



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION  
COMMITTEE

**Estimates**

(Public)

WEDNESDAY, 31 MAY 2017

CANBERRA

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Excerpts

**SENATE**

**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE**

**Wednesday, 31 May 2017**

**Members in attendance:** Senators Abetz, Back, Fawcett, Gallacher, Hinch, Kitching, Lines, Ludlam, Moore, Rhiannon, Singh, Smith, Sterle, Waters, Whish-Wilson, Wong, Xenophon.

## **FOREIGN AFFAIRS AND TRADE PORTFOLIO**

### **In Attendance**

Senator Brandis, Attorney-General

Senator Cash, Minister for Employment, Minister for Women, Minister Assisting the Prime Minister for the Public Service

Senator Seselja, Assistant Minister for Social Services and Multicultural Affairs

### **Department of Foreign Affairs and Trade - Portfolio and Budget Overview**

Ms Frances Adamson, Secretary

Mr Ewen McDonald, Deputy Secretary

Mr Justin Brown, Deputy Secretary

Ms Sally Mansfield, Chief People Officer, Corporate Management Group

Mr Paul Wood, Chief Financial Officer

Ms Kate Logan, Assistant Secretary, Executive Branch

### **FOREIGN AFFAIRS PORTFOLIO (Non-trade programs)**

#### **Outcome 1**

**The advancement of Australia's international strategic, security and economic interests including through bilateral, regional and multilateral engagement on Australian Government foreign, trade and international development policy priorities.**

#### **Pacific**

##### **Program 1.1: Foreign affairs and trade operations**

##### **Program 1.2: Official Development Assistance**

Mr Daniel Sloper, First Assistant Secretary, Pacific Division

Ms Alice Cawte, Assistant Secretary, Pacific Regional Branch

Dr Evanor Palac-McMiken, Director and Chief Negotiator, PACER Plus Negotiations Section

#### **North Asia**

##### **Program 1.1: Foreign affairs and trade operations**

##### **Program 1.2: Official Development Assistance**

Mr Graham Fletcher, First Assistant Secretary, North Asia Division

#### **Southeast Asia**

##### **Program 1.1: Foreign affairs and trade operations**

##### **Program 1.2: Official Development Assistance**

##### **Program 1.4: Official Development Assistance—East Asia Australia-Indonesia Partnership for Reconstruction and Development**

Mr Allaster Cox, First Assistant Secretary, South-East Asia Maritime Division

Mr Philip Green, First Assistant Secretary, South-East Asia Mainland and Regional Division

#### **South and West Asia**

##### **Program 1.1: Foreign affairs and trade operations**

##### **Program 1.2: Official Development Assistance**

Ms Kathy Klugman, First Assistant Secretary, South and West Asia Division

#### **Middle East and Africa**

##### **Program 1.1: Foreign affairs and trade operations**

##### **Program 1.2: Official Development Assistance**

Mr Matthew Neuhaus—Acting First Assistant Secretary, Middle East and Africa Division

Mr Lloyd Brodrick, Assistant Secretary, Middle East Branch

#### **Americas**

##### **Program 1.1: Foreign affairs and trade operations**

Ms Julie Heckscher, First Assistant Secretary, Americas Division

## **Europe**

### **Program 1.1: Foreign affairs and trade operations**

Ms Louise Hand, First Assistant Secretary, Europe Division

## **Multilateral Policy, Development, Legal and Environment**

### **Program 1.1: Foreign affairs and trade operations**

### **Program 1.2: Official Development Assistance**

### **Program 1.5: Payments to international organisations**

Mr Michael Bliss, Acting Senior Legal Adviser, Legal Division

Mr Blair Exell, First Assistant Secretary, Development Policy Division

Ms Rebecca Bryant, Assistant Secretary, Foreign Policy Whitepaper Taskforce

Ms Natasha Smith, First Assistant Secretary, Multilateral Development and Finance Division

Dr Lachlan Strahan, First Assistant Secretary, Multilateral Policy Division

Mr Andrew Goledzinowski, Ambassador for People Smuggling Issues

Mr Patrick Suckling, Ambassador for the Environment, Investment and Economic Division

## **International security, nuclear disarmament and non-proliferation**

### **Program 1.1: Foreign affairs and trade operations**

### **Program 1.2: Official Development Assistance**

Mr Richard Sadleir, First Assistant Secretary, International Security Division

Mr Paul Foley, Ambassador for Counter-Terrorism

Mr Tobias Feakin, Ambassador for Cyber Affairs

Dr John Kalish, Acting Director General, Australian Safeguards and Non-Proliferation Office

## **Services to other agencies in Australia and overseas**

### **Program 1.1: Foreign affairs and trade operations**

Mr Andrew Byrne, First Assistant Secretary, Public Diplomacy, Communications and Scholarships Division

Ms Sally Mansfield, Chief People Officer, Corporate Management Group

Ms Robyn Mudie, Executive Director, Diplomacy Academy

Ms Kate Logan, Assistant Secretary, Executive Branch

Mr Greg Hammond, Acting Executive Director, Overseas Property Office

Mr Ken Pascoe, Assistant Secretary, Strategy and Property Services Branch, OPO

## **Services to diplomatic and consular representatives in Australia**

### **Program 1.1: Foreign affairs and trade operations**

Ms Lyndall Sachs, Chief of Protocol

## **Public diplomacy and communication**

### **Program 1.1: Foreign affairs and trade operations**

### **Program 1.2: Official Development Assistance**

### **Program 1.6: New Colombo Plan—transforming regional relationships**

### **Program 1.7: Public information services and public diplomacy**

Mr Andrew Byrne, First Assistant Secretary, Public Diplomacy and Communications Division

## **Progress against Australia's development policy and performance framework**

### **Program 1.2: Official Development Assistance**

Mr Blair Exell, First Assistant Secretary, Development Policy Division

Mr Peter Versegi, First Assistant Secretary, Office of Development Effectiveness

Mr Chris Tinning, Chief Economist, Development

Mr James Gilling, First Assistant Secretary, Contracting and Aid Management Division

Ms Lisa Rauter, First Assistant Secretary, InnovationXchange

### **Cross-regional programs**

#### **Program 1.2: Official Development Assistance**

Mr Blair Exell, First Assistant Secretary, Development Policy Division

Mr Peter Versegi, First Assistant Secretary, Office of Development Effectiveness

Dr Lachlan Strahan, First Assistant Secretary, Multilateral Policy Division

### **Emergency, humanitarian and refugee program**

#### **Program 1.2: Official Development Assistance**

Mr Blair Exell, First Assistant Secretary, Development Policy Division

Mr Jamie Isbister, First Assistant Secretary, Humanitarian, NGOs and Partnerships Division

### **Multilateral replenishments and global development partnerships**

#### **Program 1.2: Official Development Assistance**

#### **Program 1.3: Official Development Assistance—multilateral replenishments**

Ms Natasha Smith, First Assistant Secretary, Multilateral Development and Finance Division

### **NGO volunteer and community programs**

#### **Program 1.2: Official Development Assistance**

Mr Jamie Isbister, First Assistant Secretary, Humanitarian, NGOs and Partnerships Division

### **Outcome 2**

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

#### **Consular services**

##### **Program 2.1: Consular services**

Mr Jon Philp, First Assistant Secretary, Consular and Crisis Management Division

#### **Passport services**

##### **Program 2.2: Passport Services**

Mr Bob Nash, Executive Director, Australian Passport Office

### **Outcome 3**

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

#### **Security and ICT Services**

##### **Program 3.1: Foreign affairs and trade security and IT**

Mr Luke Williams, Chief Security Officer

Mr Tim Spackman, Chief Information Officer, Information Management and Technology Division

##### **Program 3.2: Overseas Property**

Mr Greg Hammond, Acting Executive Director, Overseas Property Office

**Committee met at 09:00**

**Senator XENOPHON:** Ms Adamson, could you go to the issue of East Timor. What is the status of the mediation with East Timor over the maritime boundary?

**Ms Adamson:** Of the conciliation with East Timor?

**Senator XENOPHON:** Yes.

**Ms Adamson:** I need to make clear it is a conciliation rather than a mediation.

**Senator XENOPHON:** Sorry. It was a mediation. It has turned into a conciliation, hasn't it?

**Ms Adamson:** I will invite my colleagues Mr Cox, who is the First Assistant Secretary of the South-East Asia Maritime Division and Michael Bliss, who is the Acting Senior Legal Adviser of the Legal Division, to answer that.

**Mr Bliss:** Yes, we are engaged in a conciliation process. This is a process that is set out as one of the available processes for dispute resolution in the UN Convention on the Law of the Sea.

**Senator XENOPHON:** What is the status of it? Where are you at? When is it likely to be concluded or is there some time frame for initial hearings or conciliation meetings in respect of it?

**Mr Bliss:** We have had a number of conciliation meetings.

**Senator XENOPHON:** Where have they taken place?

**Mr Bliss:** There have taken place in a number of locations—Singapore, Washington and Copenhagen.

**Senator XENOPHON:** Why Washington and Copenhagen?

**Mr Bliss:** This has been the preference of the commission members themselves. As you would appreciate, finding locations which are available to the conciliators and the council concerned, as well as the parties, is—

**Senator XENOPHON:** Who are the conciliators? Can you tell us who they are?

**Mr Bliss:** Yes. The Chair of the Conciliation Commission is Peter Taksoe-Jensen. Another is—sorry, I do not have the list with me. I will take that on notice. I just do not want to give you inaccurate—

**Senator XENOPHON:** That is fine. If you get back to me, that will be fine. Can I just ask: what is the total amount of money that Australia has spent to date on dispute resolution, litigation, arbitration, mediation and conciliation in relation to this maritime boundary dispute?

**Mr Bliss:** I do not have that figure with me, but I can get that figure to you.

**Senator XENOPHON:** Can you give me a ballpark figure at this stage?

**Mr Bliss:** I would prefer to give you an accurate figure on notice or during this session.

**Senator XENOPHON:** Thank you. But, can I ask you: whatever that figure is, where does the budget come from? Does it come from the aid budget or some other budget outcome?

**Mr Bliss:** No, it does not come from the budget outcome. I might pass to—

**Senator XENOPHON:** Which bucket of money does it come from?

**Mr Wood:** Our operating costs come from DFAT. So it is from the operating budget and definitely not the aid budget.

**Senator XENOPHON:** In the context of our relationship with East Timor since independence, Ms Adamson, do you have a view as to what damage the maritime boundary dispute has on East Timor's perception of Australia and what some might call a soft power advance by China? I had some research done which indicates that there are still very strong views by Timorese leaders about Australia in the context of this dispute. It is not a criticism of China as such, but they have built the presidential palace and provided patrol boats and a whole range of measures—quite a few in terms of the bilateral relationship between China and East Timor. But, in terms of Australia, there were 10,000 protesters who attended a rally opposite the Australian embassy on 22 to 23 March this year. The leader of FRETILIN in their parliament and Aniceto Guterres proposed that the national parliament pass a parliamentary resolution to support the demonstrations that they were carrying outside the Australian embassy. How do we repair or build that relationship given that the contrast has been that China seems to have been doing very well in the bilateral relationship with East Timor in recent years?

**Ms Adamson:** I will ask Mr Cox, in whose division responsibility for the conduct of Australia's relations with Timor-Leste lies. Relations between any two countries, particularly close neighbours, always have a number of dimensions to them. In many cases around the world, history is part of that. But I think we have a very good story to tell currently on our relations with Timor-Leste. I will invite Mr Cox to speak more about that.

**Mr Cox:** Our relationship with Timor-Leste is much broader than just maritime boundaries.

**Senator XENOPHON:** It is an important issue, though, is it not? It is a very important issue that has consumed the relationship.

**Mr Cox:** Yes, it is an important issue but our relationship is much broader. We remain Timor-Leste's major security partner. We are its major development partner, with an aid program of around \$100 million working in livelihoods, education, health and governance, all of which is valued very highly. Our political leaders continue to maintain a dialogue while we have this maritime boundary dispute, including contact between Prime Minister Araujo and Mr Turnbull and between Ms Bishop and her counterparts and others, including at international

meetings. So, as with other countries with whom we have disputes on other issues, we are capable of maintaining good, positive relations in a range of areas, as well as having this dispute over maritime boundary location.

**Senator XENOPHON:** In terms of relations, Jose Ramos-Horta, a former president, was discussing a travel advice for Timor-Leste on his Facebook page on 24 May of last year. He wrote:

My comment on the stupidity of Australia's DFAT Travel Advice for Timor-Leste: 80% of the assertions are erroneous and ... malicious, put out with obvious intent to discourage Australian visitors to Timor-Leste in a mean retaliation for TL challenges on the Maritime Boundary saga.

He went on to say:

Common criminality in Timor-Leste is very low and we have one of the lowest homicide rates in the world.

And then he goes on to have a go at the AFP, which I do not want to repeat, which I thought was quite unfair. Is that travel advisory still in place? The travel advisory that Ramos-Horta—

**Mr Cox:** There is no link between travel advisories and the relationship between Timor-Leste on maritime boundaries.

**Senator XENOPHON:** I am just pointing out what a former president said in terms of the tone of the relationship.

**Mr Cox:** Jose Ramos-Horta is quite entitled to his own view, but there is no link between travel advisories and the maritime boundary issues.

**Senator XENOPHON:** You do not see any link between that?

**Mr Cox:** No. There is no link.

**Senator XENOPHON:** Notwithstanding what Ramos-Horta said and what has been said in the parliament on Timor-Leste.

**Mr Cox:** Those are the views of Jose Ramos-Horta—

**Senator XENOPHON:** And in the parliament.

**Mr Cox:** I can assure you that there are no links.

**Senator XENOPHON:** Would it be fair to say that when this dispute is resolved it would at least mean a new chapter in our relationship with Timor-Leste?

**Mr Cox:** When the dispute is resolved, the relationship will continue on in its many other facets, and we will have, ideally, an agreed maritime boundary, yes.

**Senator XENOPHON:** Can I go to the issue of Witness K. No disrespect to you, Minister, but it is something that always seems to exercise the Attorney whenever I mention Witness K. On a related matter, noting that there are no longer proceedings on foot, is the department now inclined to grant Witness K a passport or to advise that he should receive a passport because there is no longer a tribunal for him to be a witness at?

**Mr Cox:** On the matter involving Witness K, the arbitration has now been concluded as a result of one of the confidence building measures between Australia and Timor-Leste.

**Senator XENOPHON:** Sure. The reason why Witness K has not got a passport is that there was a concern that he would give evidence at the International Court of Arbitration that could be damaging to Australia's national interests. That is why his passport has been withheld for a number years. Since there is no longer a matter for him to give evidence in, why is it that Witness K still has his passport declined. My understanding is that there is a case in the Administrative Appeals Tribunal involving the department, where Witness K is fighting to get his passport back. He is now a witness without a tribunal to give evidence to. In other words, there is nothing for him to be a witness for, given it is now conciliation. I do not understand why Witness K is still being dealt with in this way.

**Mr Bliss:** I can answer this.

**CHAIR:** A brief answer, if you would, Mr Bliss.

**Mr Bliss:** The passport was not refused to prevent Witness K from giving evidence in the CMATS arbitration. The passport refusal is based upon a request from a competent authority on security grounds in accordance with section 14 of the Passports Act.

**Senator XENOPHON:** Which competent authority was that?

**Mr Bliss:** I am not sure I am able to provide that information.

**Senator XENOPHON:** So you will not tell me which competent authority it was?

**Mr Bliss:** I am not sure it would be appropriate to do so.

**Senator XENOPHON:** Given there is the issue of time, I will give you advance notice that we will revisit the issue of Witness K a bit later on.

**Senator WONG:** I will come back to the white paper and question on notice No. 2 just to give you a chance to consider that unless you want me to do it now. I can do Timor-Leste. I have a couple of questions on Timor-Leste.

**Ms Adamson:** If you would not mind. Thank you.

**Senator WONG:** I know this was touched upon by Senator Xenophon but he went down a different track. I just want to make sure I am very clear about the reconciliation process. First, the joint statement; we have discussed the decision to terminate the CMATS Treaty previously. Can you just outline what effect that decision will have?

**Mr Bliss:** That was, as you would be aware, one of the measures that was taken as a good faith measure, recommended by the commission and taken by the two parties. The consequence of that was to revert to the previous situation which was, of course, to the Timor Sea Treaty.

**Senator WONG:** And it is a different position to the one the Australian government has previously held?

**Mr Bliss:** If I could explain, Australia amended its treaty obligations because of Timor-Leste's notification on 10 January under article 12.2 of that treaty, that CMATS ceased to be in force after three months. So in order to fulfil Australia's undertakings—I am sorry this is a different point. Let me go back to the clarification. This was a confidence building measure, the consequence of which was to go back to the situation prior to the CMATS Treaty being in place, which is that the Timor Sea Treaty prevail.

**Senator Brandis:** It might be helpful, since I have given the instructions on this through the Office of International Law and my department, to expand on that. The termination of CMATS was a unilateral act to which Timor-Leste was entitled. The CMATS importantly contained a 50-year moratorium on boundary negotiations. It had been Australia's position that that 50-year moratorium and the CMATS Treaty was exclusive, or shall we say exhaustive of the issue.

**Senator WONG:** Exhaustive, yes.

**Senator Brandis:** In proceedings last year Australia lost the argument that it was open to Timor-Leste outside the CMATS Treaty to reopen the question of boundaries and, in view of the fact that the arbitration commission decided under UNCLOS, the United Nations Convention on the Law of the Sea, that the moratorium under CMATS was not exhaustive of the rights of the parties in relation to maritime boundary negotiations, but could be raised now and has been, then there was little utility for Australia in the CMATS Treaty in any event. As I said at the start of these observations, the termination of CMATS was something that Timor-Leste was entitled, unilaterally, to do and it has done, meanwhile we are now embarked on the conciliation proceedings which are the only operative proceedings on foot at the moment.

**Senator WONG:** If you go to the joint statement by the governments of Timor-Leste and Australia and the Conciliation Commission in which essentially a summary of those facts as you outlined them are outlined, there appears this paragraph, which is essentially the indication of continued negotiations:

For the further conduct of the conciliation process, the governments of Timor-Leste and Australia have each confirmed to the other their commitment to negotiate permanent maritime boundaries under the auspices of the Commission as part of an integrated package of measures agreed by both countries. The governments of Timor-Leste and Australia look forward to continuing to engage with the Conciliation Commission and to the eventual conclusion of an agreement on maritime boundaries in the Timor Sea. The Commission will hold a number of meetings ...

So given that background, can you tell me what steps we have taken to create the conditions that are conducive to achieving an agreement on permanent maritime boundaries in the Timor Sea?

**Senator Brandis:** We have taken the good faith measures that have been asked of us. We have engaged constructively in the process and I think I am at liberty to tell you that as recently as last week the chair of the Conciliation Commission, Mr Taksoe-Jensen, was in Canberra and he met with the foreign minister and me. In the course of that meeting I think I am at liberty to say that Mr Taksoe-Jensen complimented Australia on the constructive manner in which we had engaged in the conciliation.

**Senator WONG:** Mr Bliss, in October I asked some questions about this. This is at page 83 of those estimates. This point is now being resolved. I was asking you about the jurisdictional point. I asked:

Senator Wong: Will the Australian government continue or not continue to pursue the jurisdictional point?

Mr Bliss: No, that has been decided by the Conciliation Commission.

That has happened. Then I said:

Senator Wong: As I understand it, the role of the commission is to seek to assist the parties to reach a settlement. Whether or not a settlement is reached the commission can produce a report. Is that right?

Mr Bliss: That is right.

Senator Wong: It is not legally binding?

Mr Bliss: That is right.

Senator Wong: Has Australia given any indication whether or not it will accept the commission's report?

Mr Bliss: No.

I want to understand, in light of what has been said, both today and in the January 2017 statement, whether that answer remains the case or whether that answer needs now to be added to.

**Mr Bliss:** Perhaps I could have been clearer in the last estimates when responding to the question about the report. Of course if an agreement is not reached in the context of the commission, itself, between the two parties, then the commission will produce a report. In that report would be recommendations and, of course, those recommendations would be exactly that, so while the report of the commission is something that we accept is a process and an outcome of the commission in circumstances where there is not a prior agreement, the recommendations contained within that report are the subject of further consideration, I would say by both parties.

**Senator WONG:** So the jurisdictional point is now moot, effectively. Is that correct?

**Mr Bliss:** Yes.

**Senator WONG:** We accept that the commission can prepare, make or produce a report?

**Mr Bliss:** Produce.

**Senator WONG:** We have not indicated whether we are prepared yet to accept those recommendations?

**Mr Bliss:** No, and, in fact, we have not seen those recommendations.

**Senator WONG:** No. I just want to be clear.

**Senator Brandis:** Would it be helpful if I were to run you through the events that have happened since January because I can give you a chronology?

**Senator WONG:** I am just conscious of time. You are entitled to. If you feel you need to give an answer, I cannot stop you.

**Senator Brandis:** Can I just say this because it will help. We have had a meeting in the Conciliation Commission in Washington in the last four days of March. There will be another meeting of the Conciliation Commission in Copenhagen next week and intermediately, as I said, Ms Bishop and I have met with Mr Taksoe-Jensen and we have obviously discussed the matter with those who advise us within my department and within DFAT's legal section.

**Senator WONG:** I am not so much asking for a hypothetical but I am asking to understand what the various steps in the process might be. If we get to the point where the commission produces the report and recommendations are made, but for whatever reason the parties cannot accept those or do not accept those in full or in part, what are the next procedural steps open to the parties?

**Senator Brandis:** I know that you are only asking about procedural steps but, given that it is hypothetical and given that this is a conciliation that is on foot, I think it would be unwise to respond to that for fear of in some way constraining or limiting the position of those who represent us.

**Senator WONG:** Yes. I would like the matter resolved, so I am not keen to do anything which might disrupt that. I am genuine. I do not understand the jurisdiction. I do not understand whether or not it is this or another matter. If the Conciliation Commission formed by the Permanent Court of Arbitration—that is the technical title—produce a report with recommendations that parties do not agree with, what options are then open to the parties?

**Senator Brandis:** Can I direct you to what I am advised is set out in annexure 5.

**Senator WONG:** Of what?

**Senator Brandis:** I was just going to tell you. It is UNCLOS Convention. I should also make you aware that the report is due by the end of September, so it is not all that long away and obviously there is a lot to happen in the meantime.

**Senator WONG:** Can someone tell me what is appendix 5?

**Senator Brandis:** Annexure 5 of the UNCLOS Treaty.

**Senator WONG:** It says what?

**Senator Brandis:** I really do not want either myself or the officers to go on the record talking about options post the report for the reason I just outlined, but if it is helpful to you that is where you will find the procedural—

**Senator WONG:** I will seek a briefing on it. All I want to understand is in that event what options are available to both governments. I actually do not think it will be as prejudicial as the Attorney says but I appreciate his sensitivity so instead we will seek a briefing from the department.

**Senator Brandis:** I am not saying it would be prejudicial but for reasons, I am sure you will understand, I do not want to run any risk at all that it could be.

**Senator WONG:** That is fine. We will try to do it privately. Did you want to say something, secretary?

**Ms Adamson:** Simply to perhaps restate, in different words, that both parties have entered into this process in good faith. So far it has been working well and I think that will remain the sole focus of the government's attention, certainly the Australian government's attention, right through until it is finished.

**Senator WONG:** I was not asking you to maintain a lack of focus or to detract from your focus. I just wanted to know what the next steps might be. Question on notice 2. This is our lengthy discussion about the white paper.

**Ms Adamson:** Yes.

**Senator WONG:** You have got it. There is a bit of *Hansard* and then there is the answer at page 3.

**Ms Adamson:** Yes.

**Senator WONG:** In that answer it says, 'In the months following the election and in line with this commitment Minister Bishop instructed the department to produce a foreign policy strategy or white paper.'

**Ms Adamson:** Yes.

**Senator WONG:** Can you tell me when this instruction was first given to the department and how was the instruction given?

**Ms Adamson:** Could you please repeat that?

**Senator WONG:** When was the instruction first given? Let us just do that first.

**Ms Adamson:** This is now the third estimates in which we have discussed this.

**Senator WONG:** And I received answers from PM&C that you would not give me so we will come to that. If you would answer that as frankly as I think you should have the first time I would not be coming back to it.

**Ms Adamson:** I have read the *Hansard* of PM&C, your estimates hearing with them, and the answers I have given have been completely accurate. I think PM&C noted that cabinet had met on 13 December—

**Senator WONG:** Correct.

**Ms Adamson:** after which the foreign minister launched the white paper but that was not the—

**Senator WONG:** We will come back to that. I am not asking that question. I am asking you another question and I am entitled to ask these questions.

**Ms Adamson:** Of course.

**Senator WONG:** We can do it at the next estimates again if you would like. I just asked you when was the instruction first given?

**Ms Adamson:** And as I have said, when I became secretary on 25 August I had a discussion with the minister. I knew, because I had read in the coalition election platform, that if elected the government would prepare a contemporary and comprehensive foreign policy strategy for the 21st century. When I became secretary I was very well aware of that. It was a challenge that I welcomed. The foreign minister and I had a discussion about it in which she indicated she wanted me to lead on this, on the production of a foreign policy strategy or white paper, and on my second day in the job I started to bring together a team to do that. I think by estimates in October—

**Senator WONG:** I did not ask you about that.

**Ms Adamson:** That is the answer.

**Senator WONG:** In the response that I have read out the answer is, 'The minister asked the department to produce a foreign policy strategy or white paper.' That is the department's answer?

**Ms Adamson:** That is correct. We use those terms interchangeably.

**Senator WONG:** But you did not use the term in your evidence.

**Ms Adamson:** I beg your pardon. I referred, in that evidence, to—

**Senator WONG:** I am sorry.

Ms Adamson: My instructions were to produce a foreign policy white paper.

Senator Wong: When did you become aware it would be a white paper?

Ms Adamson: I became aware when I became secretary. The foreign minister told me we were producing a foreign policy white paper.

Now, I just do not quite understand why that is the term that you use in the hearing and then the question and answer comes back with the interchangeable terms.

**Ms Adamson:** That is because in my previous evidence I had referred to foreign policy strategy on the first time around.

**Senator WONG:** So is it your evidence that the minister instructed you, when you became secretary, to produce a strategy or a white paper?

**Ms Adamson:** As I said, we have used those terms interchangeably. I saw no distinction between them. I recognise the point you have previously made about a white paper being a formal announcement of government policy. The strategy was used as a shorthand for that but I had always envisaged that we would be producing a foreign policy white paper.

**Senator WONG:** When did the department or when did you stop using the terms interchangeably?

**Ms Adamson:** I still use them occasionally interchangeably but the fact is we established, quite shortly after I started, a foreign policy white paper task force.

**Senator WONG:** You said you have read Mr McKinnon's evidence of PM&C.

**Ms Adamson:** Yes.

**Senator WONG:** He answered the question I have asked you previously which is: when did cabinet make the decision? He told us it was on 13 December 2016. I asked you on a number of occasions when the government had made a decision. Why was it Mr McKinnon from the Department of the Prime Minister and Cabinet was willing to answer that and you were not?

**Ms Adamson:** With respect, the answer that Mr McKinnon gave relates to the cabinet's consideration of the terms of reference for the foreign policy white paper, after which the foreign minister announced the consultation period, so Mr McKinnon gave an answer which, when I read your question, I think seemed to make sense but did not, in fact, cover the earlier conversations or, indeed, the government's commitment to produce a foreign policy strategy or white paper. So in October—

**Senator WONG:** Did it go to cabinet prior to December 2016?

**Ms Adamson:** I am not able to say at what point the government made the decision to produce a foreign policy white paper because it seems to have been made before I became secretary, but the process was well

underway through the establishment of a task force and a cabinet meeting which settled the terms of reference for a white paper which had already been agreed the government would produce.

**Senator WONG:** PM&C has told me that cabinet considered the terms of reference for the white paper in December 2016. You are saying that was not when they decided to have a white paper; that is only when they decided to have terms of reference but no-one can tell me when government actually decided to do a white paper, which, as you know as an experienced public servant, has a particular meaning. Is that your evidence?

**Ms Adamson:** The idea for it, the commitment to produce it, came out of last year's election and the campaign that preceded that, so it was known. The coalition chose to describe that in that document as a foreign policy strategy and that was why I used that term. One does not just produce a foreign policy strategy and go through the most intensive consultation process the department ever has unless one is producing a white paper.

**Senator WONG:** Chair, I have to leave for a short period. I know that my colleagues down that end of the table have questions and I am sure other senators may.

**CHAIR:** We are about to go to afternoon tea at 3.30 and at 3.45 Senator Xenophon will be asking questions. We will now suspend until 3.45.

#### **Proceedings suspended from 15:29 to 15:45**

**CHAIR:** We are resumed. Senator Xenophon.

**Senator XENOPHON:** Several hours ago I asked questions about who was the competent authority who requested the minister to cancel Witness K's passport. I think your officers could not tell me at the time but I have since been able to establish, by looking at old estimates, just to save time, that—

**Ms Adamson:** I think we did, too.

**Senator XENOPHON:** Yes. I am sorry.

**Ms Adamson:** We are sorry, too.

**Senator XENOPHON:** It was not a trick question. Mr Varghese, your predecessor, told me on 11 February 2016 at Senate estimates that the competent authority in Witness K's case who requested the passport be cancelled on the grounds that he might engage in harmful conduct was ASIS. My question is: how can ASIS be a competent authority and how can the minister rely on their advice when it is the allegedly improper conduct of that same authority, ASIS, that Witness K is prepared to give evidence about? So, in other words, Witness K's complaints were about ASIS. I am disappointed the Attorney is not here because he usually gets agitated when I ask these questions about Witness K.

**Ms Adamson:** He might want to contribute but I think the answer is in the legislation or the regulations. I will invite my colleague from legal division to confirm that for you.

**Mr Bliss:** Yes, that is right. If it is useful, you asked a number of other questions. I now have answers to some of those.

**Senator XENOPHON:** You could give me those. I thought we would wait for the Attorney to come back for the contentious bits. Please do.

**Mr Bliss:** The five members of the Conciliation Commission are Peter Taksoe-Jensen, the chair, of Danish nationality; Professor Rudiger Wolfrum of Germany; Judge Abdul Koroma of Sierra Leone; Professor Don McRae of Canada; and, Dr Rosalie Balkin of Australia. You asked about the cost for all aspects of Timor Sea issues.

**Senator XENOPHON:** Yes.

**Mr Bliss:** We will have to take that on notice as, of course, it extends beyond this department. You asked about locations. Meetings of the conciliation have been held twice in Singapore, twice in The Hague and once in Washington, and those locations have been because that is where the commission has decided they should have them in order to facilitate them.

**Senator XENOPHON:** They are welcome to Adelaide any time.

**Mr Bliss:** In relation to Witness K, you have already answered that question. We were going to answer that.

**Senator XENOPHON:** I am asking a question that I should have known the answer to a few hours ago but the question still remains: how can ASIS be a competent authority when it is the allegedly improper conduct of that same authority, ASIS, that Witness K has made allegations about and is prepared to give evidence about?

**Mr Bliss:** That is a matter of the legislation. There is a number of competent authorities who can—

**Senator XENOPHON:** Perhaps I might ask the Attorney that question. Attorney, on the issue of Witness K—

**Senator Brandis:** Yes. It is nice to see you.

**Senator XENOPHON:** The feeling is mutual and I know that the issue of Witness K always seems to raise your interest or your blood pressure, I am not sure which.

**Senator Brandis:** No, it does not do the latter.

**Senator XENOPHON:** I will try. In relation to Witness K the issue is Witness K was prepared to give evidence about the allegedly improper conduct of ASIS yet it is ASIS that has been the competent authority that has given advice to the foreign minister to cancel Witness K's passport. It is my understanding that ASIO does not have any security concerns about Witness K having his passport and I understand that there is advice from Director-General Lewis to that effect that ASIO does not have concerns about Witness K having a passport.

**Senator Brandis:** I am not sure that that is right. I think, particularly given the sensitivity of the matter, the only thing I can do is take the question on notice.

**Senator XENOPHON:** How is there sensitivity in this matter because the reason, as I understand it, that Witness K was denied a passport was so that he could not give evidence at the International Court of Arbitration. That matter has now been resolved insofar as there now is a conciliation so there is nothing for Witness K to give evidence about.

**Senator Brandis:** That is not the only legal dimension concerning Witness K. Most immediately, the decision to refuse him a passport is currently the subject of an AAT review, so I cannot comment on that.

**Senator XENOPHON:** In terms of general legal principles, ordinarily where there is an apparent or clear conflict of interest a party would recuse themselves, for instance, in being the body that is the competent authority to give advice as to whether someone should have their passport cancelled or not. Does that trouble you, as a general legal principle, that if the body that has made recommendations to cancel, to make a recommendation against an individual's interests, is the very body that is the subject of complaint by the individual?

**Senator Brandis:** You are asking these questions at a very high level of generality. I want to acquaint myself—

**Senator XENOPHON:** You are saying a very high level of—

**Senator Brandis:** Generality. I want to acquaint myself with the particular events. I am not sure which, if any, of the premises of your question are acknowledged or a matter of public record so I want to satisfy myself about that as well.

**Senator XENOPHON:** I cannot win. I am criticised for being too general or too—

**Senator Brandis:** I am not criticising you. Senator Xenophon, do not be hurt. I am not criticising you. I am merely explaining to you that, given the currency of one set of legal proceedings and certain other matters that I am aware of that I am not prepared to go into, I do not feel at liberty to answer these questions. I said I would take the primary question on notice so I or the minister can give careful consideration to what information, if any, can be provided to you.

**Senator XENOPHON:** The question I am asking you as Attorney, as a general legal principle, if there is, for instance, in the issue of competent authority in respect of the—

**Senator Brandis:** Under the Passports Act?

**Senator XENOPHON:** Under the Passports Act. If the competent authority involved is the very authority that has been the subject of allegations in respect of the person whose passport is in question, and there are other competent authorities that can give advice, such as ASIO, do you have any reservations? Leaving aside the issue of Witness K, do you have concerns about issues of potential conflict of interest or whether it is appropriate for that competent authority to recuse itself from being the authority involved and that there ought to be an alternative authority involved?

**Senator Brandis:** In order to do justice to your question I would need to know a lot more than I actually do about the way in which ASIS arrives at recommendations where it is making those recommendations in its capacity as a competent authority under the Passports Act. I am not in a position to give you that, even though you ask your question as a general proposition. It is not as simple as that because it depends on the mechanical workings of the act and the way in which ASIS exercises its decision-making process in making any such recommendation. I just do not know. I honestly do not know and, therefore, I think it is best for you, as well as for the process, if we take these questions on notice.

**Senator XENOPHON:** I have been asking questions about Witness K for a number of years now.

**Senator Brandis:** I know you have but that is my answer to this question. I want to give you as much information as I am at liberty to but I do not know how much information I am at liberty to give you and there are certain aspects of this matter, which I have just explained, that I simply do not know about so in those circumstances I think my only course is to take the questions on notice.