garden Island and Sydney Harbour is the appropriate place for the fleet?

**Mr Lewis:** There is a broader study called the state consolidation review, which is presently underway. Part of that, of course, would be issues to do with Garden Island.

**Senator IAN MACDONALD:** I guess the answer to my question is: no, no study has yet been done as to whether Garden Island is the right place to base these new ships?

**Vice Adm. Crane:** As you might imagine, over many, many years there have been many studies done at many different levels of the department on the ongoing feasibility of Fleet Base East in its generic form. I know that on a number of occasions we have looked at whether it should be elsewhere. To my knowledge, none of those studies have been able to identify a more efficient or effective outcome than Garden Island in Sydney.

In relation to the LHDs and the air warfare destroyers, there was some work done on ahead of, I think, second pass, to look at what our basic options would be, because we needed to think about the effect on the infrastructure before making a decision. Once again, it was determined that, because of, in particular, the amphibious capability and the fact that our predominant customer, the Army, was on the east coast, we needed to be on the east coast



with the LHDs. The air warfare destroyers were primarily to replace our frigates—our FFGs—which are also predominantly based in the east. That was the decision that we took.

**Senator IAN MACDONALD:** Is it essential for all of the Navy ships—well, all their big ships—to be based in the same port, from a tactical point of view or naval administration point of view?

**Vice Adm. Crane:** We took the decision some time ago to become a two ocean based fleet when we went to Western Australia. That was on the basis of the strategic need to have a presence in the west on the Indian Ocean. That two ocean basing policy has been very useful to us. The bottom line, however, is that we are restricted in where we can put our infrastructure support. Support for the fleet exists predominantly at Fleet Base East in Sydney and Fleet Base West, south of Fremantle, opposite Rockingham. To spread that too thinly costs a lot more money and, I would argue, starts to become inefficient.

**Senator IAN MACDONALD:** You mentioned a little bit earlier, I think in this context, that there were certain advantages in Sydney. Housing was one—

**Vice Adm. Crane:** There is also training support and good exercise areas with the ranges we need for the sorts of activity that we conduct as part of work-up activity for our fleet.

**Senator Feeney:** Before we finish tonight I want to get back to Senator Trood concerning his opening question today about questions on notice.

**CHAIR:** We will get that before we wrap up.

**Senator IAN MACDONALD:** I will leave it there, Admiral Crane. I have a few more questions along this line which we can perhaps do tomorrow.

**Dr Watt:** Mr Lewis has got some answers for Senator Ludlum that might be read into the record.

**Mr Lewis:** I have some answers on Senator Ludlum's questions on energy usage. As a matter of interest, Defence reports its electricity, gas and liquid fuels usage annually to the *National Greenhouse and Energy Report*. Taking the specific question that Senator Ludlum raised in relation to liquid fuel usage: in 2007-08 the usage was 12.0 million gigajoules, in 2008-09 it was 9.8 million gigajoules and in 2009-10 it was 11.9 million gigajoules. There is also information on electricity and natural gas usage if the senator is interested.

**Senator Feeney:** Senator Trood, going back to your question on the treatment of questions on notice: as indicated earlier, many of the questions received by Defence from this committee were complex in nature and consisting of various sub-questions. On that basis, the overall number of questions calculated by the department was 317 rather than the headline number of 75. The department provided departmental draft answers for the minister's consideration of these 317 questions on notice to the minister's office between 6 April and 26 May 2011. Because of the complex national security issues to which many of those questions pertained, a number of questions were properly the subject of discussion between ministers, their advisers and the department. Notwithstanding that, the ministerial team and the department will work together to ensure a more timely response to questions on notice in future.

**Senator TROOD:** How many were provided on 6 April?

**Senator Feeney:** Forgive me, Senator, but I do not have any more detail than what I have just provided.

**Senator TROOD:** You can take that on notice for me.

**Senator Feeney:** Very good, Senator; so be it.

**Committee adjourned at 22:59**