



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Governance of public resources (Auditor-General's Reports 11, 31, 39 (2019-20)
and 2 and 9 (2020-21))**

(Public)

WEDNESDAY, 14 APRIL 2021

CANBERRA

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HOUSE OF REPRESENTATIVES

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Wednesday, 14 April 2021

Members in attendance: Senators O'Sullivan, Patrick and Ms Bell, Dr Gillespie, Mr Hill, Ms Payne, Mrs Wicks.

Terms of Reference for the Inquiry:

To inquire into and report on:

Any matters contained and associated with the following Auditor-General's Reports:

- No. 11 (2019-20) Implementation of the Digital Continuity 2020 Policy
- No. 31 (2019-20) Management of Defence Housing Australia
- No. 39 (2019-20) Implementation of the Commonwealth Scientific and Industrial Research Organisation (CSIRO) Property Investment Strategy
- No. 2 (2020-21) Procurement of Strategic Water Entitlements
- No. 9 (2020-21) Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport

On 11 November 2020 having considered recently tabled Auditor-Generals Reports the Joint Committee of Public Accounts and Audit resolved to conduct an inquiry into the above Auditor-General's Reports.

Under section 8(1) of the legislation establishing the JCPAA, the Public Accounts and Audit Committee Act 1951, one of the duties of the Committee is to 'examine all reports of the Auditor-General (including reports of the results of performance audits) that are tabled in each House of the Parliament' and 'report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament'.

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HEHIR, Mr Grant, Auditor-General, Australian National Audit Office [by video link]

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JACKSON, Mr Barry, Managing Director, Defence Housing Australia

JORDAN, Mr Ross, General Manager, Governance, Defence Housing Australia

MELLOR, Ms Rona, Deputy Auditor-General, Australian National Audit Office

Committee met at 09:01

CHAIR (Mrs Wicks): I now declare open this public hearing of the Joint Committee of Public Accounts and Audit for its enquiry into governance in the stewardship of public resources. I would like to thank all witnesses for being here today. Firstly, management of Defence Housing Australia. With reference to audit report No. 31, *Management of Defence Housing Australia*, I now call representatives of the Audit Office, Department of Defence, Defence Housing Australia and the Department of Finance.

I advise that these hearings are formal proceedings of the parliament. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the parliament. Evidence given today will be recorded by Hansard and attracts parliamentary privilege. Would any representatives like to make an opening statement before we move to questions from the committee? ANAO?

Ms Mellor: The ANAO has provided an opening statement. I'm happy to have it tabled.

CHAIR: Department of Defence?

Mr Grzeskowiak: We have no opening statement.

CHAIR: Defence Housing Australia?

Mr Jackson: We have no opening statement.

CHAIR: Department of Finance?

Ms Hall: No opening statement from Finance.

CHAIR: We will kick off with some questions. For my understanding, DHA was established in 1987-88—is that correct?

Mr Jackson: That is correct.

CHAIR: I was interested in the question about whether DHA has been effective in improving ADF member retention, and the benchmarking around that. I invite any comment in response to the observation.

Mr Grzeskowiak: It's a great question. If you go back through the history of DHA over the 33 or so years, one of the reasons for it being created originally was because, at that time, Defence was responsible for investing in housing for Defence members and managed that itself. If you look back at the quality of some of the properties that we put people in at that time, it was, by any standard, appalling. In fact, we'd reached a point where the housing quality for members with dependants was actually an incentive for people to leave the Australian Defence Force. It was working as a disincentive for people to stay. If you read through the records of the creation of DHA, that comes through very strongly.

Over the 30-odd years of DHA's existence we've seen a remarkable improvement in the quality of housing that we make available to our ADF members with dependants. We track through surveys, particularly things like exit surveys—we call it the YourSay survey—what people are thinking about why they might stay or why they might leave the ADF. We know through those surveys that the quality of housing, the location of housing and the configuration and size of properties we provide for people makes a difference in people's lives—I'm talking ADF people, of course.

We require a mobile ADF workforce. Many people in the ADF would be posted on a two-year cycle—not everybody, of course. We post about one-third of the ADF every year, and many of those moves require geographic moves. The ability to know that, at the place you're moving to, particularly if you have a family, there'll be a good quality property available is a significant incentive for people to stay with us through what is really quite a difficult process. Anyone who has moved house knows it's traumatic. If we're making some people in particular do that every two or three years over a long period, we need to provide good quality not just housing but also services that wrap around that whole removal process which DHA manage for us.

We've grappled with this issue of 'is there a metric you can track that inexplicably links or definitely links the quality of a house that might be provided and the service through DHA with a quantifiable retention metric?' I don't actually think there is, but if someone has an idea we're happy to look at it. We're scratching our heads looking at that at the moment. At the moment, we've been using survey data; people's expressed views. The CDF in October 2019 wrote an open letter to the whole Australian Defence Force which was in the broad about seeking opinions on allowances and conditions of service in general, in part to inform a project that's running in Defence at the moment around what we call the offer modernisation, but looking at bringing the terms and conditions of employment up to date. A strong number of responses—and there were a lot of responses across the Australian Defence Force—were about housing and in relation to housing. Obviously there were a whole range of views expressed in those responses, but what it tells you is that housing is definitely a key factor in people's lives, and therefore it's a key factor in retention if we get it right.

CHAIR: You made some really interesting observations, particularly around an assessment around housing quality. You then indicated, if I'm correct in hearing you, that a lot of work has gone into improving the quality over the last 30-odd years.

Do you agree with or do you have a comment in relation to page 8 of the audit report, which noted:

... no work has been done to assess the effect of DHA's services on ADF member retention, which was a major reason for creating DHA.

I ask that in light of your answer around the surveys you have been doing and the question around whether there is a mechanism that you can quantify or qualify around this. I'm just wondering what your response is to the ANAO's note there?

Mr Grzeskowiak: I think in the report the statement is completely valid because it's talking about quantifiable metrics. My view is that that's quite hard. We've done a lot of work over the years in terms of understanding the effect of the whole employment offer that we offer to the Australian Defence Force and adjusting it over time to account for a range of pressures in the Australian economy at large that might encourage people to stay or leave.

Housing is part of that mix. We look at it, as I said, through the various survey data and we're exploring, as part of one of the recommendations from the ANAO report, at the moment what other metrics we can use between ourselves and DHA. We're looking at this and, if we can discover a metric that would link definitely an investment in housing or an adjustment of the housing policy to a definitive retention, we'd be very happy to use that, but what we know from surveys—particularly exit surveys—of our ADF members is that there is always a range of factors that influence an individual's propensity to stay or leave the Australian Defence Force. Housing would be in there as one of those factors, but there is a whole range of factors that affect people's decisions.

CHAIR: To the ANAO and perhaps to the Auditor-General: I'm wondering if you'd like to make any further observations of that statement that was made in the audit report. From what has just been said. I understand that it is hard to be able to measure the effect on member retention. What is your view on that? Is there a pre-existing way to measure this that might be looked at?

Mr Hehir: I might hand to Tom Ioannou to answer in detail, but I think the point that we're making with regard to performance indicator isn't necessarily about having something that can quantifiably measure the impact but about having a framework that can house the key reason for the organisation to be established to be identified and reported on to parliament in particular to provide some assurance that what the entity's established for or the key reason for it is actually being achieved. But maybe one of my colleagues would like to add something in a bit more detail about what private things we're talking about.

CHAIR: Before they do, I will clarify something. Are you saying that [inaudible] is around the importance of frameworks for specific KPIs which would be developed as a result of those frameworks?

Mr Hehir: I think my comment was more about key performance indicators not, by their nature, all being quantitative. It's about providing an assessment and indicator framework which provides information to management and to the parliament about the success of the program. The framework that exists for public sector

reporting is one which emphasises the importance of the qualitative as well as quantitative evidence and how that's reported on to parliament to give them assurance about performance of entities.

Dr Ioannou: We did a very conventional thing here. We observed that a major reason for creating the authority was to address low ADF member retention rates. We took the view that that had been a consistently expressed objective and we had a look at what had been done to help provide assurance that the entity's activities were actually contributing to that important reason for its creation. Basically, we invited the authority to help us understand what, if any, work had been done, and the audit findings are in the report and simply state that DHA and Defence could not provide any metrics or data that indicate the effect of housing adequacy on member retention or separation. That was an audit task. We didn't go on to do a consultancy on what should happen next. I think both the department and the authority understand their business well enough to try to think those issues through themselves.

Ms Mellor: We did make a recommendation for the department and the agency to agree key performance indicators that relate to and support the measurement of performance against all the objectives of the service agreement. Where the Auditor-General is going is that that's got to be in a framework of the outcome and purpose of the organisation. It completely accepts the evidence of my colleague from the Department of Defence. It's not easy, but the parliament has, through the objects of the act, asked for this organisation to be created with this purpose and so what we're looking for is whether there is some way in the performance reporting to address that purpose and give assurance to the parliament this this issue that the parliament has asked the agency to do is factored in. I think that in the submission from the agency there is indication that people are working together to try to bust that open.

CHAIR: Thank you. To a representative from the Department of Defence: is there any further comment? With reference to the submission that you did make, when will the work around providing some more detailed insight into retention impacts of ADF housing be completed? How will it be reported on?

Mr Grzeskowiak: We're working very well with DHA on all of the recommendations from the audit. We accepted all of the recommendations. It's been a very helpful audit for us in terms of stimulating our thinking. I think around the middle of the year is when we're aiming to have a new services agreement in place. We're working at the moment on how that will look in terms of KPIs and, as the auditor suggested, the framework around how we consider the service provided by DHA. That goes particularly to retention. So there should be some progress by the middle of the year. We already do have KPIs. In our existing services agreement there are eight KPIs, one of which is split into six component parts, but they tend to track the deliverables that we'd expect from DHA: the number of properties available, that they're available on the day they're supposed to be available et cetera. They don't go to the 'so what', as highlighted in the audit—whether that affects retention. That's the bit that will be the most difficult to grapple with.

I think in the end we'll be looking more at qualitative assessment through surveys that we do. We might look at adjusting one of the surveys that's done in a regular way within Defence to ask a more explicit question. That's what we are thinking about and looking at at the moment.

CHAIR: I'm conscious of time and I'd like to [inaudible]. This is a final question to Defence and perhaps DHA. I know you indicated a 30-year journey around housing quality, but I'm just wondering if the observations made around qualitative and quantitative assessment of the alignment of service to member retention the Auditor-General's Report is the first time that work has gone into this. But I'm just wondering: is this the first time that work has gone into the observations made in the Auditor-General's Report around qualitative and quantitative assessment of the alignment with service-to-member retention, or is this part of a continuing program of looking to enhance objectives? The query I have behind that is whether—I'm assuming that this would have been looked at before now—it has been looked at before now. Are there any other observations or comments you would like to make?

Mr Grzeskowiak: I can't recall this specific issue being raised in an audit before; that's not to say it hasn't been. I've been involved in working with DHA for about the last 12 years, initially in a personnel policy capacity within Defence and now as the service deliverer within Defence through a contract services agreement process. In 2007 we created a thing that was then called the New Housing Classification Policy, which took a decade to roll out. That was about adjusting the quality, if you like, of the offer that DHA provide through their houses that they provide to the ADF. One of the key focuses at that time was about ensuring that what we provided was contemporary and modern and therefore would serve to keep people attracted to staying in the Australian Defence Force when they're in a period of their life with partners and often with children and we're still moving them from place to place every two or three years. So I can assure you that within Defence it's always one of those parts of the conversation: how does the housing offer contribute to the overall employment offer package, which is all

about retention? There's a little bit of attraction in there as well, but fundamentally people don't join the Australian Defence Force looking up at the pay scales and allowances; they join because they want to do something exciting and interesting and worthwhile for their country. But once people have been in a while then the whole offer that we put in place, including housing, is all about retention—keeping people in the ADF for as long as we can, because obviously the cost of retraining people, particularly highly skilled people, is high. Therefore we want to try and extend lengths of service as much as we can.

Mr Jackson: To add further to Mr Grzeskowiak's comments, we do have a KPI with Defence on member satisfaction with accommodation quality, cleanliness, readiness and the general service around that. They are surveys that are done quarterly and rolled up to an annual KPI. Certainly DHA has always consistently exceeded those minimum standards. So I think that also goes to the point of view where, perhaps 30 years ago, it was a significant problem. We actually have removed that problem from a retention or recruitment perspective, and people are satisfied with the houses that they are getting.

Ms Mellor: We have done a performance audit in Defence Housing in the past. This isn't the first one in 30 years. The ANAO tabled an audit report in 2003 about Defence Housing. In terms of your specific question about the observations in the current report compared to the previous report, the previous report was much more focused on the service delivery side—some of the aspects that both DHA and Defence representatives have just spoken about—and also board appointments and the governance. So, yes, some time ago that was tabled—in 2003.

CHAIR: Thank you. I appreciate that very much. Questions from the Deputy Chair?

Mr HILL: Thanks very much, Chair. That's a good place to start. I'll just set the context for my questions around governance. I'll read a handful of sentences from the audit report, which is not glowing:

... DHA has not established whether it has been effective in improving ADF member retention or benchmarked the efficiency of its main function—

as we've just discussed—

The DHA Board has not addressed specific enterprise-level risks in a timely manner.

... ..

The assurance provided to the accountable authority regarding value for money in purchasing arrangements more generally would be enhanced by improved management of financial delegations and powers of attorney.

... ..

Compliance checking ... indicates multiple instances of non-compliance with procurement policy ...

Furthermore, DHA has:

... established measures for assessing its operating efficiency ...

There's a theme here:

The DHA Board has not established effective governance arrangements to support the provision of housing and housing-related services to ADF members and their families.

There's then a whole lot of detail. Concerningly:

... with one exception, there is no evidence that key policies were endorsed by or issued with the authority of the Board.

I'd put that as a question with a broad context. In light of the Audit Office's performance audit about the management of DHA—and we've heard the seriousness of the functions that it discharges in terms of the impact on morale, retention and conditions for our ADF personnel—there have been serious concerns raised about DHA's governance and the performance of the board. I'd like to talk for a moment about the skills and experience of the board members. With regard to the composition of the board, can you tell me what the capability matrix is for board directors? I don't mean the selection criteria in the act; I mean the capability matrix, which you didn't answer to Senate estimates.

Mr Jordan: That's probably one for me. As a starting point there are some competencies or skills listed in the act, especially for our commercial members. Four of the nine members of the DHA board are commercial members, and those skills are things like property, financial skills—

Mr HILL: Which are the four commercial members? I presume the printout I did from your website this morning is correct?

Mr Jordan: I hope so. I can list those four commercial members for you. The current commercial members of the DHA board are Mr Robert Fisher, Ms Andrea Galloway, Mr Ewen Jones and Ms Gai Brodtmann.

Mr HILL: Are these the correct members: Sandy Macdonald—

Mr Jordan: Yes, Mr Macdonald is the chair. I can run through the current membership, if you'd like.

Mr HILL: Barry Jackson?

Mr Jordan: Yes.

Mr HILL: Leigh Wilton?

Mr Jordan: Yes

Mr HILL: Simon Lewis?

Mr Jordan: Yes.

Mr HILL: Kate Louis?

Mr Jordan: Yes.

Mr HILL: Robert Fisher?

Mr Jordan: Yes

Mr HILL: He was a member of Tony Abbott's Commission of Audit, wasn't he?

Mr Jordan: He was.

Mr HILL: What a surprise. Andrea Galloway?

Mr Jordan: Yes.

Mr HILL: Ewen Jones?

Mr Jordan: Yes.

Mr HILL: He was appointed, what, five or six months after he lost his seat in Queensland for the Liberal Party?

CHAIR: Order, Deputy Chair. I'll take that as a comment.

Mr HILL: No, it's a question, actually, Chair.

Mr Jordan: Yes, I think that is correct.

Mr HILL: How did that come about?

Mr Jordan: There was an appointments process where the responsible minister for DHA—which is usually the defence minister but at the moment is the Minister for Defence Personnel—will through an instrument of appointment appoint a board member when a vacancy becomes available.

Mr HILL: I get the procedure. How did they just select Ewen Jones as the most qualified person to sit on the DHA board?

Mr Jordan: I don't know that.

Mr HILL: Anyone? Who signs the paperwork? Does it come through you, Department of Defence?

Mr Grzeskowiak: When board appointments become available, the Department of Finance and the Department of Defence would look to see if there are candidates that they were aware of. I understand the Department of Finance—

Mr HILL: Failed Liberal politicians?

Mr Grzeskowiak: have lists of people who might be suitable. We would put in a view—

Mr HILL: So was Mr Ewen Jones on this list of suitable people that you or the Department of Finance came up with?

Mr Grzeskowiak: I don't know the answer to that question.

Mr HILL: Can you take that on notice? Perhaps it came from the minister.

Mr Grzeskowiak: I couldn't answer that question. I can take it on notice and have a look.

Mr HILL: Sure. That would be good. What are Mr Jones's qualifications?

Mr Jordan: I can probably have a stab at that, Deputy Chair.

Mr HILL: Sure.

Mr Jordan: He's obviously a former member of parliament, and he has—

Mr HILL: I think we established that bit.

Mr Jordan: experience in auctioneering.

Mr HILL: But what are his actual qualifications, not his experience? I'm curious, because every other member of your board at least has some kind of qualification. Most of them seem to have the company directors. If they don't—

Mr Jackson: Ewen has done the Company Directors Course.

Mr HILL: When did he do that?

Mr Jackson: Soon after joining the board.

Mr HILL: Did the board pay for it?

Mr Jackson: I believe DHA paid for it.

Mr HILL: That is a nice lurk, isn't it? You're not qualified, and then the board pays to get you up to speed.

CHAIR: Order, Deputy Chair.

Mr HILL: There's no order issue.

Mr Jackson: I think that's part of ongoing education and support to board members, which the AICD fully supports.

Mr HILL: Did he have any qualifications when he was appointed—

Mr Jordan: I'd have to check that.

Mr HILL: apart from losing his seat?

Mr Jordan: I don't know off the top of my head.

Mr HILL: It says he's an auctioneer and he runs a car dealership, so those are his qualifications. Anything else?

Mr Jordan: As I said, I do not know his formal qualifications beyond what's already been stated.

Mr HILL: How many board members are there now?

Mr Jordan: We have nine.

Mr HILL: Another former Liberal senator, Alan Ferguson, was on the board. When did he retire?

Mr Jordan: His term on our board finished in February 2021.

Mr HILL: So a couple of months ago?

Mr Jordan: Yes.

Mr HILL: When was Gai Brodtmann appointed?

Mr Jordan: Ms Brodtmann was appointed to fill the vacancy created by the departure of Mr Ferguson.

Mr HILL: So in the period of the audit, putting Ms Brodtmann aside, we have the chair, a former National Party senator; we have Alan Ferguson, a former Liberal Party senator; and we have Mr Ewen Jones, the car dealer and auctioneer, who was a failed Liberal Party member. That would be one-third of the board of DHA who were former Liberal or National politicians, with the little bonus that one of Abbott's commission of audit was thrown on like a cherry on top. Is that correct?

Mr Jackson: We can confirm that they are members of the board. As to the context you have put around it, we can make no comment.

Mr HILL: Sure. So a third of the board through the period relevant to the audit were former Liberal or National politicians, with a member of the commission of audit thrown on top. It's sounding a bit like Australia Post and ASIC—another 'jobs for the mates'—

CHAIR: Deputy Chair, that's a comment.

Mr HILL: I think it's a point that needs to be made.

CHAIR: Questions are fine, but commentary around it—

Mr HILL: It's a point that has been established, given the serious concerns running through this audit about governance capability and the experience of the board. We got a bunch of former Liberal or National politicians who have been done in yet again by an audit report. They haven't been bullied by the Prime Minister, at least yet. I suppose that's a good thing.

CHAIR: Deputy Chair, I just ask you for the sake of the committee to please withdraw the comment about the Prime Minister and just focus on questions.

Mr HILL: I think Christine Holgate said enough, so I'm happy to withdraw. I'd refer you to her comments. Could you provide the remuneration details for these board members?

Mr Jordan: Certainly. The board members are remunerated in accordance with the relevant job determination from the Remuneration Tribunal. From memory, I think the rate for the chair is about \$140,000 per annum, and members are \$57,000 or so, if they are eligible for remuneration.

Mr HILL: It's a nice little lurk for people like Alan Ferguson with his parliamentary pension—a little bit on top. Well, that's good. Could you confirm those numbers. The audit found, as I said, that with one exception there was no evidence key policies were endorsed or issued with the authority of the board. There was a response to the question on notice provided to the Senate committee; I note that the board agreed with this finding. The response explained in detail that the accountable authority instructions were developed and approved by the board at its meeting of 18 June 2020 following the audit. So it's good to hear that you found the audit useful. The AAIs are written instruments issued by the board as the accountable authority under the act, establishing the systems of controls and the framework for officials to comply with finance law, and they act as the overarching framework by which all DHA policies then approved by the managing director are set. I note that the joint submission states:

The AAIs are designed to assist the DHA Board meet its duties under the PGPA Act ... proper use ... of public resources, ... risk-based controls—

and all that material. Do the AAIs represent an appropriate delegation or devolving of responsibility from the board to management? It just seems peculiar that they've said, 'Our accordance with those policies is to let the managing director settle all the requirements.' Is that an appropriate delegation?

Mr Jordan: I think what the AAIs do is provide a framework on key areas of decision-making and policy, and then, from there, certain delegations can flow. For example, under the AAIs sits section 65 of the DHA Act, which relates to financial delegations that the managing director issues to the staff.

Mr HILL: Let me just understand. So the board says, 'We delegate, under section 65, the financial delegation powers to the managing director,' and the managing director then decides the rest. Is that correct?

Mr Jordan: The AAIs are an overarching framework and there is, under that, section 65 of the DHA Act.

Mr HILL: Who determines the financial thresholds of expenditure at different levels of the organisation, to take that example?

Mr Jordan: Under section 65, financial delegations, it's the managing director—within certain parameters.

Mr Jackson: To add to that, in effect, the board, as the accountable authority, does establish the policies, which are dictated through the accountable instructions. Those, as Mr Jordan has said, do include delegations. The board does set parameters about what level of expenditure needs to come back to the board. And, equally, there are some—

Mr HILL: But not where else in the organisation it sits, necessarily?

Mr Jackson: Sorry, I don't understand the question.

Mr HILL: There is a threshold over which things come back to the board, for example?

Mr Jackson: Correct.

Mr HILL: But, below that, it's up to the managing director?

Mr Jackson: That's correct. In effect, the act basically says the managing director is responsible for the operation of the business.

Mr HILL: True, although I've been mayor of a council, and we set delegations right through the levels. In every government department—I think the four or five that I've worked in—the minster signs off the delegations that set, quite specifically, where delegations sit within the authority. This is relatively peculiar.

Mr Jackson: We have very, very detailed delegations that sit right through the organisation about—

Mr HILL: Does the board have a line of sight to those? I'm trying to understand what the board does, because it seems a very peculiar set of delegations where they say, 'Here, managing director, you do everything.'

Mr Jordan: The board is the accountable authority, and the board is ultimately responsible, in accordance with their duties under the PGPA Act.

Mr HILL: Except they just had a damning report and no-one—I suppose one Liberal senator quit; maybe that's an improvement. Is this an abrogation of the board's responsibilities? Are you confident that it's consistent with their director's duties? Have you sought advice on that?

Ms Hall: Perhaps I can assist here. It's quite usual in the governance of organisations within the public sector, and certainly for GBEs such as DHA, for the board to establish systems of internal control, as is their responsibility as the accountable authority; to establish delegations for the managing director; and also establish the frameworks around the operation of the organisation, which includes what they require line of sight on and

what they would like to approve. Then they will delegate the residual matters—everything else they want to delegate to the managing director, in this case, or the CEO in the case of other corporate entities—and then that individual will establish the delegations below them within the organisation under the broader authorities provided by the board through the accountable authority instructions, and that's quite usual practice.

Mr HILL: Is there any line of sight you would expect the board to have back to what the managing director has done with those delegations?

Ms Hall: That would ordinarily occur through regular financial and other reporting back to the board, governance and consideration—

Mr HILL: It's a concerning aspect of the audit report that you've had a board for years stacked with Liberal Party mates, a point that I've made, where there was no evidence of approval of the board actually doing its job. There are multiple governance failures that the Auditor-General has outlined, and for years the board just didn't seem to do its job. The response to that is, 'We'll sign some stuff to cover ourselves so the managing director does our job for us.'

Ms Hall: The board has put in place—

Mr HILL: Have you sought advice that the delegations, the instruments you've now put in place, do meet the directors' obligations?

Mr Jordan: In the creation of financial delegations and, indeed, the AAIs before them, legal advice was sought along the way to ensure that the delegations were (1) fit for purpose and (2) legally appropriate.

Mr HILL: That's good to hear, because, at a first pass, it does look like the board is washing its hands of its governance responsibilities and delegating most of it to management. I take your point, Ms Hall, that it does depend somewhat on the line of sight that the board has—I'm rephrasing your words—whether the regular reporting is occurring. Has that regular reporting occurred to the board?

Mr Jackson: Yes, it has. I took over as managing director in May 2019, and since that time there has been significant work done with the board, assisted by the ANAO audit, on issues around accountable instructions and around the board audit and risk committee, enhancing the role that they play. Certainly my reporting through to the various committees, such as audit and risk, and the board is fulsome and transparent, to ensure that the board is fully aware of how I am running the business. Equally, where there may have been transgressions—and I'm pleased to say there are very, very limited and very minor transgressions—to delegations that do occur from time to time, they are openly and fully reported through to the board. We have implemented as part of that process very rigorous approval processes for expenditure around acquisitions, around the nature of the work we do, so I'm very comfortable. I can't speculate about what may have occurred before my time, but I'm very comfortable now that the operation between me and the board members and the various committees is fully meeting expectations.

Mr HILL: It sounds like they are very lucky to have you to help do their own job. Has any review been undertaken by the Department of Defence or the Department of Finance about the capability of this board, which so clearly failed in its responsibilities, stacked with Liberal Party mates? Did you actually go in and say, 'This is concerning; we'd better have a look at the capability of the board here,' given you're the shareholder departments? How do you assess whether the board has failed?

Ms Hall: If I can just provide a bit of background, the act provides some fairly detailed requirements in relation to the composition of the board and the capabilities of the membership. Section 12 of the act—

Mr HILL: That's the selection criteria which I referred to. It was answered in Senate estimates. I was curious as to whether there was a capability matrix, which I think Mr Jordan referred to.

Mr Jackson: Also we've recently—as we are required to—done a biannual review of the board. An external firm was brought in, called Directors Australia. They came in and did a review. As part of that, they have provided an updated skills matrix that they believe that the board should have. That report has been considered and accepted by the board. The board—I don't know if this has happened; Mr Jordan can help me—are then required to write to our shareholder ministers with a full copy of that board assessment.

Mr HILL: When did that happen?

Mr Jordan: That was conducted late last year, early this year. It was comprehensive. The chair of the board is about to sign off on that and send it to our shareholder ministers.

Mr HILL: That's a proper process, and that's good to hear. So the board commissioned that good self-evaluation practice. Have they assessed themselves as individuals against that new capability matrix?

Mr Jordan: During the conduct of the board review, the reviewer met, either in person or by telephone, with each director, and there was an assessment. I wasn't privy to those, for obvious reasons.

Mr HILL: So that assessment has been made. Can we receive a copy of that assessment?

Mr Jackson: We'd have to take that on notice, because, as Mr Jordan, I think, was about to say, the individual directors provided it to Directors Australia on an individual basis.

Mr HILL: They're paid by the taxpayer, and Directors Australia were paid by the taxpayer, and it's a multibillion-dollar entity, so—

Mr Jackson: I understand that. I just have to check, because they were de-identified as the reports that were put forward. We just have to make sure that we're not breaching anything there.

Mr HILL: I respect that. If we could receive a copy of that, that would be good. Sorry; you were saying you write to shareholder ministers?

Mr Jordan: Indeed, and include a copy of the board review. That hasn't happened yet. We're waiting for the chair to actually sign off on a letter when he's next in Canberra, but that is imminent.

Mr HILL: Do auctioneer and motor vehicle sales skills feature in the capability matrix?

Mr Jackson: Commercial acumen certainly does.

Mr HILL: I was just checking. At what point when you receive an audit report saying the board is failing in its responsibilities does the minister or the department say, 'This is a problem; we'd better have a look at that'? It just seems astounding that we've gone through this series of failures, the board is now assessing itself, and I'm not hearing anyone from the department. Has the minister asked any questions? Has the minister asked for or received a briefing?

Ms Hall: The finance minister was briefed by the department in relation to the audit report. The minister receives regular briefings from the department, as DHA witnesses have attested to, on an annual basis.

Mr HILL: Sure, but I'm talking about the capability of the board. Has the department provided any advice on the capability of the board to the minister or has the minister requested any such advice?

Ms Hall: If I could, I will finish my response. The department advises the minister on an annual basis when it receives the annual board self-assessment in relation to overall capability and performance and also in respect of upcoming vacancies. As Mr Jordan has advised the committee, when vacancies are imminent the chairs of all entities will write to the responsible ministers with their recommendations in relation to the filling of those vacancies. The department will also provide advice, including drawing from executive search processes that we refresh on an annual basis in relation to all GBE boards, and the ministers may themselves identify candidates. In respect of DHA, as I alluded to before, there are requirements in the act for the commercial members of the board of DHA to have certain qualifications, including, as Mr Jackson referred to, commercial experience, business management. Mr De Re could you run through—

Mr HILL: That's fine. I've seen it in Senate estimates.

Ms Hall: Every board member has at least one of those skill sets as required by the act.

Mr HILL: 'Former Liberal politician' is not a criterion in the act? That's just a bonus, is it?

CHAIR: I don't think that's—

Ms Hall: The criteria are defined under section 14 of the act.

Mr HILL: It was a question. You mentioned 'annual'; there was a word you said there which was new, which was 'annual'.

Ms Hall: There's a requirement in the governance and oversight guidelines for Commonwealth government business enterprises that the boards prepare an annual board plan and provide that to shareholder ministers for consideration.

Mr HILL: A board plan, not a self-assessment?

Ms Hall: It can and sometimes does include a self-assessment.

Mr HILL: Should it?

Mr Jackson: To assist, every second year it's done by an external organisation—

Ms Hall: That's right.

Mr Jackson: and the alternate year is a self-assessment process.

Mr HILL: Given the audit report goes back over a number of years, could we receive the self-assessments and all of the detail for each of the last eight years?

Ms Hall: We will take that on notice, Senator.

Mr HILL: Thanks.

CHAIR: Deputy Chair, I just have a couple of questions.

Mr HILL: Chair, I'll cede to you. We've had about equal time; that's fine. I'll just flag, and it might be something you're going to pick up, that I thought it might be interesting if you have a look at paragraph 10 of the report. You go first, but I thought it might be good to get some responses to the three specific dot points and hear from the Audit Office.

CHAIR: Firstly, a question to the Department of Finance regarding your submission, where it was noted that the Department of Finance is currently reviewing the Commonwealth GBE governance and oversight guidelines and 'incorporating key lessons from the audit report'. My question is: when will this review be completed and what specific changes might you be able to advise us of that might be made to the guidelines to reflect the audit findings and to ensure better practice?

Ms Hall: We've commenced a review of the guidelines. We commenced it in 2020, and it got overtaken by COVID and a range of other pressures. We are kicking off consultation process now with relevant stakeholders, including the GBEs, joint shareholder departments, the ANAO, the Institute of Company Directors, other responsible ministers, and states and territories who also have similar frameworks in place. We envisage that that work will be completed through the course of 2021 and an updated version of the guidelines will be issued. It will take into account a range of factors, including ANAO audits, not limited to this one, that have made a range of recommendations going to things like the application of the Commonwealth Procurement Rules, for example, to GBEs. It will take into account developments in contemporary governance practice, including some of the findings, for example, out of the royal commission into banking misconduct, and a range of other relevant matters.

Ms Mellor: I can add, Chair, that the ANAO, as you know, compiles audit insights that are based on a compilation of our findings and views from thematic audits. In May 2019 the Auditor-General released an audit insight into board governance which was based on a series of audits, and that's been sitting there on the public record to help inform the community, including not only the community of GBEs—the single-digits number of GBEs—but the corporations and companies as well. That is all based on some significant work that we did in four entities, informed by other audits around the history of the journey of boards, including the royal commissions, and comments along the way. So, in any event, there is an artefact of the Auditor-General sitting out there that can assist boards in the meantime, while Finance turns its mind to the guidelines.

CHAIR: Thank you. Finance, do you have any observations in relation to that last comment? Is that part of your process?

Ms Hall: Yes, that will be one of the range of documents and investigations that we'll be having regard to in updating the guidelines.

Dr Ioannou: Chair, I was just going to add that, while this DHA audit was not an audit specifically into board governance, obviously the work we'd done in the previous set of audits on board governance and the *Audit insights* product that the Deputy Auditor-General just mentioned did inform our thinking on the way through as we observed various issues of the sort that have been discussed.

CHAIR: Thank you. I'll just flag that I will put some questions on notice to follow up a little bit more in relation to some of those comments. I'm conscious that it is almost close to 10 o'clock, and the deputy chair had indicated he had a further question.

Mr HILL: I just thought it might be interesting to cover off. There were three specific dot points in paragraph 10. Each of these was asked at Senate estimates, on notice, and a response was given. I thought perhaps we could just briefly put them on the record and check whether there's anything else that you wanted to add, because they were quite short-paragraph responses, and see if there was any response from the Auditor-General, because I thought they were issues we'd probably want to touch on in our report. The first one was: 'Why did the DHA board take four years to finalise a new business model assessing risks to business sustainability?' The response was, 'The board couldn't implement a new business model until the impacts of the Australian Accounting Standards Board's new ruling on leases on DHA's operation were fully understood. AASB was released in February 2016 and came into effect for reporting periods commencing on or after 1 January 2019.' Is there anything else that DHA wanted to add to that? It is a pretty succinct answer.

Mr Jackson: I think that was the overarching piece of work that was required. Prior to that there had been considerable work done by DHA, in conjunction with Finance and Defence, in looking at its operating models and, in particular, the impact around our focus on the development work. Certainly in the corporate plan that we provided to shareholder ministers in June 2019, which was my first corporate plan, we highlighted that there was

a need for a dramatic shift. We haven't seen the impact of AS 15 and 16 and, given we have some 16,000 leases, it was a huge job to design a system to allow us to do it. We identified in that corporate plan that we needed to make a change. The ministers wrote back to us on 30 August agreeing that we needed to make that change, so that is the letter the ANAO is referring to. They quite rightly said that they would like this settled by 18 November. We actually provided it on 14 November, which has instigated the new operating role that we are now dealing with.

Mr HILL: Is there anything the Audit Office wanted to comment on that?

Dr Ioannou: Not really. We tabled in April last year, and at that point this was a work in progress. So there is not much more we could add at this point.

Mr HILL: The second point was on DHA's scope of power. 'Concerns about the DHA scope of power questions were originally raised in 2008, and the board obtained legal advice then.' This is your response to that second dot point. 'Following questions from the ANAO during the fieldwork phase, the board got updated legal advice. This advice was finalised in December 2019, which confirmed that DHA's activities were consistent with its scope of power.' It sounds a bit like good luck, not good management, but is there anything else to add there?

Mr Jackson: I wouldn't agree with good luck, good management, obviously. But DHA did seek legal advice on this matter in 2005; 2008, as referenced; 2012; 2013; and 2018. The legal advice was always consistent, but it was repeatedly done to ensure that some of the larger projects were still fitting into the broader analysis.

Mr HILL: Right, that makes sense.

Mr Jackson: The final piece of work was really to close out the argument, and the AGS were very, very helpful in providing us with a matrix, almost a decision-making tree, to go through when we can play the role of developer and when we shouldn't. It was very helpful.

Mr HILL: Lawyers are never 100 per cent black and white, so you've got to check the big thinks. Is there anything else to add on that?

Dr Ioannou: Putting the specifics to one side, one of the issues that arose in the course of the audit—and it's explored both in chapter 2 and in that final chapter—is that we were very conscious that this was a statutory authority, which obviously has to operate within its defined remit under its enabling legislation and also, of course, within constitutional power. We set out to highlight where we observed uncertainty around legal positions and where it would be useful for the avoidance of doubt for the authority to try to settle some of this. I'm not sure we have a lot more to add. We reported on the state of play at the time that we tabled.

Mr HILL: That makes sense. Can you help me reconcile this? The Audit Office has said that DHA had not sought assurance from DHA management stating compliance with state and territory residential tenancy legislation, yet DHA said in response to the Senate question, 'The DHA board has received updates from management on the progress to ensure DHA's lease was compliant with state and territory legislation since July 2017.' Is that just a timing difference, or is there something I'm missing there? On the face of it, you're saying two different things.

Dr Ioannou: I'm not sure I followed that completely. I don't think I've had the benefit of seeing the responses. All we were saying was that there was a body of work underway around state and territory residential tenancy legislation. I think the world had changed a bit over time. There were different state and territory provisions that the authority was grappling with. It was the same point I made a moment ago: we believed that some of this should be settled as far as it could be, and also, of course, the final paragraph of the report says that this is the sort of issue of high-audit governance and legal authority that the board should be taking an interest in.

Mr Jackson: Certainly the board did ask the then managing director to raise it as an emerging risk through the risk register, which was done. We did engage Ashurst at the time in 2017 to assist with the process. They worked on it up until, I think, 2019, at which time the work was transferred to the AGS. The reason for the transfer was that, again, this work involves constitutional issues, which the AGS are placed to do. Mindful of the fact we have some 17,000 leases out there across multiple jurisdictions, we are comfortable in saying now that version 7 of the lease does comply with the various territories and states that it's operating in, and that has involved a significant piece of work in separating the lease agreements with some of DHA's operating practices, which we probably haven't got time to go into.

Mr HILL: No. That's alright.

Mr Jackson: But we then had the issue of washing through some 16,000 legacy leases to try and bring them up to speed. You can imagine that not all of our lessees are interested in changing a lease midterm, so we have to wait until the end of the lease and wash through it.

Mr HILL: I understand. It's a risk that you'll wash through. That makes sense.

Mr Jackson: We are managing that very closely through our operational requirements.

Mr HILL: That's it, Chair. I'll just stress that I'm not going to have another set of political points. I'll just make the point in more neutral terms that I think the committee should be interested in this broader issue. I'll take the politics out of it for a second; I've made my points about the composition of this board and the queries over Mr Jones, and we've got questions there. But it is an interesting point: when there are questions raised about the performance of the board—and you've answered some of them; I think others speak for themselves—what's the process by which ministers or government then say: 'We're the shareholders. There's something not right here'? What's the capability review? How do they get briefed on that? Who triggers that? Is the active bureaucrat in the department who's the shareholder minister worrying about this? I have, in previous lives, had a little bit of that with authorities and that. It's not an easy thing, but it's a legitimate question about the system by which the shareholder departments and the minister take an interest in that capability issue ongoing. And when more serious questions are raised, why is the board left to just do self-assessments by itself? How are those actively considered? I think those last eight years of assessments would be interesting, but I'd invite you to provide any further comment on those matters in a sensible fashion for us. Thank you.

CHAIR: I'll just flag that the deputy chair's comments will be taken as comments and indicate to our witnesses that it's 10 o'clock. I've got probably about 15 questions that I'd like to ask. I indicate that I will be putting those questions on notice. I know there are other members online. Would any other members present like to ask any other questions or flag any intention to place questions on notice?

Senator O'SULLIVAN: I'm all good.

CHAIR: Thank you very much for that. I flag that I will be placing some additional questions on notice, with reference to some of the deputy chair's questions as well. I'd like to thank all representatives for their time and their attendance here this morning. With reference to questions on notice undertaken during this public hearing or with reference to any additional information, we request that your responses be forwarded by Wednesday 28 April 2021 and indicate that any further questions outside the context of this time will be sent to you in writing through the secretariat. We now have an additional report to look into with additional witnesses.

AGNEW, Mr Dave, Director, Business and Infrastructure Services, Commonwealth Scientific and Industrial Research Organisation

BOYD, Mr Brian, Executive Director, Performance Audit Services Group, Australian National Audit Office

HEHIR, Mr Grant, Auditor-General, Australian National Audit Office [by video link]

JAGO, Ms Carla, Group Executive Director, Performance Audit Services Group, Australian National Audit Office

MELLOR, Ms Rona, Deputy Auditor-General, Australian National Audit Office

MUNYARD, Mr Tom, Acting Chief Operating Officer, Commonwealth Scientific and Industrial Research Organisation

[10:09]

CHAIR: I now welcome representatives of the Audit Office and CSIRO. These hearings are formal proceedings of the parliament. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Would you like to make an opening statement before we go to questions from the committee?

Ms Mellor: Not the ANAO, thank you.

Mr Munyard: I would, Chair. Thank you. As Australia's national science agency, CSIRO recognises the importance of strong strategic oversight and operational effectiveness of our research facilities and infrastructure to enable us to solve Australia's greatest challenges through innovative science and technology. We want to acknowledge the important role the ANAO plays in examining and reporting on the use of public finances and resources and, in particular, the significant analysis provided in the audit of CSIRO's 2012 property investment strategy. I'd like to take this opportunity to confirm that all recommendations detailed in the audit report have been agreed by CSIRO and actioned.

CHAIR: In relation to the 2012 property investment strategy, could you remind the committee, and anyone listening, what that 10-year property strategy does? Yes, I understand it is around consolidating the national footprint; aligning infrastructure, science directions and partnerships; and looking at the core business around research. But could you help me understand some of the thinking around the reason for the strategy being developed in the first place. What was it seeking to address?

Mr Agnew: The 2012 strategy, as you've just indicated, was around consolidation. It was partly around financial stability and effective use of resources, which was one of the key drivers for the strategy. It was implemented at a time when the footprint was around 58 sites. It took into consideration the work that we were doing, the priorities from a science perspective, and tried to align infrastructure with those science priorities. The idea was that, over time, we would reduce our footprint, have greater financial stability and improve our infrastructure to support science and research outcomes.

We reset our strategy in 2019. I've been in this role for the last three years. We undertook an assessment and reset the strategy to pick up some of the items rightly identified by the audit report as things we did not achieve as part of the 2012 strategy and repositioned those for our new strategy going forward.

CHAIR: There was some property divested between 2012 and 2019?

Mr Agnew: Correct. There was some property divested. There was a net position of around three sites. During that time there was a machinery of government change. The National Information and Community Technology Agency came into CSIRO and with it came five more properties. That changed our net position during that period.

Mr Hill: What year was that?

Mr Agnew: It was in 2016, midway through the strategy. We have started to divest some of those properties as part of our analysis. We are continuing to work through that. There was a reduction; it just didn't meet the original 2012 target that was set and advised.

CHAIR: Did the funding that resulted from property divestment get put into research? Talk me through the process. I'm still trying to understand the strategy of divesting assets in 2012. What was the intended outcome for that, and did it meet the intended outcome?

Mr Munyard: The intended outcome, of course, would be to maximise the investment that we have into the research capability across the organisation. Wherever we can take the opportunity to prioritise our investment and make sure that we maximise that investment into our research capability, we do. That was the intent of the strategy.

CHAIR: Was that the outcome?

Mr Munyard: As Mr Agnew alluded to, there were some additional sites that came through. We didn't achieve the intended outcome that was set in 2012. We've reset that through the 2019-29 strategy that we've implemented since then and have some targets that we've set through that throughout the strategy.

Mr Agnew: Just to clarify, Chair: there are a number of actions that are occurring this financial year and next financial year—within that original 2012 window—which were part of the 2012 strategy at the commencement. For example, we're exiting a leased property at North Ryde at the end of this calendar year. We've just commenced the planning process to relocate staff from our Aspendale site through to Clayton. They were indicated in the strategy and they are in that window but we've sort of reset those as part of our 2019 strategy.

CHAIR: You made reference to the 2019 property strategy. The ANAO's report outlined that that strategy: ... was not sufficiently informed by lessons learned and does not include any performance targets.

Have you been able to identify any key or systemic reasons for this, and what actions have been taken in response to the identification of any key or systemic reasons? I should preface that by asking whether you agree with the ANAO's observations in that regard, and then go to the second part of the question.

Mr Agnew: We partially agree with the recommendation. We took into consideration some of the inflexibility that was in the 2012 strategy. For example, the machinery-of-government change brought five properties into the portfolio. We should have repivoted or repositioned the strategy to take that into account. Our 2019 strategy does those types of activities. We are reporting to the board biannually, twice per year, around activities and performance. We have set performance targets that relate to board decisions and executive team decisions around divestment and investment. We've taken into consideration all the recommendations from the audit report and built that into the framework that supports the strategy. That includes an overarching risk assessment, better reporting on our metrics across the portfolio, performance targets that relate to the activities set in the strategy and improved governance for divestments, which is probably one area where we did need to strengthen, and we have done that reflecting the governance we use for investment decisions. That's project specific but also through the organisation's governance arrangements. We believe that we've included the recommendations and we've taken into consideration the findings of the ANAO. To be honest, there were some areas where we really did need to improve, and we believe we have done so.

Ms Mellor: I just note that CSIRO agreed with all the recommendations made by the Auditor-General. The witness indicated partially agreed. They were agreed.

Mr Agnew: Sorry.

CHAIR: Thank you. This is a question for a representative from CSIRO. Recommendation 4 recommended: The CSIRO Executive report at least annually to its Board on the progress in implementing its property strategy and the realisation of benefits.

How regularly does the executive report to the board on the realisation of these costs and benefits?

Mr Munyard: We're reporting twice annually and then ad hoc if there's a particular item in that strategy that we need to update the board on.

CHAIR: On page 56, the audit outlined:

The 2019 Property Strategy did not include any associated quantifiable targets to measure the CSIRO's performance, including against its priorities.

It also noted:

Two areas that are absent from the 2019 Property Strategy are the focus and targets on reducing footprint and operating costs. And, of course, then going to recommendation 5, which suggests that there be established quantifiable governance targets for the 2019 property strategy. I note that all recommendations were agreed to. Could you give some examples of how you've established these quantifiable performance targets and how often they are reviewed, and any other commentary you might like to make, like some of the benefits that you've noted in implementing these performance targets?

Mr Agnew: There are a range of metrics that we use. We use occupiable footprint. Building size is a square metre rate. The Audit Office recommended that we should report upon our landholdings, so we've included that as

well. It's the square metres based upon landholdings, noting that we hold significant land in particular areas for particular research capabilities. We agreed with that and have implemented that. We've included financial performance against operating costs—leasing costs, maintenance costs and overhead costs—that relate to property portfolios. We do provide reporting of a capital nature against our projects already; we will continue that. Of course, at the highest level, the CFO of CSIRO provides overarching financial performance across the total budget performance on a regular basis.

CHAIR: Does anyone from the ANAO have any comments on this?

Ms Mellor: No. That sounds like some positive action.

Mr HILL: I might go over a couple of things to check that I understand them. Overall, from the discussion and your response, it sounds like it is moving in the right direction. It's good to hear that you've implemented all the recommendations. You're confident that the new approach in response to recommendation 1 will provide to the board, the minister and so on an accurate representation of your property holdings?

Mr Munyard: Correct, Senator—sorry, Deputy Chair.

Mr HILL: We do real work!

CHAIR: Order!

Mr HILL: Oh, come on!

Mr Munyard: We have in place regular reporting. As I said, we are providing a report to the board twice a year on progress against the implementation plan, and are putting as required any papers to the board or advice to the board in relation to any impacts to properties or divestments as required for particular sites. We have the processes in place to support—

Mr HILL: You mentioned that divestments are treated in the same process with the same kind of governance discipline as investments?

Mr Agnew: Correct. Our investment process is multitier. There's a project control group, which does the transactional design type elements. There's a project board. The board reports through to the major transaction committee or our executive team depending on the financial threshold of risk. We have implemented a governance structure that will sit with divestments where we actually report through the same mechanism. We did report generically previously that the governance around the divestments themselves needed some further investment, for want of a better term.

Mr HILL: On the issue of divestment, the audit notes on page 46:

The CSIRO Executive has not sought advice on the extent to which the SIR Act authorises ...

leasing of CSIRO sites. Since the audit has CSIRO sought advice on this matter? If so, to what extent are such activities permitted under the SIR Act? The background to this is that the audit indicated that CSIRO's executive is considering leasing more of its sites because there remain concerns that continued divestment of sites is not sustainable—that is, you'll run out of things to sell.

Mr Munyard: We have sought external legal advice in relation to that particular finding. Section 8 of the SIR Act allows CSIRO to acquire, hold and dispose of land. The legal advice states that it's implicit within the ability to acquire, hold and dispose, and section 9 provides a general power to CSIRO to do all things necessary or convenient to be done for in connection with the performance of its functions. We have confirmed with legal advice that it's within our power.

Mr HILL: So it gives you the flexibility to hold an asset for years and lease it out for a revenue stream and to hedge against needing it in the future, or to go and lease a property instead of buying it?

Mr Munyard: I would avoid the use of the term 'hedge' under the PGPA Act. We have an obligation to abide by the restrictions of the PGPA Act as well.

Mr HILL: Of course.

Mr Munyard: But it provides for us to do what is appropriate and within our powers.

Mr HILL: That's good. Finance is always watching. They're probably listening now. I have some other questions, but there's nothing overly material, Chair. There's just one thing I wanted to clarify: in the front of the audit report, on the face of it, on a plain-English reading, paragraph 12 was pretty concerning, saying that your property operating costs in 2018-19 in real terms were 43 per cent higher than in 2012-13. Are you saying a lot of that was due to machinery of government changes, where stuff came the portfolio?

Mr Munyard: A lot of it was to do with the merge with National ICT Australia. There are sites that we inherited as a result of that.

Mr HILL: What are three of those, for instance?

Mr Munyard: There's a site at Eveleigh, near Redfern in Sydney, a site at Docklands in Melbourne, and a site—

Mr Agnew: There was a site on London Circuit in the ACT.

Ms Mellor: The reason we put that paragraph there is that the 2012 property strategy was designed to reduce property cost holdings back down to that benchmark.

Mr HILL: Would it be fair to say, without having to understand all of the detail, that that 43 per cent is in part explained because you have new stuff in the portfolio and also because some of the strategy was not on track—a bit of column A and a bit of column B? And that was your point about needing more flexibility in the 2012 strategy, to account for—

Mr Agnew: It's the ability to go back and revisit the decisions at a point in time. For example, the work that we're doing in regard to COVID research relates to some of our facilities, which means we would need to maintain their operating infrastructure costs, which potentially may have a flow-on effect, yes. But we've done some analysis. I think the report refers to about \$175 million as the maintenance liability. We're down at about \$122 million on current estimates, so we have seen a reduction, but not to the level that was specified in the strategy.

Mr HILL: Was it possibly a bit optimistic?

Mr Agnew: Possibly—the ability to revisit targets.

CHAIR: I have a question following on from that, in relation to recommendation 1. The recommendation was for you to develop a consistent, transparent and effective approach to measuring the entirety of the property footprint. Are you saying that some of the inconsistencies were due to machinery-of-government impact, or was there a framework in place which was interrupted by machinery of government? Could you outline that a little bit more for me.

Mr Agnew: The machinery of government changes the quantum in the reporting. The reporting itself is around our records. For example, we do hold records on our landholdings and the volume of land. We did not report those through to our executive team and the board as part of our normal reporting arrangements. We have now included all of those metrics as part of our reporting to the board, and we have set performance targets that align to those. This includes things like environmental improvements as part of a reduction in footprint, and reduction in operating costs as we divest, so the maintenance becomes less. It's those types of metrics that go into that reporting framework.

CHAIR: So you're saying that has been developed in response to recommendation 1?

Mr Agnew: That's in response to recommendation 1.

CHAIR: Okay. I'd like a broader context, given that, while we are looking specifically into one report, we are looking at issues around governance, stewardship of resources et cetera. To the ANAO, can you briefly outline why things like consistent measurement in relation to things like property footprint would be important?

Ms Mellor: The accountable authority, in this case the board, is responsible for the proper use of public resources, and in the CSIRO's case property is a significant public resource for which it is responsible. Chapter 2 tells you what was going to the board—was there good information going to the board? As the officers have discussed, there were elements of the property portfolio, which is of significant value, which were not included in material that was presented to the board. In that sense, the board isn't able to properly acquit itself of its responsibility, to give this stewardship, to actually fulfil their obligations under the PGPA Act. So the message to CSIRO in this report is: so that the board can do its job properly, make sure the information going to the board is clear, complete, transparent and covers the full elements of this important portfolio of public resources.

Mr Hehir: I want to follow-up a comment Mr Hill made about optimism bias. One of the key issues with planning and strategies like this is that decision-makers are making decisions about the use of public resources on the basis of information that's available to them and strategies to drive actions. In this case it was wanting to invest in new infrastructure and releasing resources from old infrastructure to do the reinvestment. As a result of that, lowering your operating costs was a component of the strategy, as well as building capability. If the end result of the strategy is that you get the expenditure without the benefit—that is, lowering cost and the divestment—would you have done that in the first place if you knew that was going to be the outcome? If you don't have good governance sitting over activities to ensure that you're delivering all of an integrated strategy, you can end up in a situation where you have all the costs but not all the benefits of it. That's the thematic thing in this audit which I think is important. There were changes, the response by the CSIRO to the recommendations has

been positive, but there were significant governance failures on implementation that we identified in the audit report.

CHAIR: Are there any questions from other members of the committee? I have a number of questions but I feel that, broadly speaking, some of the answers you have given to other questions have probably touched on some of the content there. So unless there are any other questions—

Mr HILL: I might just ask about one other matter on the record, but we can put a couple of questions on notice for matters of detail. The Parliamentary Standing Committee on Public Works recently reported on its inquiry into CSIRO's proposal to consolidate four Perth locations, known as the Perth Precinct Project. Is this project supported by the 2019 property strategy?

Mr Agnew: Correct.

Mr HILL: You can take this question on notice if you like. It's a useful little case study—a contemporary one. How does the consolidation project demonstrate that the 2019 property strategy has been implemented in a way that delivers the intended benefits and reflects the lessons learned from previous strategies?

Mr Agnew: Okay.

Mr HILL: And has anything changed in the way you're going about this as a result of the new governance arrangements?

Mr Munyard: We'd be happy to provide some detail in relation to that.

Mr HILL: It's a chance to show off really! Thank you.

CHAIR: There being no further direct questions, I'd like to thank representatives of both CSIRO and the ANAO for your time and attendance today. If you have taken any questions on notice, would you please provide answers to the secretariat by Wednesday 28 April. If there are any further questions by any member of the committee, they will be sent to you in writing, through the secretariat, and the same date for answers will apply. I thank you for your attendance today and for the thoughtfulness of your answers.

Proceedings suspended from 10:35 to 11:17

ALECK, Dr Jonathan, Executive Manager, Legal, International and Regulatory Affairs, Civil Aviation Safety Authority [by video link]

ANDREW, Mr Stephen, Chief Information Officer, Attorney-General's Department

FALLEN, Mr Brad, Acting Assistant Inspector-General, Inspector-General of Intelligence and Security

FORREST, Mr John, Chief Information Officer, Civil Aviation Safety Authority [by video link]

FRICKER, Mr David, Director-General, National Archives of Australia

HEHIR, Mr Grant, Auditor-General, Australian National Audit Office [by video link]

JAGO, Ms Carla, Group Executive Director, Performance Audit Services Group, Australian National Audit Office

KNIGHT, Ms Joyce, Senior Director, Performance Audit Services Group, Australian National Audit Office

McGUIRE, Mr Jason, Acting Assistant Director-General, Government Data and Policy, National Archives of Australia

MELLOR, Ms Rona, Deputy Auditor-General, Australian National Audit Office

NOTZON-GLENN, Ms Bronwyn, Acting Inspector-General, Inspector-General of Intelligence and Security

SHEEHAN, Ms Anne, Assistant Secretary, Strategy and Governance Branch, Attorney-General's Department

CHAIR: We will resume the inquiry in relation to Auditor-General report No. 11 of 2019-20, *Implementation of the Digital Continuity 2020 Policy*. I welcome all representatives. These hearings are formal proceedings of the parliament. The giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Would any of the entities like to make an opening statement before we go to questions from the committee?

Ms Sheehan: The Attorney-General's Department has a short opening statement to make.

Mr Andrew: The Auditor-General's findings are welcomed by the Attorney-General's Department. The report recognises the significant investment made by the department in meeting the targets of the policy. Our recommendations were directed to the department as a result of the audit. The ANAO assessed the department against the 17 targets listed in the *Digital Continuity 2020—Agency Implementation and Pathways* guide that were due by 31 December 2018, and found that the department had fully implemented or made substantial progress against all targets. In relation to three of the 17 targets the ANAO concluded the department was partially compliant and identified areas for improvement to assist with full implementation of the target. The department is undertaking further work to implement these areas of improvement.

Since the audit the department has developed a work plan to address these findings and has made significant progress to ensure they are fully implemented. This work includes a review of the department's records authority, which is currently in progress, and updating the department's information and records management policy. The department is committed to effective information and records management, and will be pleased to assist the committee in its inquiry. We welcome any questions the committee may have.

Mr Fricker: If I may, I would like to submit an opening statement. I wonder if, in the interests of time, I can table it?

CHAIR: Absolutely, and thank you for doing so.

Ms Notzon-Glenn: I do not have an opening statement, but I would like to formally convey the apologies of the inspector-general, the Hon. Dr Christopher Jessup QC. He is on long-arranged leave that predates this appointment, as we foreshadowed with the secretariat.

CHAIR: Thank you very much; we appreciate that. I'm hoping I'm not stealing the thunder of any other committee member, but I just want to ask the policy owner—I'm not sure who this is best directed to. That might be my first question: is the National Archives the responsible policy owner?

Mr Fricker: Yes, the National Archives.

CHAIR: Fantastic; thank you. Can you broadly outline the purpose of the digital continuity strategy and its intention against your own stated objectives of record keeping of the government?

Mr Fricker: The Digital Continuity 2020 Policy succeeded our earlier policy, the Digital Transition Policy. It is basically a response to the increasingly digital operating environment of government and our obligations under the Archives Act across government, to make sure that we are creating, keeping and maintaining the essential records of the Commonwealth and that those practices are being carried forward into the digital age. The DC2020 policy can be distilled down to three principles, so that, as we embrace more and more digital tools and techniques and workflows et cetera, we don't forget about the records we are creating. The first principle of the DC2020 policy is to value information the way other assets of the organisation are valued—so include information governance as part of the corporate governance framework of the agency. There were a number of targets and milestones under that.

The other principle is that we should maintain digital workflows from the start to the end of every process we undertake—that if a record is created initially as a digital record, it should not then be transferred onto paper so that somebody can get out a pen and sign it and then we have a hybrid of some paper records and some digital records. That basically breaks the chain of evidence and undermines the evidentiary property of Commonwealth government records. It is end-to-end digital. It must manage all information digitally.

Then there's the third principle. Increasingly, the life of information, the life of the records we create, endures well beyond that transaction of the government of the day. We need to share information across government departments to collaborate on policy development. Also, information has to survive generations. A record that proves somebody's rights and entitlements needs to survive several generations so that those rights and entitlements can be upheld. So the third principle was interoperability. Information should be interoperable across space and across time, so interoperable with other government systems today and interoperable with all government systems of the future.

Those were the three principles that we brought together under that digital continuity. The name implies that information has to last and the value and the reuse of that information has to be maintained in continuity. Those were the principles that we used. That was backed up by a range of resources, products, advice et cetera.

CHAIR: Thank you. I understand that recordkeeping is incredibly important, particularly in government, so this policy would be a particularly important one, particularly as we really have transitioned to digital. My observation of the audit report is that [inaudible] policy. I guess I'm looking at the implementation [inaudible] challenges in the implementation. Would that be a fair assessment?

Mr Fricker: That's right. The audit report highlighted deficiencies in the National Archives's management of the program. I think it's fair to say that the resources and the products were found to be fit for purpose, but the issue was our oversight of the implementation of it, the governance. We lacked stakeholder engagement, communication strategies et cetera. So it was to do with governance.

CHAIR: I invite a quick response from the ANAO.

Ms Mellor: I think that's a fair assessment of what the report says. I think it's consistent with the discussion we've been having about governance—there's governance in the organisation and there's governance of the policy, measuring the policy.

CHAIR: Yes. The audit recommended:

The National Archives of Australia should develop and implement a regime to provide appropriate assurance on the accuracy of reported data on entity progress in the implementation of the Digital Continuity 2020 policy.

This is recommendation No. 5. The National Archives noted in their submission:

Options for reviewing agency reported data are being considered as part of planning for the completion of the agency survey, which will close on 31 March 2021.

That is submission No. 6. Could the Archives of Australia provide some more details about the assurance options that are being considered to ensure the accuracy of reported data?

Mr Fricker: I invite Jason McGuire to answer that question.

Mr McGuire: So there's the Digital Continuity 2020 Policy, which we are measuring the progress of. When the audit was finalised we had a year to go with the policy. We have an established check-up survey, which we work with our contract service provider on. What we did there was realign a lot of the questioning to link back to the recommendations or recommended actions in the policy so we could measure the success of agencies. It's a self-reporting tool as well. We took on board the recommendations in the audit. When the policy was originally implemented we had a regime of questioning that didn't totally tie back to the recommended principles of the policy one to one, so we've improved that.

In terms of assurance, we have the requirement that the agency head or the accountable authority sign off on the policy, so, if an information manager is presenting that to their CEO, that gives some form of assurance that the information is accurate. With our service provider there are some quantitative measures or data that are placed in the policy. They run some algorithms and sense checks to QA that data and if it doesn't make sense they then contact back the relevant agency to correct that. Then the surveys close and we analyse the results. That's to provide that assurance with the data of the DC2020 policy.

CHAIR: I'm conscious a number of members have indicated they would like to ask questions. I have a couple of other questions I might place on notice. I'll ask the National Archives, in relation to the 2000 survey that identified that an estimated one-third of agencies were not expected to meet all requirements of the 2020 policy by December of 2020, in your view, what are some of the broad reasons for this?

Mr Fricker: The broad reasons for that are, generally speaking, there's inadequate resourcing available for records and information management within agencies. It simply doesn't have a high enough priority to be given resources to attend. The absence of appropriate systems—

CHAIR: Is that a broad, consistent thing [inaudible]

Mr Fricker: Yes. This is a summary across. Of course there will be some outliers but broadly these are the reasons. Systems are not fit for purpose for record-keeping, so business systems will have been purchased but they won't necessarily be interoperable with other systems; the data formats might be specialised and they don't have long-term data management capability in them. There are cultural issues—still. As I mentioned at the outset, part of this is about making information governance just a natural part of corporate governance, which is an organisational culture. The Australian public service is more and more very fast paced. It's very much a technology driven organisation. Often people are not turning their minds to the long-term value of information. What they're worried about is getting that document produced today or getting that transaction finished, so there is an information culture, if I could say that, that is a bit lacking. My observe is that public servants have to regard their professional value as including the value they create for the future. I think we have to instil in public servants that a sense of their own professionalism also comes from how accountable they are and what sort of corporate knowledge and corporate memory they are creating for the future generations and for future policy-making.

Finally, we see a lack of professional, skilled staff. Several decades ago records management might have been much more recognised as a skill set and you would have records managers. With the broader growth of digital literacy, as a broader sort of thing, quite rightly, we have more and more focus on digital literacy and then capability to use digital tools. Sometimes the tool disguises the fact that you also have some further obligations in terms of what those records are that you've made and how those records are being administered. So in the Archives we are also quite focused about what we can do to sustain records and information management as a professional stream within the public service.

CHAIR: Thank you. Ms Bell?

Ms BELL: Thank you, Chair. I think this question is to the National Archives: in your opening statement you said that significant progress has been made since the recommendations of this report, of which there are seven. Can you please outline for the committee what that progress has been across any or all of the recommendations to which you agreed?

Mr Fricker: The main progress has been that we have now taken on board all of the findings and recommendations of the ANAO as well as the other learnings from DC2020. Digital Continuity 2020, as the name suggests, was to take us to the year 2020, and at the conclusion of that year we introduced our next and current policy, which is known as Building Trust in the Public Record. In terms of our progress, it has been a generational change. We have now launched our new policy, which is much more maturity-model based. It is much more flexible and allows government entities to incorporate the recommendations of the policy in line with their own IT procurement cycles and in line with their own organisational strategies, and it embraces all of the learnings from the previous policy. The policy is Building Trust in the Public Record. I'm holding it up, but I don't know where the camera is.

Mr HILL: You're allowed props, I think!

Mr Fricker: Thank you! So that's it in a nutshell. I can drill down further on specifics, but, for us, it was the launch of that new policy which allowed us to embrace, in a very holistic way, the recommendations of the report and our own learnings as well.

Ms BELL: So you are confident that these recommendations are currently being met?

Mr Fricker: I am very confident that we've met the recommendations. I don't want to underestimate the challenge still ahead in actually realising all of the outcomes of the policy. The problems that I enunciated a moment ago still exist across the Public Service. I would say I'm very confident to give evidence today that we have adopted and are meeting those recommendations, but the delivery of the policy will not be an overnight success. There's still a lot of work ahead of us.

Ms BELL: Thank you for that clarification. Back to you, Chair.

CHAIR: Thank you. Questions from the deputy chair.

Mr HILL: Thank you. I'll get a specific issue out of the way first. The availability of records, as you well outlined, Mr Fricker, is critical not just for now and for the Auditor-General but for future generations. It is critical for the Audit Office to be able to do their work on behalf of the parliament effectively. We've had some discussions with the Auditor-General about the exponential growth in unstructured data. I think the conclusion we reached—I'm not trying to put words in the Auditor-General's mouth, and we'll invite them in a little while to contribute—is that it's better if data is better structured but, in a sense, they're going to have to search unstructured data anyway, for as long as email files exist and network drives exist. It is not so much a cost saving as making records more accessible for future generations, particularly decision records. As you're the policy owner of record keeping across government, what is your view, what do the rules say and what are your expectations with regard to the capturing and recording of encrypted messages—WhatsApp, Signal and Telegram, to start with. I noted your points about resources and systems, but, particularly on these issues, you talk about organisational culture, which is set by leaders, as well as policy and Public Service professionalism. What are the legal requirements on capturing those records, and how is that supposed to be done?

Mr Fricker: That is a very pressing point, and it goes to our legislation as well. The *Archives Act* defines a Commonwealth record as being a record that is the property of the Commonwealth. WhatsApp is not the property of the Commonwealth; Facebook is not the property of the Commonwealth. It is a pressing issue for us—the increasing use of third-party, non-government, non-Australian platforms for the conduct of official business. It does present a challenge. Are we keeping the minimum evidence of official conduct created when we are using these non-government platforms?

I'm a gadget freak. I think we should be embracing technology. It offers all sorts of benefits, but the record keeping needs to be addressed. For the moment, I would like to see our legislation modernised, first and foremost, to embrace a more 21st-century definition of a Commonwealth record, one that incorporates a message sent on WhatsApp, for example. You raised the point about encryption. I think when you create a record it has to meet those standards such that it is known, that it is incorporated into an approved government information management system, be it third-party or government owned. Things like encryption present an enormous challenge for the long-term use and reuse of government—

Mr HILL: And also for the Audit Office.

Mr Fricker: Absolutely, yes, for the Audit Office—and for the work of government. The immediate business use of the record—as you'd appreciate, at Archives, we are often concerned about the longer term re-use of records but, Deputy Chair, you're absolutely right.

Mr HILL: Can I just delve into those couple of issues. I think this is really important. The committee has spoken in previous hearings about this. This contradicts the perception I had gained from our previous discussions with the Audit Office—I'm not trying to set up a conflict; I'll invite the Auditor-General to contribute. You're suggesting that government business done by WhatsApp, Signal and Telegram—I use those for illustration; I'm sure there are more—may not actually be a Commonwealth record. How does that tally with the notion that text messages are Commonwealth records?

Mr Fricker: In our guidelines, we issue requirements on public servants to keep a record of what they've done. If you've conducted official business with a tweet then you are obliged to give a record. If that record should be kept under our guidelines, then really the obligation is on you to make sure a record of that tweet is kept. And leaving it on Twitter is not good enough. As we've seen, Twitter, the company, can pull down records at will. As we've seen with Donald Trump, they will decide one day that they're not keeping that anymore. Twitter is not an archive—

Mr HILL: Let's not go there!

Mr Fricker: Exactly! My point is that Twitter, YouTube et cetera are not archives, they are businesses. So a record for a particular legal process may well be anything that can be produced as evidence of something that has happened. But the Archives Act carries quite a specific definition of a record being the property of the Commonwealth. I think we are in a grey area when it comes to encrypted—

Mr HILL: Have you sought legal advice on this question? Take the scenario of a public servant from a government department. You get a government issued phone and your data is paid for by the government. You might not be using one of the corporate suite of apps—that's normal; I think everyone around the country would get that—but you've got an app downloaded onto your government phone and the data is paid for and you're producing the record in the course of your business. Are you absolutely sure that's not a government record? Are you concerned that there is a gap or have you sought advice on this?

Mr Fricker: I have sought advice on this and we have sought advice on a better formulation for the definition. I'm being quite narrow in my answer because I'm talking about 'as defined in the Archives Act'. There are many other legal processes which can take place—the Auditor-General has legal powers et cetera—but the powers in my office, under the Archives Act, are limited to those records which are the property of the Commonwealth.

Mr HILL: Have you provided advice to any minister or the Attorney-General or the parent department, or has any advice been requested on this issue?

Mr Fricker: Yes, we have. We are in active discussion about this and a range of amendments to the Archives Act to bring it into the 21st century. But the definition of a record is definitely high on that list.

Mr HILL: Can you take that on notice and provide us with details as to the dates and the subject matter of any briefs or correspondence with government that touch on these issues.

Mr Fricker: Yes, I will take that on notice. David Tune did a functional efficiency review of the National Archives which has just been released in March, and that's a feature of his review. So it is in the public domain in a recently published report by David Tune which goes to the issue of the need for legislative change.

Mr HILL: Can I invite the Auditor-General or the Audit Office to address two issues then—firstly the definitional issue which has been raised by the National Archives and, secondly, has any department or minister ever supplied copies of encrypted messages as part of any ANAO audits?

Ms Mellor: First of all, on the definitional issue: we're talking about the difference between a record and information, at one level. Our job is absolutely enhanced if people keep good records and we can access them, structured or unstructured—structured is better, people using EDRMs et cetera. But our powers aren't limited to Commonwealth records. We have powers to gather information beyond the Commonwealth. We have powers to gather information that is not defined as a record. So the definitional issues that the director-general is talking about are really important for his role in setting out what's required of public servants in record keeping, and better record keeping is going to enhance our job. We can, using our section 32 powers, seek information from any person. If we chose to seek information on, for example, messages, we could do that through that process. The difficulty is: would we be able to get things that are not stored on servers through these companies? We haven't at this point sought that sort of information—

Mr HILL: Have you considered doing so?

Ms Mellor: We're more likely to interview a person, who will be interviewed under oath, to get the information, because it is more efficient and, quite often, we're interested in not just the message but conversations and any other information around it. But we think it is important for the Commonwealth to resolve whether those kinds of applications meet the requirements of record keeping. As the director-general said, people do pick up on technology and start to use it and it can cross over from private life to public life, and in public life we have responsibilities.

Mr HILL: That's really, really useful and, I think, of great public interest given some of the previous discussions around this. Can we take the situation of an individual public servant—a mid-level public servant doing their job interacting with colleagues, interacting with colleagues from other agencies and interacting with ministers' officers using these apps. I know that, as a public servant, you don't always get the choice, unless you want to be very assertive and annoying people, about how you get interacted with. Ministers' offices like using WhatsApp; that's just what they do. That's not a criticism; we use WhatsApp. You're expected to respond in that way—or it's kind of rude to say, 'No, please send me an email,' because that's not the culture and you're trying to set someone up. How on earth is that individual public servant supposed to know the requirements if on one hand the Archives Act says this isn't Commonwealth property, so arguably you don't have to keep it, but on the other hand there is a vague positive expectation from the Audit Office saying it would like access to everything. How on earth is a public servant supposed to know whether they should be using WhatsApp, Signal and Telegram and, if so, what for and how do they keep it? Is there any guidance on this in the system—like the Public Service Commission? Has anyone ever said anything? The Prime Minister's department told us: 'We wouldn't do that; we only organise coffee. But, of course, if we did we would keep it.' But you're telling us they don't have to keep it.

Mr Fricker: We have published guidance on this at the National Archives. We regularly deliver it through our fora et cetera and it is published on our website under our general guidance. We remind all public servants of their obligation, under the Public Service Act and under the PGPA Act, to maintain a record, to maintain a level of accountability and transparency. Our advice is that, if you are using these other platforms and you are conducting important business on those and creating records, you need to keep those records in your information governance regime—

Mr HILL: Screenshot it and email it to yourself or something like that?

Mr Fricker: Exactly.

Mr McGuire: And then record it in your system that you're using.

Mr HILL: Is there a policy on disappearing messages? With Signal, a lot of people in government seem to have their messages set to disappear in a few minutes.

Mr Fricker: This is the digital equivalent of a post-it note, I guess. It makes it no less important. You have to—

Mr HILL: You find a lot of post-it notes on files.

Mr Fricker: That's true, but a lot don't make their way into the world.

Mr HILL: That's true.

Mr Fricker: Or a phone call. These are digital instances but we've been dealing with issues since the invention of the fax machine—

Mr HILL: That's true; you always make a note when the minister's office calls, because that's your job.

Mr Fricker: That's right. Our guidance—and it comes back to the discussion we had earlier about professionalism and culture—is that, if you are doing this, your responsibility is to maintain an adequate record.

Mr HILL: I'll come to the last couple of specific questions to the Audit Office in a sec, but am I hearing—

CHAIR: I would like to ask a couple of questions on this issue before you move off it.

Mr HILL: It is on the same topic. I'll just finish these couple of threads. Am I hearing from both the Audit Office and the National Archives that the clear message to every Australian public servant is that, if you are using WhatsApp or Signal for government business, you either shouldn't be doing that or you should be screenshotting it and putting it into your ecosystem? If the minister's office is communicating with you via WhatsApp and Signal, that should be captured as a Commonwealth record—is that the clear message?

Mr Fricker: Yes, I would say that is the clear message. The question remains: how well is that message being received and what penetration are we are achieving in getting that message across? As I said in my earlier remarks, the APS is a fast-paced technological—

Mr HILL: Sure, I got that.

Mr Fricker: Can I also say that we don't require every single WhatsApp or Telegram message, but we do require the important stuff. Public servants no when something is leading to a decision—this is a keeper.

Mr HILL: Ministers have two hats: they're parliamentarians and they're part of the executive and have public administration obligations on them in that category. Do the same obligations sit with ministers if they're giving instructions to secretaries?

Mr Fricker: Yes.

Mr HILL: Stuff comes into the Archives from agencies. How many records are sitting in your agency from departments or ministers that contain WhatsApp, Signal or Telegram records?

Mr Fricker: I would be very surprised if we have yet received any transfers of WhatsApp messages or that generation of technology. We have already accumulated petabytes of digital archives within the Archives.

Mr HILL: Can you take that on notice?

Mr Fricker: Yes.

Mr HILL: To the Audit Office: Has any department or minister ever supplied copies of encrypted messages for your inquiries?

Ms Mellor: I couldn't say yes or no. They may well have supplied the content of those in other records—if public servants or public officials had taken a file note, for example—but I couldn't say yes or no.

Mr HILL: We've just heard that a screenshot is probably the only realistic way you can get stuff in. Have you ever seen a screenshot of a WhatsApp, Telegram or Signal messages part of your audit work?

Ms Mellor: Not when I have reviewed an audit. No-one has brought one to my attention.

Mr HILL: Auditor-General, you haven't seen that?

Mr Hehir: Nothing's come up that I've seen directly related to a record from one of those conversations.

Mr HILL: I think would be naive to think that there isn't government business being conducted on these apps. Is that reasonable, Mr Fricker?

Mr Fricker: It's an absolute certainty. I think it's well-known that government officials are communicating with WhatsApp and other platforms similar to that.

Mr HILL: What penalties are in place for departments, public servants or ministers who fail to supply encrypted messages and record them as required?

Mr Fricker: Under the Archives Act, the only breach is to engage in conduct which leads to the deterioration, loss or alteration of a Commonwealth record. That's the offence. If the record is never made in the first place then I don't think there is any penalty available through the Archives Act.

Mr HILL: That's clear. Chair, it may be that we need to think about this and hear from the Public Service Commissioner or something. That's an interesting answer. So there is an expectation that these are captured, but, if you have a little chat with the minister's office and then delete it, they are not breaching your legislation; they may be breaching some other requirements, but we're not sure what they are. Is there any final comment from the Audit Office on this issue?

Ms Mellor: In relation to the broad question about penalties, accountable authorities need to set their record-keeping authorities and their accountable authority instructions and reinforce the obligations of public servants to do things. For those public servants engaged under the Public Service Act, I also suggest that the APS Act itself would have in the code that people act according to the law. The code actually says that you need to act according to the law, and the policy owner that administers the law has just said that it's the law. So there are those constructs. Whether they're effective—

Mr HILL: That's an interesting issue. Just a final focus group—we'll go around the table. Ms Notzon-Glenn, have you ever communicated with your colleagues, ministers or ministers' offices on WhatsApp or Signal?

Ms Notzon-Glenn: No. Our agency does not communicate on any of those platforms, particularly given the classification—

Mr HILL: The nature of what you do.

Ms Notzon-Glenn: Yes, that's correct.

Mr HILL: I was hoping for that answer from you. I think we'll take that as Mr Fallen's answer. Mr McGuire?

Mr Fricker: I might find out something now!

Mr McGuire: No, I don't personally use those platforms. We did for a time during COVID, but that was more administrative and not for important records that you would keep.

Mr HILL: There's a great distinction sometimes, isn't there? You said it was a certainty people were doing this.

Mr Fricker: I have with Twitter, for example. The Archives are a cultural institution as well as a resource management institution, so we use all of those social media channels to do all that—aspects promoting the collection et cetera. I have conducted business with those platforms, and I do that. I take a screenshot and I put it on my record-keeping system to make sure. I have every tweet I've ever tweeted. I've cancelled my account, because I'm sick of it! But I've kept a PDF copy of all the tweets and all the things that I've done, because I need it to get off that platform and onto my record-keeping system.

Mr HILL: This is going well, because you should be a model citizen—the Inspector-General of intelligence shouldn't be on WhatsApp! Attorney-General's Department, do you receive any messages from your colleagues or the minister's office on WhatsApp, Signal or Telegram?

Ms Sheehan: From time to time, depending on preferences of ministers' offices and depending which minister is in office, yes, I have communicated with advisers through WhatsApp. Similarly to Mr Fricker, where I've considered that to be a significant record, I've taken a screenshot to comply with the records authority.

Mr HILL: So have you taken screenshots of conversations with ministers or their advisers?

Ms Sheehan: Where I've considered it to be a significant record that would be appropriate to be maintained.

Mr HILL: Mr Andrew?

Mr Andrew: I haven't.

Mr HILL: I think there's a rich vein of future enquiry. Thank you, Chair.

CHAIR: Thank you. It's actually a really interesting topic of conversation and certainly an important one. The last witness, I think from the Attorney General's Department, indicated the importance of record keeping where a decision or something that aligns with the requirements of record keeping [inaudible]. I come back to some of the challenges that were outlined before the [inaudible] integration of the Digital Continuity 2020 Policy. One of the things that was referenced by the National Archives representatives, if I recall correctly, was the cultural issues around some of these things. I think I'm referring back correctly. He said if you look more broadly at this whole issue, it's not just the cultural issue within government; it's actually a cultural issue socially. In other words, since the early 2000s, when social media started to take off—Facebook, then you had Twitter; you've got things like WhatsApp et cetera. I also look at the way that communication has changed over that time. Things that were once ordinarily done on a landline phone are now suddenly done mobile to mobile; that becomes the preferred option to such a degree that some people carry only their mobile phone and don't have a work or a home number. It's the same with written communication. I think somebody had said they used to arrange coffees by picking up the phone, but now you find people just as easily send off a quick text message about arrangements and actually never pick up the phone. Part of my question is broader around this. Is one of the things that we should be looking at the whole discipline around proper record keeping, because wouldn't that help to drive a cultural change that in turn would help to implement a policy such as Digital Continuity 2020?

Mr Fricker: Should I lean into that one? I feel like I'm hogging the discussion today!

CHAIR: That's okay. It's an important discussion.

Mr Fricker: What can I say? You're playing the strings of my heart. Everything you've said is really the core mission of the National Archives. Right now we are in discussion with the Public Service Commissioner on this very topic to see if we at the National Archives can work with the APSC on this professional streams strategy that the APSC has adopted as part of the overall workforce strategy to do everything you just said—to instil this culture, not record keeping you do as something on a Friday afternoon when you've finished all your other work but as a natural by-product of your official conduct. So the things you do create a record. The systems that we have across the APS are smart and nuanced enough to recognise a record to be kept and let the others go. We don't ever say you should keep every record. Ninety per cent of records can be deleted. It's that 10 per cent—the core important records. I'm not giving you much of an answer other than to agree with you.

CHAIR: That actually goes to governance, doesn't it? There's a feeling that a cultural sense of governance and ownership of governance around [inaudible] made at various levels of government—across government, across agencies and entities—really is where the focus should be. That's an appropriate focus, isn't it? If we want to address cultural change and actually make that happen, simply capturing everything doesn't actually instil that discipline.

Mr Fricker: No.

CHAIR: I'd argue that it potentially reduces it, because then also there's no requirement to necessarily have the appropriate levels of governance around what is considered a decision. I think you know where I'm going.

Mr Fricker: I do. It's also making us smarter consumers of information as well. I think, as we've just heard, the value of records is about information management. The better records are not just about creating a dead document that will prove to somebody that you did something; they're the fuel for future policymaking, future decisions et cetera. I think if we become smarter consumers of information—across society, for that matter—as we deal with disinformation and misinformation, all of us should be smarter consumers of information. That would also encourage that culture of therefore giving you more of a sense of how to produce quality information as well within that governance—the area that you just described. I do keep coming back to that professionalism of people in public administration. Of course, we build schools, bridges and roads—well, the states do, I suppose—but a lot of what we do as public servants is create knowledge assets for future generations. As professionals we should be more mindful of that. I'll get off my soapbox now. You've got me started, but I agree with you.

CHAIR: That's okay. It's an area that I'm actually quite interested in, particularly as often, when we look at Auditor-General reports, something I do see pop up reasonably consistently is the issue of culture, so I'm looking at some of these things and what we can do to help drive the culture that is needed to in turn deliver the outcomes that are required. Questions from Ms Payne?

Ms PAYNE: The audit found that the NAA's internal arrangements for administration of the policy were 'not effective'. NAA did not develop an effective implementation strategy and did not maintain 'appropriate governance, oversight, and reporting arrangements'. I'm quoting from the report. NAA notes that the five audit recommendations concerning the Digital Continuation 2020 policy have been fully integrated into planning and

delivery of the new policy, building trust in the public record and managing information and data for government and community, which succeeded the DC2020 policy on 1 January 2021. It seems there might be some inconsistency between the view of the ANAO and NAA about the role as policy owner and in terms of ensuring that people comply with that, so could you expand on your understanding of that responsibility?

Mr Fricker: We can explore if the disagreement is there. We wouldn't produce the policy if we didn't want it to succeed, but we don't have coercive powers as such. Our function powers don't extend to overseeing the record keeping going on in the government entity. We don't have that sort of role in the Archives. Our role is very much to produce, promulgate and impose record keeping obligations on the Commonwealth. That's what it says in the act. It is very much a soft power, not a hard power, that we exercise. I don't think we disagree. I don't think there is a disagreement there, but what we have done—and Mr McGuire here is tangible evidence of what we've done—since the ANAO's report is divert far more of our internal resources within the Archives into this. We've now created a branch—the Government Data and Policy Branch—headed up by Mr McGuire. It is tangible evidence of that. We now have an SES officer, a branch dedicated to promoting this and a new policy that is being constructed. As I said earlier, it's a maturity model, not so much a prescriptive, pass-fail set of deadlines. We've adopted this practice to make this approach more successful. So I don't think there is a disagreement, but, as I said, we don't have that enforcement functional power.

Ms PAYNE: What sort of activities are implemented to encourage the policy to be adopted?

Mr McGuire: There's a range of activities. If we go back to the audit observation, where we were ineffective in managing the policy ourselves, we see that, when the DC2020 was initially released, we released the policy and then it became business as usual. Then our resources were reduced, so we were really on policy delivery and we couldn't do all that value-added service that we used to. But we did note that as a business-as-usual process, it probably wasn't checked as often as we would have liked. So we did implement a project management approach. For the last year of the DC2020 we developed a project management plan, which was recommended by ANAO, and that was approved. Then there were the implementation support programs around our products, liaising with those low-maturity agencies through roundtables and covering those common themes and issues that the director-general outlined earlier, which is in our reporting as well.

With the new policy, we really started from a three-phase project management approach with the suite of project management documentation. Phase 1 was the scoping, phase 2 was the development and delivery of the policy and now we're heading into phase 3, which is the implementation across a five-year period, with a range of products and released guidance that we provide on a regular basis through a range of forums. We have agency advisory groups established. We have an SES roundtable where we talk about high-level issues which meets regularly as well.

So that's how we're managing the policy. As the director-general said, we now have a dedicated branch that really looks at our government data and policy, whereas before it was part of a larger branch which had operational aspects of collection operations, transfers, preservation and all of those aspects. We're now channelling our resources to focus on the implementation and all of our guidance material that we provide to our government clients, which are about 188 agencies, I think, at last count.

Ms PAYNE: To the ANAO: would you like to further comment on your view of that role?

Ms Mellor: Yes. This is an issue that we've discussed, particularly with regard to cyber, in the committee's inquiries in the past. At a simple level, policy owners need to find a way to make sure that their policy's effective, or else why have it? Effectiveness can come through many approaches. I don't dispute the director-general's view about coercive powers. But influence is a really strong regulatory power and influence often comes through reporting and transparency. If you're going to report and be transparent, you want to have assurance that your data is good. Obviously, the committee would be aware that we've found in cyber that there is self-assessment. It goes to the Attorney-General's Department—and it's not these people; it's another group. As in the case here, it's self-assured or self-assessed, and we found that the self-assessment process is flawed and that people overstate their progress. We found that in here as well. Relying on the accountable authority has proven in both cases not to be as reliable as the policy owner would like.

So what is the internal regulator doing about reporting the state of play of the implementation of important policy? What's the impact of risk to the Commonwealth if these important policies aren't being implemented? We hear a lot from regulators internal to government doing what you might describe as passive regulation, but we would highlight that, if you're going to have a policy, you should be able to measure its success, you should be able to report on it and you should be able to raise issues of risk to the Commonwealth if you are a policy owner. I don't think I'd say it's a conflict; I'd say it's another example in the Commonwealth of a regulator internal to government who's taken the information approach to supporting people and not something more than that.

Ms PAYNE: Thank you. Is that suggesting there should be more data collected by NAA about how agencies are complying?

Ms Mellor: We certainly took a view in this report that the data should be assured further. We did some testing ourselves and found that the data probably wasn't as reliable as the self-assurance suggests, which is very similar to our findings in cyber that chief information officers give their accountable authority a report and there may be an optimism bias in it. We certainly in the fullness of time will talk about cyber in the committee again, I'm sure, but this is one of the issues. With internal regulation, policy owners need to drive change. Can you only drive change through this supply of information and collection of self-assessed data? I think it would be fair to say publicly not—that we're not seeing it in cyber, that we haven't seen it in record keeping. Should there be a much more active role for the policy owner in implementing the regulation, the change in behaviour that they're seeking through the policy, than just this kind of model that we're seeing again in the public service?

Ms PAYNE: Thank you. The audit recommended that NAA establish monitoring and evaluation arrangements for the DC2020 policy and any successor policies. These arrangements would include relevant, reliable and adequate performance measures, capture consistent performance information and clearly define how successfully measured and reported they are. That is recommendation 4. NAA notes that agency targets were reviewed and reporting on the 2019 survey included progress against DC2020 recommended actions. Can NAA provide details of its performance measures for the new digital policy and how these are relevant, reliable and adequate in terms of enabling accurate assessment of performance against objectives?

Mr McGuire: One of the DC2020 recommended actions was about where we were a bit ambiguous about whether the actions were mandatory, optional or suggested. So we did a review—this was before my time in the role; NAA did a review—and there were 24 actions as part of the policy. Two were mandatory: one was to complete the agency survey and the other one was that digital information was the record, not the analogue, paper record, from 1 January 2016. The remaining measures or options were all then classified as recommended actions. What we were saying there is, 'If you follow all of those requirements, you will have good information management within your organisation.'

We did then communicate that, and one of the observations of the audit was that our stakeholder engagement and communication probably wasn't as good as it could be, so we have stepped up that as well. So we did communicate the changes in those measures. As I said earlier, in our questioning in the survey, we've tried to better align the questioning to those recommendations so we can assess where agencies are at. The audit found that in earlier surveys there wasn't a good correlation of some of the answers to how they would meet the recommended actions. So that's what we've done in the DC2020.

Moving onto the assurance, I take the point. The accountable authority—we thought that was a good measure. We're hoping the agencies are reporting appropriately to their accountable authority. Our survey contractor does some quantitative assessments if the answers—they are expecting them to add up to a certain thing, so if they don't add up, they contact the agencies.

With our new policy, we do have a draft evaluation and monitoring plan which is to go to our project board, I think, at the end of this month, which is how we want to measure our delivery, the agency implementation and then how we measure the success of the policy. We are in the process of considering how we redesign the questioning in our check-up survey, which we will be looking at as part of that process to see if we can get better, reliable data to come through.

In terms of the assurance with agencies, I take the point. If we had more resources, we could get out and work with agencies a lot more. So we are operating as efficiently as we can with the resources that we have.

Ms PAYNE: I might ask one further question. The audit recommended:

The National Archives of Australia should establish effective internal arrangements to administer and oversee the implementation of the Digital Continuity 2020 policy, and any successor policies. The arrangements should include appropriate governance structures and a strategy to guide the administration of the Digital Continuity 2020 policy, and any successor policies, as a coordinated program of work.

That's recommendation 1. NAA notes

The National Archives implemented revised governance and administrative arrangements for the DC2020 policy ...

Can NAA provide further details of these revised arrangements? What governance and administrative arrangements has NAA established to oversee implementation of the new digital policy?

Mr McGuire: As I mentioned earlier, with the DC2020 policy, we developed a project and implementation plan and we managed it as a project with regular reporting and reviews and assessment. With the new policy, which really started in late 2018 or early 2019, we really did take on a full project management approach. With

that came proper project management plans and a suite of documents. We have a project assurance committee as one of our governance committees in National Archives. Through that development of the policy we reported to the regular meetings of the project advisory committee. We took advice, changed the approach, looked at what we were and weren't doing well, and measured where we were at during the delivery. We also reported to our executive board on a regular basis.

As part of that whole suite of governance arrangements we've been able to monitor, deliver and manage more effectively. We have looked at our risk management. We have risk management plans. We review our risks regularly as well. And then there's our stakeholder communication. As I said, we established some advisory groups of practitioners. We have an SES roundtable at the higher level. We have to re-engage that now we're in the implementation phase and delivering the policy as of 1 January. We also use our GAIN forum of government agency information managers to communicate, give case studies and so forth.

What I'm saying is that we have a more project managed approach that we follow fairly rigidly. With phase 3 our project advisory committee were very comfortable where we were at with the delivery of the policy. We now follow the project management approach, but we don't have to report to them regularly. We still need to follow the same principles and the same approaches.

Ms PAYNE: Thank you, Mr McGuire.

Ms Mellor: If the ANAO could just comment on this part of that report for Ms Payne. If I step back from it, what was missing was the energy around the governance structures that could have been put in place. There's a really big lesson for agencies in here. This was a long-term agenda. Many times we've seen a lot of effort going in at the beginning and then it dropping off. I think the lesson here is that agencies that have long-term responsibilities need to stay energetic and motivated about their cause.

I haven't audited what the witness has just told you, but if you read the beginning of chapter 2 of our report, you'll see that it started off, it then waned, they didn't get drafts signed off and they didn't report, so they had the mechanisms emerging to do that. This is something we see when people are given big long-term jobs and over time something else comes along and becomes more important. I think there's a real lesson in here for agencies that have long-term policy responsibilities, long-term regulatory responsibilities and long-term anything—'Stay on top of your governance and stay interested in it. It isn't a waste of time.'

I don't think we as auditors could ever say that we've seen anything that was planned and managed well being unsuccessful at the end. There might have been twists and turns along the way, but good planning and good governance usually help people get a good result.

CHAIR: Thank you. I have some specific questions. I'm conscious there are some witnesses who haven't had an opportunity to comment directly on the impact of the Auditor-General's report. My first question is to the Attorney-General's Department. The audit found that you had fully implemented or made substantial progress against all the policy targets. Have you now fully implemented all of the targets? What feedback or, to use a word I hear from the Audit Office sometimes, lessons do you think can be learnt or provided for other agencies in terms of implementing policy targets?

Mr Andrew: This reflects on the conversation that just played out. I think the department took the DC2020 seriously. We considered it important from the outset. We had sufficient resources to commit to it. Because information is a crucial element of the nature of the department's purpose and its mission we had strong engagement through governance committees. We were able to use our existing governance committees to pick up these additional responsibilities, so we had senior executive buy-in. There was accountability through the senior executive to the survey results. As we passed along that road, because I was directly signing off on that self-assessment, we were deliberately pessimistic in saying where we were with respect to the advancement of policy. Just addressing the self-assessment model, sometimes it's really difficult because—sure there can be an element of optimism, although you try and curb yourself against that optimism, but there is also an element of definition where there can be a grey. When the Audit Office assesses your self-assessment they might have a different view to what was meant by that particular self-assessment target. It may have been that there isn't sufficient audit evidence available to ratify the position that was taken and so from time to time that can create difficulties. But again we took a position which was to be as pessimistic as we could to be able to demonstrate the basis on which we had come to that particular self-assessment. The fact that it had senior executive oversight, in terms of that travelling through the environment, meant that there was a positive motivation to make sure you that could justify the position that you were placing.

The last point I'd make was that it was a compliance piece. The DC2020, from my perspective, was a series of building blocks. If you were able to put them in place then you created an environment where we all know that

this space is going to change, but if you haven't got those fundamental elements about governance, if you haven't got those fundamental elements about data interchange, each of the principles in place, then it makes it much more difficult for you to adapt to change. For that bunch of reasons, I think that's why we ended up where we ended up. Those areas of ambiguity—I think it was just a process of trying to build, as best we could, an appreciation overall of what was trying to be achieved through the policy.

CHAIR: A quick question for CASA: the ANAO's report recommended you update your [inaudible] policy, that was recommendation 7. Part of my question is how are you going with that? Have you now met all of the targets from the Digital Continuity 2020 Policy? Do you have any observations or lessons for other agencies from your experience?

Mr Forrest: In terms of the electronic transactions policy that was reviewed, we've incorporated that into CASA's information management directive. This directive became effective in November 2019. It is reviewed every two years, with the next review to be conducted by 2021. In terms of DC2020 it's been quite a journey for CASA. We started off in a [inaudible] and we had resources assigned to the program. What we found is that [inaudible] it's quite a long journey and it's a matter of building capability as you go through. I am quite happy with the outcome for DC2020. We have just submitted our last check-up, which was due at the end of March.

CHAIR: Thank you. A question to IGIS: you said in your submission that you were developing an information governance framework, due to be finalised by May of this year, to address any outstanding obligations regarding the 2020 policy. Do you have any update you are able to provide us—happy for you to take it on notice if necessary—on your progress in implementing the targets from the 2020 policy? How is your information governance framework providing or delivering some processes around monitoring and reporting on that progress?

Ms Notzon-Glenn: What I think we would say is that we have made good progress in implementing the recommendation which went directly to us, which was recommendation 7. Our submission outlines the progress that we've made so far, but I might quickly summarise it to say we've engaged, or we had engaged, an external consulting firm to advise on the implementation of enhanced information governance arrangements for us. We have a dedicated information governance specialist within our office now. We've also implemented an office-wide restructure, including for the purpose of improving information governance, which goes to the first part of your question.

For us the record keeping in hard copy is very strong. As an oversight agency we recognise the importance of records and record-keeping. Where we found some slight challenges is in the digital space where we run across three separate systems, many of which relate to highly classified information. We are working through how we might digitise some of those parts. But as the ANAO report acknowledges there are some aspects of the security parts of our work which mean that some records just never will be able to be digitised. We are working to see how that might be operating across those three systems. In terms of progress, I can say that we are actively working on the framework that we attached to our submission. We also have classified aspects of that that sit underneath it that we are working to across those systems. At the moment, I can say that we have made good progress and the new inspector general, Dr Christopher Jessup, is very committed to information governance. It is something that we discuss both at our executive committee meetings and at other external accountability meetings like our audit committee.

CHAIR: Thank you very much. I'll just invite a final comment, if any, perhaps from the Auditor-General, if there is anything in response or a comment that you would like to make?

Mr Hehir: No, I don't think there is anything additional that I would like to make. I think my colleagues have made all of the comments that I think are important with respect to this, particularly those relating to the implementation of the regulations and how to make that effective. I think that's a key message, not just from this audit but from a number of other audits that we've done.

CHAIR: Thank you very much. To all witnesses today: I would like to thank you for coming. If you have taken questions on notice, or if you were asked to provide any additional information, please forward it through to the secretariat by Wednesday 28 April. Just to advise, if there are further questions from members of the committee they will be sent through to you in writing through the secretariat.

Proceedings suspended from 12:32 to 13:17

CONNELL, Ms Rachel, First Assistant Secretary, Water Division, Water, Climate Adaptation, Natural Disasters and Antarctic Group, Department of Agriculture, Water and the Environment

HEHIR, Mr Grant, Auditor-General for Australia, Australian National Audit Office

JAGO, Ms Carla, Group Executive Director, Performance Audit Services Group, Australian National Audit Office

MELLOR, Ms Rona, Deputy Auditor-General, Australian National Audit Office

O'CONNELL, Ms Lyn, Deputy Secretary, Water, Climate Adaptation, Natural Disasters and Antarctic Group, Department of Agriculture, Water and the Environment

WHITE, Mr Michael, Senior Executive Director, Performance Audit Services Group, Australian National Audit Office

CHAIR: We will now resume the hearing with reference to Auditor-General's report No. 2: *Procurement of strategic water entitlements*. I call representatives of the Australian National Audit Office and the Department of Agriculture, Water and the Environment. These hearings are formal proceedings of the parliament. False or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Would you like to make an opening statement before we moved to questions from the committee? ANAO?

Ms Mellor: No, thank you.

CHAIR: Department of Agriculture, Water and the Environment?

Ms O'Connell: No, thank you.

CHAIR: I understand that there are a number of questions from the committee. I might start off by inviting the deputy chair to ask a couple of questions, and then we will move around the room accordingly.

Mr HILL: Sure. I'll just set the context for this first series of questions. I'm mindful of the apparent contradictions raised by the Australia Institute's report *Unredacted documents prove Commonwealth paid too much for 'watergate'*. The documents provided, after a two-year battle, to Independent senator Rex Patrick, who I think is on the line, contain the commercial valuations commissioned by the department for negotiations with the vendor. The key findings—obviously you can comment on these in a moment—are that the Commonwealth paid \$2,745 per megalitre, nearly double the \$1,500-per-megalitre price recommended by the valuation that the department commissioned and almost 20 per cent more than the top of the valuation range, \$2,300. The contention, therefore, is that the valuation documents contradict claims by the then Department of Agriculture and Water Resources that the valuer stated that the department should be prepared to pay a premium for water rights and that the documents contradict the Audit Office's finding that the prices paid in strategic water purchases were equal to the maximum price determined by the valuation. That's the context.

I'll just turn to table 4.1 on page 49 of the ANAO report. It shows the ANAO's analysis of value-for-money assessments for strategic water procurement. There is a column there titled 'Benchmark (maximum considered)'. Can the Audit Office explain what was used to determine this figure for each purchase? And how did the department determine the benchmark, the maximum considered, for the Condamine-Balonne purchases specifically? We won't go into all of that here, but there is political controversy around this, given the nature of the ownership and links to certain ministers and so on. Can the Audit Office explain, firstly, what was used to determine this figure?

Mr White: Yes. The 'Benchmark (maximum considered)' column came from a range of processes within the department. The water markets group provided information on pricing, if it was available, through various water markets; through valuation sources, if they had them, for various areas; and through other considerations in terms of movements in time and those sorts of thing that were occurring from the point of last valuation. A range of factors went into each of those benchmark considerations by the department.

Mr HILL: Have you read Slattery's submission?

Mr White: I have.

Mr HILL: What response would you give to that? I outlined in very brief form the key contentions: that the unredacted documents prove that the department's claims are not true and that the Audit Office's conclusion is erroneous in some way. What would be your response to that?

Mr White: We did have a discussion with Senator Patrick at estimates, where I provided some part of the view. Subsequently, the Auditor-General wrote to Senator Patrick to put his position on paper and also to respond

to questions on notice. We have considered the views of Senator Patrick and obviously those in the Australian Institute submission. We still consider that the valuation report was assessed by the department in a manner that was reasonable and that the allocation of the premium to the price range that was provided was a reasonable approach at the time.

Mr HILL: It would be helpful, given you've corresponded with Senator Patrick, if you could make that correspondence available to the committee. I don't think Senator Patrick would have any concerns.

Mr White: I think we can do that.

Senator PATRICK: I have no concerns.

Mr HILL: He's got no concerns. There he is, beaming in. How did the department determine the benchmark—the maximum considered—for the Condamine-Balonne purchases, specifically? What documents were used? You said you concluded that it was reasonable to pay well above even the top of the valuation range, so how did they conclude this?

Mr White: The department had a couple of different valuations over time from the actual valuer himself, as well as being provided information from other areas within the department. One of the valuations, I think, was from the previous year, where it listed some properties and some valuations, including a similar premium idea. Then they had the final valuation that was there and was provided and relied upon.

Mr HILL: Was the Colliers International valuation used and, if so, which one?

Mr White: That's the one—from I think it was March 2017.

Mr HILL: So that one was used. There's a column there entitled 'valuation amount market price'. Can the ANAO explain how this figure was determined? What valuation was used to determine that figure?

Mr White: I think that is top of the range from the report itself.

Mr HILL: So it's the top of the range. Is it normal just to get a valuation range and then pick the top and call that the market price? I thought that in other hearings we talk about looking at the midpoint and negotiating from there.

Mr White: I think in that one, in particular, it was the upper end of the range, where they put the entire 30 per cent on top of the valuation.

Mr HILL: Let me get this right. They got a valuation, they got the midpoint and then they decided the market price was actually the upper end and then they whacked a premium on top of the upper end.

Mr White: That's correct.

Mr HILL: How do you conclude that that's reasonable? I struggle to reconcile that with the Audit Office's approach on many other things. We're about to talk about Leppington Triangle.

Mr White: We did a range of work in relation to the valuation, including assessing the previous valuation from I think it was February 2016 and looking at the movements from the valuer over time, and I think the values moved quite substantially. We had also assessed work that was analysis and research that was done by ABARES, where they recorded and reported on significant movements over that period of time. In reading the report, we looked at the explanation that the valuer had provided that there were some sales that would possibly occur again or follow, occurring in the near future, that would be above the range that was listed. We also looked, then, at the explanation of the valuer that a 10 to 30 per cent premium could be expected on some sales, depending on a range of factors.

Mr HILL: So there were some sales which might be expected which hadn't happened and there were some sales which you could call outliers, or the absolute highest of the highest of the highest end, and that's the basis on which the department then determined the market price—if you like, the worst case for the taxpayer and the best case for the seller.

Mr White: I was talking about work that we did in terms of looking at how the price range may have been reasonable. How the department factored in the 10 to 30 per cent, they might better answer themselves.

Mr HILL: We'll get to value for money.

CHAIR: I have a question. With all of this, when you said 'reasonable', you're saying that on all occasions this was reasonable. How does the whole system work?

Mr White: Chair, if I can, I will explain. We were looking at a series of procurements from within the department. We were looking particularly at those procurements that were considered to be undertaken as limited tenders. We were looking at the entire process that the department went through, in terms of whether or not they had achieved value for money, including whether or not they had set up an appropriate framework in the first

place, whether they had followed government policy, whether they had followed the Commonwealth procurement guidelines and whether or not they had an approach to set a reasonable basis for setting price. I think that, in the report, we note that they hadn't fully set an appropriate framework to ascertain value for money and, in fact, in the front of the report, we note that, for government entities, they should include, for example, negotiation as one of the key elements of any procurement to obtain value for money. We looked at their framework and inclusion of the Commonwealth procurement guidelines, but we know they weren't always consistently applied. We did look at the application of the Commonwealth procurement guidelines and whether or not the socioeconomic factors were considered and I think we've noted that there were some inconsistencies throughout there. Then we looked at the approach whereby they had a methodology for setting price within the procurements, including obtaining valuations, particularly where they were in non-active markets, and, then, whether or not they had the ability within their methodology to include an additional premium based on other factors that may be important to consider in the purchase. So we considered the whole gamut across the sample and we concluded across the sample.

CHAIR: You were talking about additional factors. Can you give me an example of some of them?

Mr White: Some of the additional factors, which I think the department has previously discussed at Senate estimates, were that the volume of water was considerable, that the Commonwealth Environmental Water Holder was very clearly in favour of the procurement and that the valuer had written into his report that there was the possibility of premiums to be paid on the price range that he had provided. And there may be more factors.

CHAIR: I'm just conscious that I've interrupted the deputy chair. I don't want to take too much of his time but, very quickly, in reference to framework, if the framework had been designed and adhered to to maximise the value of strategic water entitlements purchased, would some of the challenges and resulting recommendations in this report have actually eventuated?

Mr White: I think we note that the planning and design of the frameworks for the procurements was quite good. I think we note that the actual carrying out of the procurements lacked consistency in a few areas, which, as you note, gives rise to some recommendations and some issues being raised by the ANAO.

Mr HILL: Can you take on notice and provide us with a list—you'll need to look back into your working documents—of all of the various valuations, with their dates, that your work relied on?

Mr White: In this procurement?

Mr HILL: Yes, in relation to the Condamine-Balonne purchases specifically, because I think there were two Colliers valuations, a 2016 and a 2017.

Mr White: There were.

Mr HILL: Could you please be clear, for each of the questions I've asked—so for the 'Benchmark (maximum considered)' column and the 'Valuation amount (market price)' column—which valuations were used to influence each of those findings and then also provide a full list of all of the valuations which you had access to as part of your audit work?

Mr White: Yes. There was also a CBRE valuation from 2015 that was part of the process of our assessment.

Mr HILL: So that's two specific questions: which valuations informed which column, and, next question, a full list of all of the valuations. The third question is: subject to whatever restrictions you have, could you table a copy of the valuations which you hold?

Mr Hehir: It might be better and easier for you to ask for the valuations from the department, who hold the documents.

Mr HILL: That's fine. I get it, yes. We don't usually ask you for the copies of working documents, but we can ask you for a list of the ones you relied on. I understand. We'll get to that. The ANAO states that upward adjustments to water purchases are allowed in some circumstances, as we've touched on. In this regard, the report states:

The methodology allows for the department to make additional upward adjustments if it considers it suitable and defensible. The relevant line area will then make recommendations to the Valuations Committee or Water Project Board. The department did not develop Terms of Reference for the Valuations Committee or record meeting minutes.

Does the ANAO believe that the department did in fact go to the Valuations Committee or the Water Project Board in relation to the Kia-Ora and Clyde purchases?

Mr White: I'd have to take that exact point on notice. There was some evidence of going to the board. I'm not sure exactly which cases they were.

Mr HILL: Okay, if you could take that on notice. Is there any record at all of any meetings of the Valuations Committee or the Water Project Board?

Mr White: We do have documents from them and resulting minutes from the board, including very early on from the set-up of the program and the approaches to be adopted throughout the move from open tenders to the limited tender approach that we looked at.

Mr HILL: So you've got records of some meetings of the Valuations Committee. I'm just trying to reconcile. You just said you had evidence of the fact that they actually existed and met and some minutes, yet the audit report says that the department didn't develop terms of reference or record meeting minutes. Was it a bit random?

Mr White: The terms of reference might not have been developed, but the committee did meet. They did look at some particular things. We know that there are some records of materials going to the committee, if that makes sense.

Mr HILL: It doesn't really, because your report clearly says:

The department did not develop Terms of Reference for the Valuations Committee or record meeting minutes.

Mr White: We have some material that goes to, as I said, options for the change from the open tender process to the limited tender process that we audited, but I don't think we have formal minutes for those things.

Mr HILL: Perhaps you could take on notice to provide us with a further description, understanding that the normal protocol is that we don't get you to provide actual documents. Could you provide a further description of the kinds of records you had so that we can understand that sentence? Did the Audit Office look at all valuations related to each strategic purchase?

Mr White: I couldn't tell you that we looked at every valuation that was provided to the department, but we looked at all the valuations that were made available to us and we have no reason to believe that they withheld any.

Mr HILL: So all the documents that were sought were provided?

Mr White: Correct.

Mr HILL: Did you look at the opt-in valuation that valued overland flow licences at \$50 per megalitre?

Mr White: I wasn't aware of that valuation at the time of the audit.

Mr HILL: And that wasn't provided to you?

Mr White: I haven't seen that valuation. I certainly didn't ask for it. I personally wasn't aware of it.

Mr HILL: But you don't have to specifically ask for things. Isn't the department supposed to give you everything?

Mr White: I haven't seen that valuation.

Mr HILL: Are you aware of any documents released via FOI or now in the public domain relating to the Kia-Ora or Clyde purchases that you didn't view in your audit processes?

Mr White: I think the Australia Institute report refers to some valuations that may have been carried out by the same individual valuer from a previous career time. I think they were 2008 or 2010, if I remember correctly from the submission. I don't think those valuations were valuations requested by the department. The department and the ANAO have discussed that multiple times, and I haven't been provided with them.

Mr HILL: I will just run through a couple of other questions. Senator Patrick, who is well across the detail, may want to go back to a couple of these issues.

CHAIR: Deputy Chair, if I could just ask a question that is broadly aligned?

Mr HILL: Sure.

CHAIR: This is probably a question to the department. In terms of valuations, can you outline the sorts of considerations you did have when you were looking at these valuations and looking to make use of them? What were the considerations that you did actually give weight to and have regard to, please?

Ms O'Connell: For the purposes of this hearing as well we can table a list of all the valuations that were done in relation to water purchases. We did do that at the 26 March Senate estimates hearing.

Mr HILL: That's a list. Did you table the valuations?

Ms O'Connell: No. We tabled the list of all of the valuations. That gives a quite comprehensive view of the number of valuations that were done across all water purchases. I'm very happy to make that available to this committee.

Mr HILL: But can you table a copy of the valuations?

Ms O'Connell: There would be an enormous number of valuations. When you see the list, I'd be very happy to make available the relevant ones you want.

Mr HILL: Thank you.

Ms O'Connell: Chair, your question I think went more to how we used those valuations.

CHAIR: Yes. What was the thought process, the structure, the considerations and the assessment procedure, if you like, in evaluating valuations?

Ms O'Connell: Okay. I'll ask my colleague to address that.

Ms Connell: There were two different approaches that were taken, which were set out in a valuation methodology: one approach that was adopted in relation to active markets and a different approach that was adopted in relation to non-active markets. The water entitlements that we are currently discussing in the Condamine-Balonne were characterised as being in a non-active market. The process that the department followed was to commission an independent valuation from a registered valuer. As to the scope of the work for this particular valuation, I'm happy for us to provide a copy of the answer on notice that we provided at Senate estimates, which sets out the scope of work that the valuer was asked to provide. I will note that we also took on notice at Senate estimates on 26 March to provide a copy of the Colliers valuation that was relied on. We're obviously in the process of complying with that request.

That question on notice also goes to your question, Chair, about how the valuation was used, in terms of the decision of the delegate to approve the acquisition of the water entitlements. Price was one component of the decision, but, in accordance with the Commonwealth Procurement Rules, the delegate also considered other factors, including non-financial benefits. Essentially, the main reason for this acquisition was to recover water for the environment from irrigation purposes, in accordance with the Basin Plan.

CHAIR: Is that what you mean by 'non-financial benefits'?

Ms Connell: There were four non-financial benefits that formed part of the delegate's decision to acquire the water entitlements. There was the low risk of acquiring the water, which had a security of tenure through to 2111. There was the fact that it was quite a large amount of water. In the Condamine-Balonne, the Basin Plan requirement was to recover 100 giganalitres of water for that particular catchment, and these two entitlements amounted to 78 giganalitres. There was the environmental value of the water to the Commonwealth Environmental Water Holder. We saw that come to fruition last year, when she was able to use this water basically to keep the Narran Lake Ramsar wetlands alive. And the fourth non-financial consideration of the delegate was the low socioeconomic impact of acquiring this particular parcel of land.

Mr HILL: Could I just get a clarification. What does that last factor mean?

Ms Connell: There were concerns about acquiring parcels of land from a range of primary producers in the area and the impact that it would have in terms of taking water out of productive use on small regional and rural communities. The view—and this is also set out in the question on notice—was that acquiring this water wouldn't have a significant socioeconomic impact.

Mr HILL: I understand now. As a dot point in isolation it sounded a bit like the seller was poor so we paid them more, which sounded a little bit weird. That makes sense now. Thank you.

Senator PATRICK: I want to follow up some of the questions from Mr Hill. The Auditor-General's office have stated that, at the time, they were satisfied that the proper valuation was used, but my understanding, from the letter that's been provided to me, is that subsequently to the audit the Auditor-General contacted the valuer, who basically advised that it was never his intention for his advice to the Commonwealth to be construed as going beyond the \$2,300 per megalitre. I just want to establish, for the benefit of everyone else, that that is in fact the correct status at this point in time.

Mr Hehir: I'm sorry, what was the question?

Senator PATRICK: Basically the Auditor-General has subsequently contacted the valuer, and the valuer has indicated that it was never his intention for the Commonwealth to pay above \$2,300 per megalitre. I just want to make sure we're on the same common ground at this point in time. That's the case, isn't it?

Mr Hehir: We contacted the valuer, and the valuer indicated that they had not provided advice to the department that that use was appropriate and that their view was it was not appropriate.

Senator PATRICK: You have subsequently gone back to the department to seek additional information, to give them an opportunity to respond to that new piece of information. My understanding from estimates is that the

department has provided you with no new information, so I'm presuming you are now looking at re-evaluating your position in relation to the statement made that the Commonwealth paid within the valuer's price range.

Mr Hehir: We're looking at what we can do to assure readers of our report that they have that subsequent information available to them. Part of our problem in dealing with this type of subsequent information is we don't know what the counterfactual was—that is, what the department would have done had it had that information from the valuer. Secondly, we haven't had an opportunity to do any audit work on the assertions from the valuer. As you know from reading many of our reports, we try to corroborate assertions as much as we can to get to that evidence base. At the moment I'm looking at what we can do to draw the attention of readers of our report to that subsequent evidence the valuer has given.

Senator PATRICK: We can't unscramble the egg here. What that means, however, is: had the department made a 30c phone call, even if they had paid the top price the taxpayer would have saved \$12.9 million. That's essentially where we're at with this purchase.

Mr Hehir: You'd have to ask the department about that. Part of the issue of the purchase process was they had a procurement methodology which, as my colleague said earlier, allowed them to go above the valuation range if certain circumstances were in place. That's what makes it challenging for us to say what the counterfactual would have been in this circumstance.

Senator PATRICK: My position on this is very clear: had they made that phone call, there would have been a saving. It would have been proper; indeed, it should be part of a normal standard process, when you are spending that amount of money, to at least pick up the phone to the valuer. The problem I've got is that Mr Metcalfe, the secretary of the department, when questioned about this very issue, says he is relying on the Auditor-General. The Auditor General is now saying, if I understand you correctly, 'Well, we are kind of just relying on the department.' That's an unacceptable proposition. The department needs to lay out the fact that too much has been paid, and then we can get on and deal with how we make sure that doesn't happen again in the future.

Mr Hehir: I don't think I'm saying that we're relying on the department. We certainly take evidence from the department, and, certainly at the time of the audit, we thought the interpretation of the valuation report that the department put to us that they were taking was a reasonable reading of the valuation report, given both the information in it, with respect to a point valuation and a range, and the other commentary about what was happening in the market at the time. It was a reasonable view at that time, but other people could read it differently, obviously.

CHAIR: Just on that issue, I have a question for the Auditor-General—and then I'd ask the department to provide a response as well—about these valuations and this valuer. Regarding the current conversation in relation to the valuations, did the valuations provided to the department and then subsequently assessed by the Auditor-General include an evaluation of non-financial benefits?

Mr Hehir: No, they didn't. They were an evaluation of the water entitlement itself. In fact, I think the report actually notes that it didn't include consideration even of the decommissioning of water infrastructure in that pricing consideration.

CHAIR: I'll throw to the department. Could you please provide some insight and views into this in relation to valuations that don't value non-financial benefits. Does that explain some of the alleged discrepancy?

Ms O'Connell: As you say, we relied on the written valuation report. In there it set out the scope for paying the premium, so we relied upon the written valuation report to undertake the purchase. Our valuation covered a more comprehensive look. Ms Connell outlined the sorts of areas that we would look at in taking into account the strategic nature of the water purchase. I might ask Ms Connell to go through that process in terms of our assessment of the valuation and what else we took into account for that purchase.

Ms Connell: Just confirming, the Colliers valuation was a market valuation, but the department delegate took into account other non-financial elements, including the size of the water parcel. I should note, in relation to this acquisition, that it was 25 per cent of the overall recovery target. I think it was about 25 gegalitres, but it realised about 80 gegalitres for the Commonwealth Environmental Water Holder. The basis of the advice on the environmental value is the Commonwealth Environmental Water Holder. That's the purpose of that statutory office. In terms of the socioeconomic impacts, I understand the department relied on information from the Queensland government and local councils as well as other information about the impacts of taking this water out of the consumptive pool on rural and regional communities in this area.

CHAIR: Having no direct experience in this area, am I correct in assuming then that the valuations received and [inaudible] would not have [inaudible] to the monetised value of non-financial benefits and in fact would not be expected to incorporate those into their valuations, or do they?

Ms Connell: Sorry, you're breaking up a bit there. Could you restate the question?

CHAIR: I was just indicating that I don't have a corporate background in this area, so I'm asking for clarification. The valuers and the valuations provided to the department would not be expected to include those non-financial benefits, and those valuers wouldn't even necessarily have access to the monetised value of the assessment of each one of those four non-financial benefits that you outlined before, so they wouldn't have been incorporated in any of those valuations. Is that right?

Ms Connell: That's correct. They just provide a market valuation of the water entitlements.

Ms O'Connell: From the perspective of the market valuation—the valuer's report, which is just the market value, not the other components that my colleague has outlined, but even with market valuation, the price paid for the water entitlements was equal to or less than the maximum price determined by the valuation, so it was still within the maximum price by the valuer. But the key components here, in addition to the market price, were the non-market assessments made in terms of the value of that particular purchase.

Mr Hehir: Can I make a comment on that? If a department were undertaking a procurement using a valuation as the basis and wanted to pay above a valuation because of other factors, we would expect to see that documented in the process so that they could demonstrate that the reason for paying over the valuation was well established. That wasn't the case in this particular procurement. The department relied on the valuation and on the interpretation of the valuer's report, which led them to believe they were operating within that valuation. So I don't think it is a source of confusion between the factors.

CHAIR: Thank you. I will just invite a comment in response to that from the department and then hand to Senator Patrick.

Ms O'Connell: We have nothing further to add. We concur with what the Auditor-General said. We paid within the valuation range.

CHAIR: Thank you. Senator Patrick.

Senator PATRICK: Can I just say that suggesting that the department paid within the valuation is actually misleading the committee, and if the department wants to repeat that I will take it further. The valuation is really clear. It says that the price should have been from \$1,100 per megalitre to \$2,300 per megalitre. The department paid \$2,745 per megalitre, and the valuer has confirmed that the department was erroneous in going outside of that range. Saying that is within the range is misleading, and it should not be evidence that the committee accepts. This is nothing short of incompetence. I understand why the department is trying to cover it up, but anyone who looks at this on face value would come to a conclusion, particularly now—

CHAIR: Order! A question, please.

Senator PATRICK: I'm just cautioning the witness that she is misleading the committee and I will take it further. I will take it further offline, and I will move on to further questions. To the Auditor-General—

CHAIR: Senator Patrick, I appreciate we are operating from three different technologies, and I thank you for your forbearance. You have made a comment, and I would like to invite the department to provide a response to that, if they would like to. But, Senator Patrick, perhaps you would like to reframe it? If you wish to take anything further, we can discuss that at a subsequent meeting.

Senator PATRICK: I'm not going to reframe anything, Chair. That is misleading the committee on the evidence that is before the committee. We've heard the Auditor-General and we now understand that that price should never have been paid. Indeed, if they wanted to go outside the valuation, they had the ability to put that to the minister. I've seen the briefing that went to the minister, and it does not include any information that suggests that they should go outside the range. A mistake was made. Let's just admit that and then work out how we make sure that doesn't happen ever again.

CHAIR: Before you move to your next question, I would invite the department to give a response.

Ms Connell: In response—and this is also set out in question on notice No. 189, a copy of which we'll provide to the committee—the delegate based his decision on the basis that the market valuation provided by Colliers included advice that, if the analysed sales were offered today, an improvement in value could be anticipated in the order of 10 to 30 per cent. It was on the basis of that advice that the price per megalitre that was ultimately paid was determined, as part of the delegate's decision. I would also note that the Auditor-General provided advice in Senate estimates that the interpretation was reasonable.

Senator PATRICK: Again, that interpretation was reasonable up until the point at which someone picked up the phone and paid 30c to find out what the real value ought to have been. I will leave it there, Chair. Going back to the Auditor-General, a submission made by Ms Slattery questions your compliance with the audit standard in

relation to the way in which you simply relied on evidence from the department. Do you want to comment on that?

Mr Hehir: I'll start by saying that the auditing standard to which they refer, ASA 500, is a financial audit standard and this was a performance audit. That is to some extent a technical issue, because a similar standard is available under ASAE 3500, which is a performance audit standard and uses basically the same types of words. However, the type of analysis they undertook clearly related to the application of ASA 500 with respect to a financial audit, where what you're trying to do, as an auditor, is get an assurance that a particular dollar-amount line item in the accounts can be relied upon—that is, is the number precisely correct? But that wasn't what the nature of this audit was.

Audit standards in general say, for example, that you carry out those functions to the extent necessary, having regard to the significance of the work for the auditor's purpose, and in this particular case our purpose was not to go through each one of the valuations done in the course of the procurements to determine whether they were accurate enough to be included in the financial statements. As an aside, I'd say that, because they're non-active markets, we don't do a valuation based upon current value of water; they tend to be put in at cost, effectively. But it wasn't for the purpose of that.

What we were looking at was whether the department had a methodology in place to underpin their procurements and whether they complied with that methodology. In looking at their compliance with the methodology, the assessments around value for money were based upon compliance with the methodology and whether the methodology supported value for money. In this case, our conclusion with respect to value for money was that the department didn't develop an approach which was about maximising the achievement of value for money, and that's in the conclusion of the audit report.

In summary, I think the report is saying you shouldn't undertake a financial audit type of due diligence across the external experts when in reality that wasn't the purpose of this audit. I certainly reject the view that we didn't comply with our auditing standards. We applied the auditing standards appropriately here.

Senator PATRICK: I go to the methodology that they talked about. In both the Lowbidgee and Tandou purchase—the lower Darling-Barker purchase—the department relied on valuations that came from the Murrumbidgee, yet these were water purchases for water that was in different valleys. To put that in very simple parlance: it's like taking a valuation for a property in Vacluse and using that to work out what the value for a house in Rooty Hill is. In the case of Lowbidgee, there was a 2014 order that suggested that paying \$175 per megalitre was too high for this supplementary water. In this case, we've seen \$370 paid per megalitre in the Lowbidgee area. That relies on a valuation that came from a completely different area. It is the same with the Tandou purchase. Do you have any comment on that?

Mr White: We responded to the questions at Senate estimates in relation to the Lowbidgee purchase. We understood from the department when we were doing the work that there was very limited information available on the New South Wales state register from which to commence making an assessment on value in that area. The department considered other information sources and they reached around for different areas where they felt that similar or comparable water rights and valuations may be available. They settled on one that was above the area in question. We found that that was a reasonable approach given that we couldn't find any more-accurate source of valuation at the time.

In terms of the Tandou one, I might let the department explain more clearly, but there was an agreement that they had for their water for transfer rights, and it allow them in that particular case to use that right in part of their valuation.

Senator PATRICK: So the Tandou story was slightly different, but, in essence, the evidence I'm hearing is that you're saying it is okay to take a Vacluse valuation and apply it to a Rooty Hill house in circumstances where there's not a lot of information available about Rooty Hill. That is the analogy of what it is you are suggesting, and it disturbs me that you say that that is okay.

Mr Hehir: We're not saying that there was a process that was okay here. The audit is identifying how the department complies with the methodology [inaudible] to undertake the procurements. But the audit doesn't go to the point of saying that the price paid was a value-for-money. In fact, it makes comment which indicates that that's not our view, that the department didn't maximise value for money. This is from our commentary on the framework that was put in place and, more particularly, the point that our expectation would be that, even when you establish a benchmark and start talking to willing buyers within the benchmark, the job of our public sector procurer is to try to negotiate the best price for the taxpayer. The audit report is critical of the department not undertaking negotiations.

More simply: if the offer fell within the range, just accept it. In an environment where you don't have active markets and so you don't necessarily know what the prices are and are using benchmarks, we would have an expectation that, to achieve value for money, there should have been a stronger negotiation process. So I wouldn't like our report to be typefied as saying that we think that every price paid maximised value for money for the taxpayer, because I don't believe that's what it says.

Senator PATRICK: I go to Tandou then. ICAC has done some investigation in relation to the Tandou case. ICAC found that, for example, the Tandou property was property that in 2016 was identified as transitioning to dryland cotton growing, yet we find ourselves paying top dollar in 2017. A year later, we saw the mass death of Murray cod because there was simply no or very little water flowing down the Darling, and yet we seem to have come to the conclusion that the price paid—\$38 million plus \$40 million in compensation, and then allowing the buyer to sit on the property and take the next year's water allocation to generate \$35 million in crop for the next year. You can understand why the taxpayer is somewhat disturbed by all of this. Could you tell me the appropriateness, noting that most water valuations last for 90 days and then can't be relied on? What is your view about the approach taken in Tandou, where they effectively got a valuation from a different valley to set the price? It was also then a case that, in effect, the department didn't take possession of the water entitlement until a year later in circumstances where valuations only last for 90 days. Do you have any comment on that?

CHAIR: I take it you are addressing that to the ANAO?

Senator PATRICK: Yes, to the ANAO. This is going to the methodology and the way in which they are looking at evidence.

CHAIR: Okay, so it is a question to the ANAO. If you don't mind, Senator Patrick, I'd be interested in hearing from the department.

Senator PATRICK: Sure.

Mr White: The methodology that was used for the other limited-tender purchases that we looked at wasn't followed strictly by the department. It was undertaken by a group separate to the team that had worked on the other tenders. That said, they followed similar processes in terms of undertaking evaluation. As you noted, they also provided compensation. We note in table 1.1 that there was a range of considerations in that work. There was no specific framework for us to assess the component parts of that against including the additional use of water, but there was consideration by the department across each of the elements.

We do note in the report that part of the debate between engineers over the process was that the entity selling the water had entered into business commitments for future years. I understand it was part of the agreement to allow them to discharge those commitments via water use in the subsequent year. I think the department can add more detail on that if you would like.

Senator PATRICK: It is specifically to the question as to whether it's proper to use a valuation that only lasted 90 days and to then pay a price to take possession of water that you won't get for another year if indeed water is available in circumstances in which, on the department's own evidence to this committee and to the RRAT committee, these valuations change very rapidly, with a range of different circumstances.

Mr White: We did note in the report that we had some concerns about the usage of valuations outside of the range stated in valuations themselves and the department had undertaken to look at that as part of the completion of the report.

CHAIR: Thank you.

Ms O'Connell: We accept the criticisms in relation to the ANAO report—the shortcomings that are identified there—and we've agreed to all of the four recommendations and implemented a range of them. That's background. There are certainly some criticisms about the strategic purchases laid out in the report, and we accept those; but, to go to your specific question about that particular purchase and the valuation, I'll ask my colleague to address that.

Ms Connell: There is nothing further to add in terms of what the ANAO have already said apart from coming back to the issue you raised before about the utility of the water that was acquired from Tandou. Our advice from the Commonwealth Environmental Water Holder is that the water that's been recovered in Tandou has been critical to helping the recovery of decimated fish populations in the lower Darling following the recent drought and fish deaths.

Senator PATRICK: I say to you that that justifies the purchase. It doesn't justify paying above market rate. It is the same with socioeconomic effects in relation to the Condamine-Balonne purchase, where you've mentioned those effects. They are not things that affect the price; they are criteria that must be met before you are allowed to

purchase. They have no bearing on what amount of taxpayers' money you should hand to the water owner. They can reasonably expect to get a market price. All of those other factors are policy decisions that basically say yes or no to whether you can go ahead with the purchase.

CHAIR: I take it that that as a comment.

Senator PATRICK: This is a question. Do you accept that you shouldn't use socioeconomic test as a mechanism for determining price? It is only a mechanism for working out from a policy perspective whether the allowed to go ahead; is that correct?

Ms Connell: I can only talk to the decisions that were made in relation to these water entitlements at the time, noting that the buyback program is now closed and that, in terms of the decision the delegate made, he was mindful of the fact that the Commonwealth procurement rules required him to take into account non-financial benefits of the acquisition.

Senator PATRICK: I go back to the Auditor-General and ask him to look at the evidence of Mr Metcalfe at Senate estimates for the water day on the Friday. Mr Metcalfe basically said he relies on the Auditor-General and that if the Auditor-General says everything is okay then he is not inclined to act. That's the problem I've got in respect of a solid finding from the auditor that in the case of Condamine-Balonne the Commonwealth paid outside that maximum valuation. With the new information that we have on hand, he won't act until the Auditor-General does something, so I draw the Auditor-General's attention to that particular transcript. I'll leave it there.

Mr Hehir: I'll look at the transcript. As I mentioned earlier, I am looking in response to some of the issues you've raised with us about how, with regard to our report, we draw attention to the additional information provided by the valuer, because I think that's consistent with auditing standards. When we get information such as that, the user should be aware of it. We're certainly doing that. In this case the secretary is a user. They will have that opportunity to look at that information.

Senator PATRICK: Thank you very much, Auditor.

CHAIR: I believe there is a brief question from the deputy chair.

Mr HILL: It's probably a brief question to the Auditor-General—in handing over to Ms Payne. I'm sort of hearing this in two ways but tell me of this is oversimplifying. There is the valuation question, and we've gone through a fair bit of that. I think there is a bit more that we're not going to get time for today but we can revisit that and put stuff on notice. If you like, that gets to the question of can you do something? Have you got the evidence? Could you pay this much within the sort of range? I do take the point, I think on a plain English reading—the points Senator Patrick's made—it is kind of difficult for a lay person to understand how you're paying more than the top of a valuation and you're saying 'Yes, that's okay'. There are some presentational issues and we've talked about the factors—whether we agree with them or not.

There is a separate question though from 'can you do something?' to 'should you be paying a certain amount?' and that seems to go to the broader value for money test and also 'is their negotiation?' Are people actually getting their sleeves rolled up on behalf of the taxpayer and trying to screw down the price?—to be honest. I don't hear a lot about that. I just want to check, is that a reasonably or overly simplistic understanding of quite a complex area? There's a 'can you' thing which goes to the valuation—and I see Mr White's nodding, maybe you want to jump in—then there is a separate question which is 'should you be paying a certain amount?' which goes to commerciality, negotiating, arm-twisting and the value for money regime in procurement. Is that a reasonable distinction, Mr White?

Mr White: I would say that's pretty reasonable.

Mr Hehir: It might be a simplification but it is reasonable. As auditors—we comment regularly about this—when we go in and audit we have to audit against a framework and the framework in this case is the procurement rules and the framework's established by the department. We've got to look to see whether a framework established by the department is reasonable and whether it is complied with and that's the process we did in here. [inaudible] you could say is a commentary around did you [inaudible] maximise money from the taxpayer [inaudible] No, it didn't set up a framework and approach which did that.

Mr HILL: That is an important thing to be clear on. Although the department could argue that it could do what it did, there is a strong body of evidence that said it shouldn't have proceeded in the way that it did, both because it didn't comply fully with its own frameworks and it didn't obtain value for money.

Mr Hehir: Our findings are that the department could've enhanced value for money by doing certain things, which are set out in the audit report.

Mr HILL: Not paying so much—

Mr Hehir: I think a lot of the issues that have been raised are picked up in the audit report. Some of the commentary is, 'Why didn't we have guidance about things rather than commentary?' We have to put it against the framework. What we have done is try to put as much information to the parliament so the parliament can debate these issues, rather than expressing opinions where we don't think it can.

Mr HILL: I'll hand over to Ms Payne. Thanks, Chair.

Ms PAYNE: Thanks, Chair. I want to ask questions to the Audit Office about value for money. How has the ANAO determined that the Condamine-Balonne purchases met the triple bottom line when the application of guidelines weren't met in three out of four assessment categories?

Mr White: We didn't necessarily assess that all of the purchases were value for money. In fact, we have included tables where there were a range of factors that weren't considered in line with the framework of the department. We've also raised some concerns where there were some questions about value for money in terms of adhering to the Commonwealth procurement guidelines.

Ms PAYNE: Has the ANAO satisfied itself that the purchases met the triple bottom line outcomes?

Mr White: We were, in the case of the Condamine-Balonne, happy that there was sufficient documentation on the triple bottom line.

Ms PAYNE: What methodology or documentation was relied upon to make that assessment?

Mr White: We looked at a range of documentation the department had in terms of various state governments and councils as to whether there would be displacement of jobs, for example, and whether in fact the change in structure of land use would have a significant impact on employment and therefore in terms of the economic value within the area that it sat in, and things like that, to assess whether or not the socioeconomic impacts were going to be considered as considerable or not preferred.

Ms PAYNE: In order to determine that the purchases did meet value-for-money requirements, what is your understanding of the weighting of each aspect of the triple bottom line?

Mr White: We didn't have weighting within a framework to say that this was how each individual component was considered, but ultimately that would be a better approach for consideration of a range of factors when you are looking at value for money.

Ms PAYNE: Did the ANAO come across briefings to the minister or other related documentation used to justify the Kia-Ora and Clyde purchases and that referred to the purchase as being 'exceptionally advantageous'?

Mr White: Possibly. I would have to take that on notice and check. Our point about 'exceptionally advantageous' was that it was a requirement within Commonwealth Procurement Guidelines and that it wasn't defined by either the Department of Finance or the department itself in its procurement framework.

Ms PAYNE: With so many rejected offers from EAA to the department and without a definition of 'exceptionally advantageous' or a framework designed to maximise value for money, how can a purchase for water that exceeds the maximum price for water, determined by multiple valuations, be justified?

Mr White: The valuations that I think you might be referring to were over a significant period of time. We have been discussing here today our assessment of the valuation that was in particular used for the procurement itself. The other valuations, including those that extend back to 2010, may provide you with some relevant information or background material, but there is only one key valuation to be assessed in terms of the procurement value.

Ms PAYNE: I would like to ask some questions of the department. Can you explain how triple bottom line outcomes are measured and assessed, and what is the weight provided to each bottom line?

Ms Connell: We have nothing further to add to what the ANAO has set out. I note that the strategic water purchase program is now closed.

Ms PAYNE: There were many offers from EAA to purchase their water, and they were all rejected. How then does this purchase provide value for money when no other purchase has, and what mechanisms were set up to prove that this was value for money when the guidelines were not applied in relation to determining whether the purchase was exceptionally advantageous?

Ms Connell: I refer back to the way the decision was made by the delegate, which was set out. We've already set that out in response to question on notice 189. It walks through how the valuation was commissioned and the fact that the delegate took account other non-financial benefits in terms of reaching the decision that acquiring these water entitlements was value for money.

Ms O'Connell: If it assists, we could table that response for you. Would that be useful?

Ms PAYNE: Yes, that would be useful.

Ms O'Connell: Let's do that, if someone could do that.

Ms PAYNE: I think that answers my subsequent question too. Thank you.

CHAIR: Thank you very much. I note the time. I'll just indicate that there are some questions that, in the interests of time, I will place on notice. I would like to thank all witnesses for attending today. If you have taken questions on notice or if you were asked to provide additional information, could you please provide it to the secretariat by Wednesday 28 April 2021. If there are any further questions from the committee, they will be sent through to you in writing through the secretariat.

BOYD, Mr Brian, Executive Director, Performance Audit Services Group, Australian National Audit Office

BREMNER, Ms Tracey, Senior Director, Performance Audit Services Group, Australian National Audit Office

HALLINAN, Mr David, Deputy Secretary, Department of Infrastructure, Transport, Regional Development and Communications

HEDDITCH, Mrs Jacqueline, Senior Director, Performance Audit Services Group, Australian National Audit Office

HEHIR, Mr Grant, Auditor-General, Australian National Audit Office [by video link]

MELLOR, Ms Rona, Deputy Auditor-General, Australian National Audit Office

SPENCE, Ms Pip, Deputy Secretary and Chief Operating Officer, Department of Infrastructure, Transport, Regional Development and Communications

[14:37]

CHAIR: Welcome. These hearings are formal proceedings of the parliament. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Would either the Audit Office or the department like to make an opening statement before we move to questions from the committee?

Ms Mellor: There is no opening statement from the ANAO.

Ms Spence: We have just a short opening statement to provide an update. We'd like to take this opportunity to inform the committee that the four independent investigations and review processes initiated by the department in response to the ANAO's performance audit and a separate Australian Federal Police investigation into matters raised in this report do remain ongoing. As previously noted, the AFP has advised the department that any material that may prejudice this investigation should not be released while the investigation is underway. This advice was reconfirmed by the AFP in March of this year. Consistent with this advice, information has been and will continue to be withheld where the department is aware that it is part of the body of evidence being reviewed by the AFP under its investigation. This includes the publication of the independent audit of the Leppington transaction being undertaken by Mr Mark Harrison, which is currently with the AFP. Of course the department will provide much more detail once these processes are complete.

CHAIR: I'll ask a couple of questions and then throw to the deputy chair, in our usual manner. With reference to the previous hearing in which we heard about a number of reports, investigations et cetera, I'm wondering if you can provide us with any status update or further insights that the department is able to provide since our last hearing.

Ms Spence: All processes are still ongoing. The final reports of the two code of conduct investigations are with the independent breach decision-makers for review. We have received penultimate drafts of Mark Harrison's independent audit, which we have, as I've mentioned, provided to the AFP. The fourth exercise is KPMG undertaking a culture and capability review to examine any underlying factors in the former Western Sydney unit. We're expecting them to report shortly.

CHAIR: Do you have any further information or updated information for this committee on any further progress or work the department has done in terms of addressing the recommendations and findings out of this report, particularly with reference to the instances that have been outlined in this report—what I can probably only describe as what really was a failure of process, I dare say, and policy?

Ms Spence: As I've indicated previously, we are certainly bolstering our existing processes and guidance for demonstrating value for money, particularly around land valuations and associated transactions. To that end, we have updated our accountable authority instructions to increase control and oversight of land acquisitions and disposals by our senior governance committee. That has to be undertaken before we exercise any applicable delegations under the Lands Acquisition Act.

We also have a broader financial framework review underway, which we finalised in the first half of this year. As part of that, we're updating our existing guidance to requirements to spend money under the PGPA Act to highlight the need for additional consideration to be given to large and complex transactions, again including valuations and land acquisitions. We're also rolling out additional financial management and procurement training, and that will include a case study incorporating lessons from the Leppington Triangle transaction. We're

also working with the Department of Finance to develop more detailed guidance on land acquisition disposals and valuations to ensure that everything that we do is consistent with the requirements under the Lands Acquisition Act and the Commonwealth Property Disposal Policy. We're also strengthening our audit and risk management frameworks to incorporate lessons from the transaction, including processes for conducting internal reviews. I think, as I've mentioned, the AAIs have been updated to require that wherever the ANAO recommends an internal review, it is undertaken by a reviewer from outside the affected work area and that the approach has been endorsed by our senior governance committee. The outcomes will be considered by our audit and risk committee as well as the secretary.

We've provided guidance to staff on their roles and responsibilities when participating and responding to an ANAO performance audit and reviewed and updated what was previously in place in light of the lessons learned. We've now established an SES level chief risk officer to support a dedicated audit and risk branch within the department. The focus of this branch will be to bolster the department's audit and risk management capability and enhance the department's risk culture and awareness. We've updated our risk appetite and tolerance statements to reflect the level of risk that the department is willing to accept and to identify areas where increased controls are required, and we're also providing training and tools to support improved risk management across the department. That's being rolled out at the moment. Finally we're improving how probity issues and conflicts of interest are managed. A new independent probity advisor has been appointed to the major transport and infrastructure projects division to make sure that probity risks are appropriately managed across the division. This builds on our requirements for an SES level internal probity advisor from outside a relevant division to be appointed for all procurement activities requiring a probity and risk management plan.

Mr HILL: We've gone over most this at the last hearing.

Ms Spence: I'm just trying to answer the question the senator raised.

Mr HILL: I'm just noting it for the chair. We're heading towards the third hearing. We're 15 minutes in and we're saying the same stuff we said last time—no disrespect to the witness, but—

Ms Spence: I was just trying to answer the question; sorry.

CHAIR: I hear your frustration, Deputy Chair, and you will get time—

Mr HILL: No, it's an observation.

CHAIR: It's okay. I'll ask the witness to continue but perhaps be mindful of time.

Ms Spence: Yes.

Mr HILL: To be fair, I thought the first part of the answer was very useful, because it was additional material. If we've been over something last time, feel free to take account of that. That's all.

Ms Spence: Okay. The last thing that I'll add is that we've now commenced our training on meetings with interested parties to make sure that we've got appropriate guidance in place for staff to engage in that kind of engagement in a safe and consistent way with probity requirements.

Mr HILL: The coffee shop meetings?

Ms Spence: Any engagement with interested parties.

CHAIR: I have one more question—I've got lots of questions—that follows on from the previous one before I give some time to the deputy chair. It follows a line of questioning from our previous witness and the previous report. It goes to value for money. What steps have you taken to ensure that value for money is front and centre in terms of deliberations around acquisitions of this kind, and are you able to point to any areas where you can see insight that there were some structural areas that can be addressed? If so, what have you done to address them?

Ms Spence: Without wanting to go over ground that I've covered, that does go to the update of our AAIs to make sure that when we're looking at anything like that value for money is taken into account—basic things like updating templates to ensure that, first and foremost, people are giving consideration to matters such as the important issue of value for money. In the conversations we're having in our governance committee, again, the focus is on value for money in relation to those types of acquisitions or disposals.

CHAIR: Questions from the deputy chair?

Mr HILL: Thanks—not remotely meaning to cut you off; I thought that the update on the investigations was very useful. It's just that we'd heard the other bit. To the Audit Office: page 72 in the report says that the departmental review of the transaction, responding to your concerns, was undertaken by 'two officers involved in the transaction'. You also said that it would have been 'prudent' for officers outside the Western Sydney unit to participate in the review. How many officers were involved in the transaction?

Mr Boyd: That's a difficult question to answer, believe it or not, because obviously people came and went throughout the Western Sydney unit. From our perspective, probably the easier thing, which I think might be more helpful, would be to look at it in terms of the advising process, which was key to this. There are people working within the unit, but the key thing that happens is that briefings go up internally within the department for decision and information as well as in two cases for information to ministers. So, if you look at it in terms of that, there were six involved who either sent or were the contact officer for one of those relevant 10 briefings. You're either a contact officer or you're signing off on the briefings, and there were six people across those 10 briefings. Sometimes you might fulfil one role but not the other role, if that makes sense.

Mr HILL: Yes, that makes sense. People act, move around and all that stuff.

Mr Boyd: Indeed.

Mr HILL: We've heard evidence of two code of conduct investigations relating to the Leppington Triangle matter, and I think Ms Spence said that those two investigations, one by Vivienne Thom and one by Barbara Deegan, have concluded—

Ms Spence: No—

Mr HILL: Sorry—they're underway but they were just about concluded?

Ms Spence: The status is that they're with the breach decision-makers to—

Mr HILL: So the report has been completed, but the report is now with the decision-makers?

Ms Spence: They're now with the breach decision-maker.

Mr HILL: Just one of those investigations, the investigation by Ms Thom, appears to relate directly to this transaction.

Ms Spence: That's correct—Dr Thom.

Mr HILL: And only this officer has been suspended from duties?

Ms Spence: This is an issue that we've discussed previously. The department is aware of the ANAO's concerns around which officers should be under investigation. The secretary has discussed this issue in detail with the Auditor-General. Under section 15(3) of the Public Service Act, the relevant department is responsible for establishing procedures to determine whether an APS employee has breached the code of conduct. If anything was to come forward that required us to revisit the decisions taken, we would. But at this stage there is a single code of conduct investigation underway in relation to the Leppington Triangle acquisition.

Mr HILL: The Audit Office's concerns about the code of conduct were limited to just one officer or more officers than that?

Mr Boyd: More than that.

Mr HILL: Did the department consult you before settling the scope of its code of conduct process, notwithstanding the fact, as Ms Spence has rightly said, ultimately that's the secretary's responsibility?

Mr Boyd: No.

Mr HILL: Was the scope a surprise to you?

Ms Mellor: 'Surprise' isn't a word we'd use.

Mr HILL: I thought you might surprise me there!

Ms Mellor: No. We accept that the department—the employer, if you like—the accountable authority, is the person who decides on what material to conduct investigations. I think the ANAO's position is that there were a number of people involved in this transaction—more than one—whose behaviour may have raised eyebrows, the department have decided to proceed the way they have and that's a matter for them.

Mr HILL: I get that. It's like an ecosystem—

Mr Hehir: Can I just add something to that?

Mr HILL: Sure.

Mr Hehir: I've had a couple of conversations with the secretary, as the department indicated. The secretary has pointed out to me what he's doing and why. It's not our job to make those decisions for people.

Mr HILL: Yes. I think that has been established. I'm not disagreeing with that.

Mr Hehir: In the conversations I've had with him I haven't raised issues of concern to me about the process they're undertaking. As I said, the secretary has talked to me about it, and what they're doing hasn't raised concerns with me specifically. I feel that they are dealing with things appropriately.

Mr HILL: So there's an ecosystem, if you like. If there's a large number of people in the unit and around the place, a smaller number of people directly involved in sign-offs and, as Ms Mellor said, a number of people whose behaviour may have raised eyebrows, how many people is that?

Ms Mellor: I think it's fair to say that the eyebrow raising that we do is against process, and there were processes, like the review undertaken by the officers who were involved in the transaction, that we called out. The evidence of Mr Boyd is that there were six people who were more deeply involved in the signing off of advice on the transaction. The department has chosen to pursue a code of conduct process in relation to one of those six. There's no more evidence past that. That's how it is.

Ms Spence: One thing we are doing is the culture and capability review of the Western Sydney Unit.

Mr HILL: Yes. I'll get to that in a moment. Can I just finish this? Apart from the six people involved in the sign-off, was anyone the subject of the conversation between the secretary and the Auditor-General or the subject of concerns by the Audit Office, notwithstanding the department has entirely properly made its decisions?

Ms Mellor: I'm not sure what you mean by 'the subject of concerns'.

Mr HILL: I'm trying not to reference private conversations here, Deputy Auditor-General.

Ms Mellor: It's hard because when we're auditing we're looking at whether people followed the processes that they should have followed. In the probity and conflict of interest part of the audit we obviously looked at whether people were following the processes they should have been following and they stepped outside that. That might put up some flags. Post the audit, the department has decided to take some steps. We're comfortable with the steps that they're taking—

Mr HILL: I'll try not to reference private conversations, but is it fair to say—and I'm reading my notes here—that there were two officers that the ANAO raised concerns about?

Mr Boyd: Can I maybe step back, Deputy Chair. As we understand it from discussions with the department, this is the process by which the department settled upon which individuals they would subject to code of conduct reviews involved. I think you understand our process. We have report preparation papers, which is a working draft, then the section 19 proposed report, and then we table. Appended to the report preparation papers was an appendix, and the clear and stated purpose of that appendix was to say: 'We have some issues concerning the way the department's addressed probity in this transaction. Here are some examples of the sorts of things we're concerned about.' The department used that appendix to the report preparation papers to decide who it would subject to code of conduct investigations. As I said, that wasn't the purpose of the appendix; it was for a different purpose.

When we engaged with the department in terms of understanding 'Okay, it'll be tabled in the Senate; what is the code of conduct scope?' we looked at six individuals who were involved in being either the contact officer or the signing officer for the 10 briefings. Six gives you a sense of how many but not the scale of things. Three of those officers were involved in one of those capacities on one briefing only—so not a large role. Two were involved with two of the briefings, and one was involved with seven of the briefings. The officer involved with seven of the briefings is one of the individuals whom we had particular concerns about, but that individual is not subject to code of conduct. One of those involved with two of the briefings, who was also the officer involved with some of the meetings with stakeholders about which we raised concerns, is subject to a code of conduct investigation.

Mr HILL: The officer who was involved in the seven briefings: has the department examined that and looked—

Ms Spence: Excuse me, Deputy Chair, just to clarify Mr Boyd's evidence: while the report preparation papers were important, the management action was based on a broader set of materials, not solely on the RPPs.

Mr HILL: Sure, as would be proper; you'd have a broader set of information. Is that person still working in the APS?

Mr Boyd: My understanding is that they're still with the department.

Mr HILL: What level are they?

Mr Boyd: Executive level officer.

Mr HILL: An SES officer?

Mr Boyd: No, the level below that: executive levels 1 and 2.

Mr HILL: Alright, so EL1 or EL2?

Mr Boyd: Yes.

Ms Spence: One of the things that we've been very keen to do is to support the privacy of all individuals involved in all of this. If there is a desire to go into more detail about individuals, we'd appreciate it if we could do that in camera.

Mr HILL: I'm deliberately trying to avoid that. There's a general protocol, which sometimes has to be broken, about not naming non-SES officers. That's what I was just trying to establish: it's not an SES officer. Are EL officers eligible for bonuses, or only SES officers?

Ms Spence: The department doesn't provide bonuses.

Mr HILL: This may be a difficult question. From your observation, Mr Boyd, given you were closest to it, was the sort of behaviour that we saw here, the carefully constructed briefings that were gone through, characteristic of someone who was not an experienced public servant, who might have come from the private, commercial world—they then got their teeth into a project and off they went—or was this characteristic of an experienced public servant who knew what they were doing?

Mr Boyd: Definitely the latter.

Mr HILL: So it was an experienced public servant who knew how to work the system, write briefs to persuade decision-makers of the direction they wanted to go in? Clearly all the evidence wasn't laid out.

Mr Boyd: One of the key things we pointed to in the audit report was the consistent reference point made by the department in its briefings, both internally and for information briefings. In particular the January ones to the then minister were that the price they were looking to pay was consistent with the department's own estimations. We set out in the audit report what we saw was a fairly poor process that the department went about in looking at a couple of land sales in the general region of the airport—looking at the price per hectare paid for much smaller amounts of land that actually had dwellings on them—and then, in the first instance, escalating that by 50 per cent, which gave them a \$23-million-odd figure. Then they did it a second time and escalated it by 100 per cent, which gave them the \$31.78 million figure. Then they compared what they were proposing to pay to those numbers and told decision-makers internally as well as the minister in January that what they were proposing to pay was consistent with estimations. To us, that sort of process is simply not robust in terms of providing a benchmark to be satisfied.

Mr HILL: We can get a sense of that from the redacted scope-of-the-investigation letter that's sent and the matters—

Mr Boyd: But even, to us, there's the decision-making around that. At the key briefing in March 2018, where the department approved the spending of public money, very senior people in the department approved the spending of \$31.78 million in a transaction they were, at the same time, told would be at most \$30 million. Where's the questioning within the decision-making framework to say, 'Why am I being asked to approve spending \$1.78 million more than the very maximum you're telling me we should have to pay?'

Mr HILL: Some of those issues also go to the broader cultural issues—which I think the secretary spoke to last time—when you go up the chain.

Mr Boyd: Indeed.

Mr HILL: I just want to stay down the chain for a second. The person who has been suspended, the only person subject to an investigation on the matters—what classification level are they?

Ms Spence: SES band 1.

Mr HILL: Auditor-General, you told the parliament last October that, in the course of the Leppington Triangle audit, you formed that view that the Commonwealth may have been defrauded and contacted the Australian Federal Police. That was July—is that correct?

Mr Hehir: Yes, I think that's correct.

Mr HILL: What contact have you had with the AFP since your initial contact?

Mr Hehir: Mr Boyd might be best to answer that in detail.

Mr HILL: I'll make it a general question: what contact has there been between the Audit Office and the AFP?

Mr Boyd: Some of this was happening when COVID restrictions were in place. We had a small number of face-to-face meetings with various officers from the AFP, as well as a number of telephone hook-ups and some email exchanges. We've had no contact from the AFP since December last year.

Ms Mellor: Mr Hill, the purpose of that contact—what the Auditor-General did was consent to the release of information. I think I've said this before: it's not technically a referral; it's a consent to the release of information. In the course of that contact, some information's been released to the AFP to assist it.

Mr HILL: That's one of the legislative tidy-ups, is it—

Ms Mellor: Correct.

Mr HILL: that we were proposing to clarify your ability to refer matters?

Ms Mellor: We can release information, and the purpose of the contact was to brief and to release information.

Mr HILL: What's your current understanding of the status of the AFP's consideration of the matter?

Mr Boyd: The last we heard was that they'd proceeded from considering whether to investigate to actually investigating. But, as I said, we haven't heard from them since last December, so, as to what and how it's progressed since then, we're not aware.

Mr HILL: In October last year, the secretary told the parliament that he'd commissioned the Sententia independent audit. Was the ANAO consulted on the terms of reference of that audit?

Mr Boyd: No.

Mr HILL: Has the department shared any of the outcomes of the audit with you?

Mr Boyd: The individual conducting that has met with both me and my colleague—we're responsible for the performance audit. In a second meeting, we also had the financial statement signing officer present. That's the only engagement they've sought from us, and we participated.

Mr HILL: Were you consulted on the terms of reference for the broader cultural capability review?

Mr Boyd: No.

Mr HILL: Has the department consulted you or has the consultant consulted you during that audit?

Mr Boyd: No.

Mr HILL: So that's KPMG, is it?

Ms Mellor: It wouldn't be normal.

Mr HILL: No, no. I'm just checking.

Ms Mellor: It wouldn't be normal. Certainly, there's been interchange with the department in terms of keeping up to date at the secretary and A-G level, but we—

Mr HILL: I wouldn't have expected it of the culture review. I would have expected it of the transaction audit review, and you've said they were engaged in that.

Ms Spence: Deputy Chair, I can assure you and the ANAO that of course we will be providing a copy of the Sententia report. It's just that, at this stage, it's still being tested with the facts on that. We'd be hoping to provide a copy to the ANAO shortly.

Mr HILL: When do you expect that to be completed?

Ms Spence: We are hoping it will be within weeks, but the question will remain. We won't be able to release it until the AFP provide us with the authority to release it, because we don't want to impact their investigations, but we would certainly provide it to the ANAO ahead of any public release.

Mr HILL: To the Audit Office: as far as you know, do the reviews announced by the department address all the concerns you raised with the AFP?

Mr Boyd: I don't think I can say yes to that. The nature of our concerns was different to code of conduct—whether it was breached not by individuals. If you look at the conclusions of the report, in particular at chapters 3 and 4, the findings and conclusions say that the approach taken to valuation inflated the value of the land. As we point to in the report, there were particular actions and inactions of people within the department that led to that outcome, and, as a result of that, the department paid more than what was proper in the circumstances; that is us saying that, essentially, it doesn't meet the PGPA Act test for proper use of public resources. Our concerns were: had the actions of individuals in the department led to that outcome, what else was at play in terms of trying to understand why we got to this outcome—

Mr HILL: Was there something that would tip over into the criminal realm?

Mr Boyd: Indeed—which is a different thing to code of conduct.

Mr HILL: We can talk about this later, Chair, but perhaps we could take up Ms Spence's offer to talk a little more in camera at a future time. I'd like to be satisfied in my mind, given there has been a concern raised publicly and in private briefings on the department's decision not to pursue a code of conduct investigation. I suspect I could be satisfied, but it's not something we can do in public given the privacy issues at the moment.

With regard to the coffee shop meetings, page 39 of the report refers to coffee shop meetings between officers of the department and Western Sydney landowners, and says that these meetings were largely undocumented. Can the Audit Office explain to the committee why these meetings caused it concern?

Mr Boyd: Yes and no, in a way. One of the reasons they caused us concern was: we don't know in quite a number of instances why officers within the department were having meetings with stakeholders, what the purpose of them was and what was discussed and agreed as part of that. When you look in the context of any situation where you're dealing with procurement, including in this case a land acquisition in Western Sydney, there are clear risks, including probity risks, which need to be managed. From our perspective, the unknowns give us cause for concern. From those interactions where we had some visibility as to what was going on, the nature of some of those interactions themselves gave us concern. In some instances, clearly stakeholders are lobbying because they want governments to make certain decisions or act in certain ways, and, from our perspective, we can't see why department officials need to be involved or should be involved at all in some of those things. It went from simple friendship catch-ups to things where a particular stakeholder would be saying: 'Here's my proposal for what I would like to get done. Do you have any comments on it? How do you suggest we proceed with this?' To us, that's not something a Commonwealth public servant should be engaged in—in any circumstances, we would suggest.

Mr HILL: I think Ms Spence mentioned earlier that there has been an overhaul of meeting guidelines to prevent these undocumented coffee shop meetings in the future. Is that a reasonable conclusion?

Ms Spence: I'd probably phrase it slightly differently. It's to provide our staff with guidance on how to engage with interested parties.

Mr HILL: I heard you say that.

Ms Spence: There may be times when, for the reason that there is no other place to meet, it may occur in a coffee shop, and that doesn't necessarily make it a bad thing.

Mr HILL: That's fair.

Ms Spence: We're just trying to increase people's awareness of how to ensure that they're acting—

Mr HILL: Coffee shop meetings raise perception questions, but they're not always out of line. But they should be documented if there is a business transaction.

Ms Spence: And if there are multiple people present, and if there is clear clarity on the outcome and the basis of the discussion—those sorts of things.

Mr HILL: It's good for the coffee shop; they'd sell more coffee! The meetings referred to in the report weren't just related to the Leppington Triangle; is that correct?

Mr Boyd: No, that's not correct. Most of those meetings we had concerns with weren't related to the Leppington Triangle; they were within the Western Sydney Unit but weren't related to the Leppington Triangle acquisition itself. This is why, for us, we were looking at how the Western Sydney Unit within the department was conducting its business.

Mr HILL: There was at least one meeting with another landowner, Ms Louise Waterhouse; is that correct?

Mr Boyd: As to exactly how many meetings, we don't know. But there was certainly more than one.

Mr HILL: With Ms Waterhouse?

Mr Boyd: Are you talking about just in coffee shops? Of meetings generally, there were more than one. There was more engagement than just on one occasion. As to exactly how many more—

Mr HILL: I'm asking you about Ms Waterhouse. Was there engagement with Ms Waterhouse that was undocumented?

Mr Boyd: Yes, that's what I'm talking about.

Mr HILL: Do you know what the meeting was about?

Mr Boyd: This is part of the difficulty for us. We can see, in terms of some of the exchanges, particularly via emails, what was being discussed. They were going to talk about her proposals for land when she was wanting to have an intersection moved—those sorts of things. But in other ones, no, we don't have the insight that we need.

Mr HILL: They might just be friends having coffee.

Ms Spence: If it would help, I would refer you to the question on notice. Mr Boyd might have more, but we're aware of only two informal meetings between departmental officials and Ms Waterhouse. Just for clarity.

Mr HILL: How many officers were involved in those meetings with Ms Waterhouse?

Ms Spence: Just the one officer.

Mr HILL: The same officer both times?

Ms Spence: That's my understanding.

Mr HILL: And was that in the coffee shop?

Ms Spence: There were two meetings in coffee shops—

Mr HILL: With Ms Waterhouse?

Ms Spence: Two informal meetings that we are aware of.

Mr HILL: Given there are no records of what was discussed there, have you gone back subsequently and figured out what was discussed?

Ms Spence: We've gone through our records and, obviously, as part of the various investigations underway, whatever extra material we can find. But I think it's a clear issue that we are working through to improve the way in which we record outcomes of meetings, whether they're formal or informal.

Mr HILL: How were those two meetings you referred to arranged?

Ms Spence: It seems to be text messages and emails.

Mr HILL: Text messages as in a normal text message or an encrypted message?

Ms Spence: Just normal text messages or emails.

Mr HILL: Have you obtained those text messages?

Ms Spence: I've said text messages—I'll take that on notice. I've seen emails.

Mr HILL: This is to the Audit Office: were coffee shops the only places where poorly documented meetings involving officers and landowners were held?

Mr Boyd: No, Deputy Chair.

Mr HILL: Where else were such meetings held?

Mr Boyd: In relation to Leppington in particular, there was a meeting at Leppington's location. We think it was actually in an office at the farm, but there are poor records around that meeting. There is other email correspondence indicating that people were going to catch up or meet up. When you're relying upon that sort of evidence rather than an agenda or record of a meeting—who was there and so forth—it's not absolutely clear. But certainly there were more than just the two coffee shop meetings, from all the evidence we've seen.

Ms Spence: If it would assist, in relation to the meeting Mr Boyd is talking about, which I think is the one on 27 November 2014, there was actually a brief prepared beforehand and a record of the meeting provided afterwards. I'm not disagreeing that we need to improve our processes, but after the evidence provided at a previous committee, we made sure we interrogated our systems and found that there was some process around that meeting in particular.

Mr HILL: I want to touch on the road realignment, but before I do, on communications, do you have WhatsApp, Signal or Telegram on your phone, for instance, Ms Spence?

Ms Spence: I've got WhatsApp on my phone.

Mr HILL: Do you use that for communication with colleagues, agencies, the minister or the minister's office?

Ms Spence: More with just informal conversations. In my role as chief operating officer, I'm often letting people know that the IT system is not working or something like that. It's an easy way of getting information out.

Mr HILL: That's 'more often', but do you ever use it for business related purposes?

Ms Spence: Not for business, no.

Mr HILL: Have you ever had cause to screenshot any of those messages and record them as a public record?

Ms Spence: No.

Mr HILL: Mr Hallinan?

Mr Hallinan: No.

Mr HILL: On road realignment, Mr Boyd, perhaps to save a bit of time, my colloquial understanding of this from the previous briefing—and please correct me—is that there was a road realignment worked out many years ago, and then somehow there was a decision made to move that road realignment, the result of which was that the ring road, the access road around the airport and the runways, would be moved to sit within a flight crash zone,

breaching accepted national or international standards for airport design. In plain English, that runs the risk of a plane crashing on a busy highway. Is that a simple distillation of a pretty complex issue?

Mr Boyd: Yes, in a broad sense. The Northern Road had to be realigned. Where it was going to go originally would have gone through the middle of the Leppington pastoral farming land, so it got moved closer to the end of where the second runway will be based on the current long-term layout plan. Not on the runway, but near the end of the runway.

Mr HILL: Are you satisfied with the decision-making process and the documentation of the process that led to the moving of this road to within a flight crash zone?

Mr Boyd: The process by which the decision was made to agree to that changed realignment is something that we were critical of in the audit report.

Mr HILL: In what sense?

Mr Boyd: There were a couple of things. There was the way in which the decision-making went around whether the road could be moved, and the departments provided some information, I think, on notice to estimates, in terms of their engagement with Roads and Maritime Services. But our audit didn't just look at the engagement between the New South Wales government and the Commonwealth government as to what's going on; we also looked at what the department's decision-making was like internally. So there has been a significant move back. In mid-2015 the department's response was, in their own words, a definitive no as to whether you could have the road realignment where it now is, and over time that got moved. Now, as we point out in the audit report, that got wrapped up in an argument by the department, saying that, by agreeing to change where the road would be moved to, we will generate significant goodwill from Leppington Pastoral, which will help us acquire this land we'll need in 30-odd years time. Yet, at the same time, they're putting together a package to incentivise an unwilling seller. So, to us, there's a contradiction there between saying we're doing something which should generate goodwill, which will help them come to the table, but we also need to do various other things to incentivise them to come to the table. And, as you say, at the same time there's a process there that asks: what is the risk that is involved long term with that road now being located closer to the end of the second runway than well outside those zones?

Mr HILL: It seems that, at the end of the day, if that road has to be moved in the future for another runway, it's the poor old taxpayer who'll pick up the bill for that. I'm mindful of the time, Chair, and there are a few issues that we're going to need to reflect on to figure out what else we can do on the record. This might be one for Ms Spence. On the AFP issues, because it does influence to some degree the kinds of things that we can explore, is the department still assisting the AFP with its inquiries?

Ms Spence: Yes.

Mr HILL: When was your last interaction with the AFP?

Ms Spence: When I sent through the penultimate draft of Mr Harrison's report.

Mr HILL: You're the primary contact with the AFP, are you?

Ms Spence: There are two of us. On a day-to-day basis, the Assurance Taskforce that we set up to support our response to this also engages with the AFP and provides updates.

Mr HILL: You said in your opening statement:

... the AFP has advised the department that any material that may prejudice this investigation should not be released while the investigation is underway.

That was in your submission. On what date was that advice received?

Ms Spence: The last date was in March. If you'll just bear with me, I can give you a specific date. It was 17 March.

Mr HILL: Can you provide a copy of that advice from the AFP?

Ms Spence: It was verbal advice.

Mr HILL: So there are no parameters for that advice?

Ms Spence: I think we've tabled the written advice that we received from them in response in the Western Sydney airport inquiry, so I'm happy to table those documents.

Mr HILL: If you could—the reason being that something the committee can reflect upon, as we digest the *Hansard* and whatever else is left, is that prejudicing an investigation is not, in and of itself, a ground for not answering a question in the parliament, and we've checked this with the Clerk of the Senate. You can't make that blanket claim, notwithstanding the AFP always try to. If the committee wants to pursue things—

CHAIR: Order, Deputy Chair!

Mr HILL: No, I'm making—

CHAIR: Just keep your points to the AFP.

Mr HILL: Chair, I'm making a very polite, sensible point, but I'm just explaining the context so we can all be in the same place. I spoke directly to the Clerk of the Senate and confirmed this: in circumstances where there are issues that we may want to pursue in public, we can get the AFP in. And given the department is not giving us any parameters, just this blanket claim, which is unsubstantiated and not supported by practice, that's fine. This happens from time to time. You get the AFP in and, in relation to what we say in public, figure out what they are concerned about and what are they not, and that then guides where we can question.

Ms Spence: In the first instance, if it would assist, we can table the same evidence here, which was around the written advice we originally received.

Mr HILL: No, that's fine. I was just putting it on the record, Chair, to understand where I was coming from there.

CHAIR: Deputy Chair, I'd just like to ask three broader questions. I'd don't want to interrupt you too much. Are you okay with that?

Mr HILL: I might just put a couple of quick things on notice for the department, because you've well covered the update on the reviews. Could you also take on notice how much each of those reviews has cost or is expected to cost when they're finished? And you may need to take this on notice as well: in preparing the secretary's six-paragraph submission to the committee last time, was there any discussion with the minister's office? The minister now is Mr Fletcher, who I think is the same minister—he has been reappointed—that presided over this case in the first place.

Ms Spence: I can provide you the update on what we've spent so far, if that would assist, or I can provide that on notice.

Mr HILL: Just do it on notice; that's fine. I'm mindful of the time, so I'm just trying to save airtime. Did you or any departmental officer discuss your submission with Mr Fletcher or his office before the secretary made it?

Ms Spence: No. We provided them on advice what we were submitting, but that was for noting, not for clearance.

Mr HILL: Did you, the secretary or any other departmental officer discuss your appearance with Mr Fletcher's or his office last time, or have you discussed it this time?

Ms Spence: No.

Mr HILL: Have you sent any briefing material about the Leppington Triangle matter to Mr Fletcher or his office since his reappointment to the portfolio?

Ms Spence: I think there have been two briefs, one of which was to note the submission that we've provided, and the other one was in relation to a request for documents that had come through, just in his role as responsible minister. If I can take that on notice—

Mr HILL: Take on notice the dates and the subject matter. It would be great if you could confirm those two or anything else. Chair, there are a few other topics, but I'll hand over.

CHAIR: Thanks, Deputy Chair. I appreciate that. I just want to go back to the audit report, because I'm mindful of the fact that the inquiry is not just into one report but several with a theme around governance in the stewardship of public resources. My question, firstly to the department of infrastructure, is in relation to the Assurance Taskforce, which, of course, reports directly to the secretary. I'm just wondering how often this task force meets, but, more particularly, how it's implementing and, then, how it's monitoring the implementation of the audit report's recommendations.

Ms Spence: The task force is used as a script. It's a small unit within the organisation. I think there are probably about four or five people, if that, in it. They're providing advice on and supporting preparation for appearances such as this, and also working across the organisation to make sure that reports are provided to me in my role as the chief operating officer and to Mr Hallinan in his role as relevant deputy, as well as to the secretary, on how we're progressing against the recommendations that we have accepted and are implementing the response to, and they're also managing the various reviews that we've referred to: the Sentensia review and the KPMG review.

CHAIR: In relation to your submission, you note that you're working with the Department of Finance to develop detailed guidance on land acquisitions, disposals and valuations to ensure that the approach is consistent with the Lands Acquisition Act and the Commonwealth Property Disposal Policy. Could you provide some

further details on this material and, of course, the implementation? My next question is: has any staff training been provided?

Ms Spence: In terms of the training, in terms of where we're up to with the Department of Finance, we have material with them to support training, and that's still being developed. Once that material has been confirmed as appropriate, we will be rolling out training on these issues. I think those are the main things.

Mr Hallinan: I think that's the fundamentals of it. Almost conveniently, the Department of Finance is also reviewing the Lands Acquisition Act at the moment, and I think some of the lessons out of the Leppington evaluation process are being incorporated into their whole-of-government advice as well.

Ms Mellor: One of the important things to note in all of this was the decision for the department to step outside the Lands Acquisition Act. Doing all of the work on the Lands Acquisition Act is great but the observation we'd also make is that it started there and it didn't end under that framework. So it's a watch point I think in the future for departments involved in land acquisitions to make sure that their governance processes around decisions, to start one way and go another, are quite clear. We've talked about strong governance before—making clear decisions when you are changing course and making sure the right people are involved is important for any agency.

CHAIR: A question to the department: there are such a number of different issues that've been raised in the context of this report that go to process, governance, policy failure—all sorts of other things as well that've been touched on today and in the earlier hearing. Are you satisfied that all of the reviews, procedures, practices, consultations—everything else that you've undertaken—have not only thoroughly investigated where this problem lay but also ensured it won't happen again? Are you satisfied that no stone has been left unturned now by the department in relation to any of the issues identified by the audit report—in fact, any that have maybe been identified by the department?

Ms Spence: I think we've undertaken a very thorough response to the issues that have been raised. Obviously we will wait to see what comes out of the other review processes to see if there's anything else that we should be doing, and that's why we've undertaken the culture and capability review and the detailed independent audit that Mr Harrison is doing. I suppose we would note that this does seem to be an issue around a very unique, one-off type of transaction. We have had other areas of the department that have been audited where similar issues have not been identified. But that's not meaning we are complacent about this at all. We will continue to work through anything that comes out of the existing reviews as well as continuing to implement the very sensible recommendations that came out of the ANAO audit in the first place.

CHAIR: You mentioned culture and the report into culture. It is something of interest to me. Does the department have a process to be able to look at management and measurement of required cultural change?

Ms Spence: Probably the way in which the report is structured it's less of a quantifiable approach, but rather better understanding the processes and the way in which work was undertaken. So possibly what you're talking about is a second step from actually getting the report to understand what were the processes in place? Were there things that should've been done differently which would have meant we would've avoided the situation that we find ourselves in today?

CHAIR: Does the department have an intention to implement any form of measurement around these things or what's—

Ms Spence: Through the APS census results and through short pulse surveys there are things we can look at doing. At this stage I don't know whether we will go down that path or not in terms of change. We are very much focused on how a unit within the organisation was operating and whether there are lessons from that which can be applied to other sort of one-off, complex processes that we're involved in, and that's the looking at it from that perspective. I hope that helps.

CHAIR: If you'd like to make any further comment or provide any further detail on notice, if there's anything around how to address it more broadly—and I'll frame some questions to assist that if you like.

Ms Spence: I'd be happy to.

CHAIR: I'm conscious of the time. There being one minute before the scheduled conclusion, I'll just throw briefly back to the deputy chair.

Mr HILL: I'll just ask a question to you and the witnesses. I reckon I can get through most of the other stuff I want to in about 10 minutes or so rather than have another hearing, and then we'd only need to reconvene once we've digested the questions on notice, or have a brief in camera discussion. Is that possible, Chair? I think the witnesses are okay for 10 minutes or so.

CHAIR: Can we do it in five?

Mr HILL: I'll give it a crack. With regard to the Western Sydney unit, how many officers involved in the Leppington Triangle transaction are still working for the department?

Ms Spence: I'd have to take that on notice to be accurate.

Mr HILL: Please take that on notice and also let us know if any of them have been promoted. Have any of the officers involved in the Leppington Triangle transaction gone on to work for other Commonwealth agencies or ministerial offices?

Ms Spence: Again, I'd prefer to take that on notice, unless Mr Hallinan has an answer.

Mr Hallinan: Just for accuracy, I think we should take it on notice, but, yes, people have moved to other agencies.

Mr HILL: Ministerial offices?

Mr Hallinan: Not that I'm aware of.

Ms Spence: Not that I'm aware of.

Mr HILL: Have any officers involved in the Leppington Triangle transaction gone on to work for airport landholders?

Ms Spence: No, not that I'm aware of, but we'll confirm. I'm very, very confident they haven't, but I would hate to mislead you.

Mr HILL: I know they're painful questions and they'll take a little bit of time, but you can understand, with the probity, we just want to cover these questions off.

Mr Hallinan: Take it as a no, and we'll correct the record if that's incorrect, but I think we're both quite confident that it's a no.

Mr HILL: When did the department first become aware that officers were engaging in undocumented coffee shop meetings with landholders from Western Sydney? Was this as a result of the audit or had it come to the attention of senior managers before that?

Ms Spence: I think the concerns in relation to the way in which those meetings were being held were as a result of the report preparation papers that were provided to us by the ANAO.

Mr HILL: Can you take on notice how many such meetings you identified, involving how many officers and with which landholders? That's quite important.

Ms Spence: I think we have provided some advice to that end, but I'll double-check, and we'll obviously update it.

Mr HILL: Sure. Given the concerns which were raised about the role of the audit and risk committee, have there been any changes to the audit and risk committee since the last hearing? Have any members been replaced?

Ms Spence: Not since the last hearing, no.

Mr HILL: So we've still got the same members in place since the audit report was presented to the parliament?

Ms Spence: Yes.

Mr HILL: Has the audit and risk committee discussed this matter since or regularly?

Ms Spence: They're given regular updates.

Mr HILL: On the reviews that are underway?

Ms Spence: Just factual updates about the processes that we have in place.

Mr HILL: I'll try and throw the rest on notice. I think there will probably be a bit of follow-up, but it should be relatively tight once we get the questions on notice, if that helps.

CHAIR: I appreciate that. Thank you very much.

Mr HILL: Sorry; I have one final quick question. The assurance task force which you mentioned reporting to the secretary, Ms Spence, has been established. How often does the task force meet? How is it communicating—

CHAIR: I've asked that question.

Mr HILL: Okay, great. You've got that one on notice.

CHAIR: Yes. I've actually asked that question. I thank all representatives of the committee and witnesses for your time today. I'd particularly like to thank the Audit Office, as you've been here the entire day. We do

appreciate your time very much and also the time of the other witnesses before us this afternoon. If you've taken questions on notice or you've been asked to provide additional information, could you please forward it through to the secretariat by Wednesday 28 April 2021. Further questions from members of the committee will be forwarded to you in writing through the secretariat, as has been earlier flagged. I thank all members and witnesses for their time here today.

Committee adjourned at 15:34