

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ISLAND TRANSPORT SERVICES MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE ON FRIDAY 5 FEBRUARY 2010.**

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**Mr COLIN FINCH**, CHIEF EXECUTIVE OFFICER AND **Mr GWYN ALWAY**, MANAGER, VESSEL STANDARDS AND SURVEY, MARINE AND SAFETY TASMANIA WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** (Mrs Rattray-Wagner) - Thank you very much, gentlemen. I would like to welcome you to the island transport hearings. Obviously you have had some understanding of the hearing process, so if there is anything that you do not understand along the way we are more than happy to assist in any way we can, but we just appreciate your time today. We will begin with some basic questions. I am interested in hearing you explain to the committee how you discharge your statutory responsibilities with respect to commercial ongoing vessels, and in particular the inspections related to the system, and also do you require complaints to activate an inspection, or do these just happen as a matter of course?

**Mr FINCH** - Our act calls for us to ensure the safe operation of vessels, and as a consequence of that we have a series of by-laws and regulations which govern how vessels are designed, maintained and operated. The most relevant one is probably the Vessel Safety Standards By-Laws, which has 200-odd clauses, which detail everything about how a boat is to be built and managed. There are other regulations, for instance the Pilotage and Navigation Regulations, about how you operate a vessel, and also the Certificates of Competency By-laws, which deal with how people are certified to operate a vessel. In the by-laws it specifies a program of what is called survey for the vessel, so the vessel has to be built to what is called initial survey, much like a house. The plans have to be approved and the construction overseen. And then there is a periodic survey, so every year the vessel is inspected by a MAST surveyor. Usually every other year it is inspected out of the water, and the alternate year it is inspected in the water and the machinery is trialed. But there is the opportunity - and we will get to that - that that survey program may be varied, really at the discretion of MAST.

The people who operate on a vessel, who serve on a vessel, all have to have certificates of competency. There is a whole schedule for what you need. It depends on the size of the boat and where you are going to operate. Typically people will either go to the Australian Maritime College or Seafood Training and get a certificate to operate the boat. You get certificates for engineers and for masters. And finally if you want to carry passengers then you have to comply with the safe operation regulations, and you have to have an approved safety management plan. That is audited, and we do a practical on-water test of how that operates. So that is a brief outline of how we try to ensure the vessels are safely operated.

**CHAIR** - So when a vessel is brought into the State to be used in this State as for instance is happening in Bridport to service the Furneaux Group at the moment, does that go through the same procedures? You obviously have not been involved in the building of the boat so you have no real understanding of that, so where does that process pick up?

**Mr FINCH** - In the case of a vessel that has come from interstate, or even from overseas, then we ask to see the Certificate of Survey that has been issued for the vessel, and we automatically recognise certificates issued within Australia either by the Commonwealth or by another State jurisdiction. If it comes from overseas it would normally come under a private classification society like a Lloyds or a Det Norske Veritas or one of those. So, we look at the paperwork and it's a little bit the same with certificates of competency - we would again look at the certificates and there's a whole process for recognising overseas certificates.

**Ms FORREST** - With regard to that then, how would you describe the Southern Shipping's survey records over recent years prior to July 2007 particularly, and then since?

**Mr FINCH** - They have two vessels. The elder vessel, the *Matthew Flinders* comes under Commonwealth survey because it operates interstate. Somewhere in the last decade the Commonwealth changed their arrangements and they now no longer survey vessels so they either say to an owner, you have to go to a private classification society or you have to go to a State authority. In the case of the *Matthew Flinders*, they obviously came to us and said they would like to put this vessel under MAST's survey, Tasmanian survey, and then the Commonwealth issues a determination recognising the MAST certificate. We've had a lot to do with *Southern Condor* because that's the vessel that was built under Tasmanian survey and it has been operated under Tasmanian survey. So we have had much less to do with *Matthew Flinders* because that has always been done by the Commonwealth.

This has certainly complicated things a little bit with Southern Shipping because when anybody reported a problem with the boat the first thing we had to ask was which vessel were they talking about. As likely as not it wasn't us, so we'd be talking to Commonwealth or they'd be talking to us so we do liaise a lot or we have liaised a lot with the Commonwealth about these vessels. We've got a fair understanding of where each other's vessel is at. They are roughly sister ships so that a problem with one vessel is likely to occur on another or there is a potential for it to do so.

**Ms FORREST** - So, what has the record been like?

**Mr FINCH** - Perhaps the easiest way to illustrate that is with these files. One of these files goes from February 2007 to May 2009; the next one goes from May to October and the final one goes from October to early January, so you can see that progressively we've intensified our surveillance and inspection regime on Southern Shipping and on the *Southern Condor* because we had concerns about the standard of the boat which seemed to deteriorate over time.

**Ms FORREST** - So, there's been a decline in the safety record, for want of a better word? Is that how you'd describe it?

**Mr FINCH** - Well, it's more in the record - not so much the safety record. We were more concerned about the maintenance record. If you can determine that the maintenance of the vessel is declining, or the standard is declining, then you want to ensure that you can step in before the safety record deteriorates as well because it is likely that one will follow the other. So, we were trying to be pre-emptive, if you like.

**Ms FORREST** - So, the maintenance record was showing that there was deterioration in that? So, what action did you take, then, to address that and what reasons were given?

**Mr FINCH** - Towards the end of 2008 we began to have concerns about the maintenance standard of Southern Shipping. We had to undertake a passenger safety audit of the safety management plan, which we did in January 2009, and that brought out problems that were occurring with the operation of the vessel. One thing we found was that the vessel was running through a lot of oil. It had a leak in its stern tube and this was identified just by looking at the records on the boat. The vessel was due to go to survey out of water, so it was going to be slipped in Devonport at the end of January and we asked for this to be attended to at the time. So we had quite a program of survey; things that we wanted to inspect, while it was slipped in Devonport. When it came out of slip we did some trials on the vessel and the recommendation of the contracted surveyor was that we increase the surveillance regime.

So the next survey of the vessel was due to be August. In fact it took place in September. There was an opportunity for a month of leeway either side. In September when we surveyed the vessel we found, again, a lot of routine maintenance issues that weren't being attended to so we then put the vessel on a three-monthly survey program. So the due date for the next survey was going to be November 14.

If you check through the records that we have, you will see that we increased our inspection regime and our surveillance on Southern Shipping, particularly on the *Southern Condor*, throughout this period. So, as we've identified a problem we've progressively tightened up our inspection regime. We gave less tolerance of defects with one of them attended to.

**Ms FORREST** - And were they?

**Mr FINCH** - They were, because we said we would be suspend the certificate of survey so the vessel couldn't operate until the defect we had identified was dealt with. Towards the end of the process we were beginning to find that we would go there to look at one issue and find another, so we sorted one thing out and then identified another. Maybe that was all right. For example, we were told of a sewage leak, I think in October, but when we got there we found the vessel had another leak somewhere else and so we suspended the certificate for that. So by increasing our surveillance we were tightening up the vessel, but we made sure as far as possible that the vessel did not sail unless it was in a seaworthy condition.

**Mr HALL** - In the same vein -and I think Ruth probably had some of those questions you have already answered - are maintenance schedules and servicing generic across particular vessels? For example, with this one and a similar vessel that came in, do they have similar schedules? Is that the way it works?

**Mr FINCH** - Yes.

**Mr HALL** - So you don't impose anything over and above what might be classed as normal scheduling, say, for a Toyota car or whatever? That gives the analogy.

**Mr ALWAY** - There is probably a difference between maintenance and survey cycles. Every boat has the same survey cycle and it's based on a routine inspection of the vessel over a period. For example, a propeller shaft would be looked at every four years, the rotor stock every eight years, and tanks every four years. That is a rotating cycle and all boats are the same there. I think Colin has said that we've ramped up the survey regime for *Southern Condor* because we were concerned that maintenance wasn't being carried out and we were finding that we were the people that needed to find the issues with the boat and make sure they were rectified.

**Mr HALL** - And the intelligence you got to say that maintenance wasn't being carried out came from whom?

**Mr ALWAY** - Various sources. That's not a very good answer, but some of the reports were actually about damage that was sustained to the vessel. I think the vessel lost a rudder on two occasions so that obviously triggered an inspection regime of new steering gear and rudders and so forth. Also when it was slipped for survey last February it was docked in Devonport, the shafts were drawn then, and at that point the port propeller shaft came right out and new bearings were fitted, new seals were fitted, the shaft was end-for-ended because it was worn. That was part of a routine survey at that time.

**Mr HALL** - And the *Southern Condor*, just to refresh my memory, is how old? When was it first commissioned, do you know?

**Mr ALWAY** - I think 10 to 12 years ago.

**Mr FINCH** - It must be about that - about 2000 or 2001.

**Mr HALL** - So does the age of the vessel increase frequency of surveys at all, or not?

**Mr FINCH** - It's quite a new vessel; it shouldn't be having any problems.

**Mr HALL** - Yes, so she'd only just be run in.

**Mr ALWAY** - She's a good vessel. She's a good ship.

**Mr HARRISS** - When you're making those assessments, gentlemen, about the maintenance and so on, do you have the capacity to investigate the reasons for that sort of maintenance being neglected, such as financial factors - like a company is struggling? You can see the angle I'm coming from because that's where we're at now, because of the financial difficulties of the company. Do you have that capacity, that authority?

**Mr FINCH** - No, we don't have the authority to go and look at the books of the company. We assess the vessel as we see it. We try to treat everybody equally, I guess, in the sense that we don't worry about whether somebody's a wealthy owner or not a wealthy owner. To be honest, that has little to do with how they maintain the vessels. You find quite ordinary people are quite capable of maintaining a vessel really well and some people can't. I think one of the things we have learnt over the last few years, particularly through this safety management process, which is quite intrusive, is that with people who don't maintain their vessels it's not that they're just bad at that bit of their business. They're usually bad at every bit of their business. They are bad managers; they would

probably have bad marketing if they were a passenger operator and you tend to find that the people who do not manage their vessels well tend to go out of business.

**Mr HARRISS** - I respect what you say about the rich and the not so, and that it doesn't impact, but they are flags of concern, nonetheless, aren't they? If a company is cash-strapped then it is unlikely to be diverting too much of its attention to things that it might be able to get away with for a little bit longer to try to get the cash flow running and so on. Do you have the opportunity, the obligation or the right to liaise with other components of the shipping process such as DIER or TasPorts or anybody else so that as a group you can identify emerging problems?

**Mr FINCH** - We certainly flagged to DIER at any point where we suspended a survey or we had concerns. We were likely to do that so they were aware from an operational point of view because they were trying to maintain a shipping service. We try to be very careful not to be an arm of government. In other words, we would not want to increase our survey activity and inspections on a vessel because it was part of government policy or because the government elsewhere had concerns about an operator. You only have to read the papers; everybody had concerns about Southern Shipping for much of the last year.

We were very careful to make sure that what we did was absolutely in accordance with our by-laws and how we operate. Certainly we explained what we were doing as a survey process to others outside and we liaised with the Commonwealth. If you are asking whether it is it a coordinated policy of government, no it isn't, and I don't think it should be either.

**Mr HARRISS** - No, not so much a coordinated policy, Colin, it is more the opportunity for all of the players to interact which might identify at a really early stage a major underlying problem which can then be addressed from the contractual point of view which may have saved MAST some grief with regard the safety of the vessel.

**Mr FINCH** - The short answer is no, I think.

**Mr HARRISS** - Thanks, Chair.

**Ms FORREST** - You made the comment, I think, that *Southern Condor* was a good ship that should not be having these sorts of problems generally and that people who tend to manage maintenance poorly tend to manage their business poorly. Would you say this has been the case, that the ship should not be having problems, that the maintenance is one aspect that has been managed poorly by Southern Shipping?

**Mr FINCH** - I don't think that they were saving money by their maintenance regime. It maybe would have involved the expenditure of some money but not some of the work that they did not do to the vessel and some of the things that they did do. For instance, they used a log loader on Flinders Island that exceeded the safe-loading capacity of the ramp and they did a lot of damage to their ramp. In the end we were putting on limits. We had quite a debate with them about how many logs you could carry on this log boat and we ended up with your being able to carry 1.3 tonnes of logs on the log loader every time it went over the ramp and if it went over that it exceeded the safe working load of the ramp.

On these two occasions they did a lot of work to repair the ramp and finally they strengthened the ramp, which was in line with what we had been telling them for some time was necessary.

I do not think it was that they were well organised or trying to save money; they were just disorganised and not very well managed.

**Ms FORREST** - And not responding to your earlier requests, obviously?

**Mr FINCH** - No.

**Ms FORREST** - You made a suggestion some time ago. How long ago were these requests made?

**Mr FINCH** - I think in May last year we were suggesting that there was a real problem with the ramp and that they were overloading the ramp with the way they were loading logs. They eventually strengthened the ramp in October.

**CHAIR** - Colin, with regard to the maintenance issues, can you help me understand what happens if the skipper or the captain of the vessel logs an issue? Does that go to the company and then they forward it on to your organisation or does it go direct to you so you have an understanding that there is an issue with the vessel and it has to be addressed by the company at your request, or can the company just shift that paperwork somewhere else for the time being until it comes up to the regular inspection?

**Mr FINCH** - It depends a little bit on the company. A good company will work well with its masters. They're part of their team, they're paying them after all, and they will attend to the issues that a master raises and deal with the problem.

In the case of Southern Shipping, we've certainly got a lot of information from masters who've contacted us and said, 'Please don't tell the manager that you've been in touch with me', and we've had argument with Mr Gabriel about our speaking to the skippers. Often he would say, 'How did you know about that?' and I said, 'I spoke to your skipper'. He said, 'I don't want you ringing up my skipper' and we had to sort of give the impression that that's what would happen, but certainly we got complaints.

**Ms FORREST** - It's reasonable, though, for a skipper to make a complaint directly to MAST, isn't it? It's not inappropriate for them to do that?

**Mr FINCH** - No, it's not, because he was concerned about the safety of the vessel. I think most of the skippers of Southern Shipping, during the course of last year, would have spoken to us one way or another.

**Mr ALWAY** - Probably in a larger percentage of cases if a skipper - or any staff employee, for that matter - found a problem, they would let management know and it would be attended to and MAST wouldn't have any involvement. We wouldn't know and we wouldn't need to know if it was an electrical issue or just an ongoing maintenance issue. If it was a modification to the vessel, though, MAST certainly would need to be involved.

**CHAIR** - When you go through the cycles of survey, do you ask for any of those defect notices that have been presented or handed in by the master of the vessel, or anybody working on it? Do you ask for a copy of them - is there a log or some compliance requirement that happens through your systems?

**Mr ALWAY** - Not normally. With passenger vessels, where there is a safety-management plan in place, there are log and maintenance records that we can look through as part of an audit. The safety management plan for *Southern Condor* wasn't very well managed, similar to the operation of the vessel, so it was not possible to obtain those written records from the company. Each time we did an audit of the safety management plan, the records were not well held at all.

Further to that, I guess Southern Shipping is a bit of an extraordinary case. Probably in the majority of vessels we've surveyed, we'd go through and tick boxes and there would be not a lot of reporting needed - it would be fairly straightforward. We found with *Southern Condor* each time we visited the vessel that we were listing defects all the time. We were the ones bringing up the work that needed to be done to the boat; it wasn't coming from management or the owners or themselves. That in itself is an unusual case.

**Mr HALL** - Is it fair to say that the *Southern Condor* was your biggest problem child for MAST in that class of vessel over the past two or three years?

**Mr ALWAY** - Perhaps along with one or two other vessels. There is probably a fleet of 1 400 vessels and, of those, perhaps half a dozen are problems and take up most of our time.

**CHAIR** - Do those same six continually remain problems?

**Mr FINCH** - Generally about half those vessels will disappear over time because the business disappears, so the problem solves itself in one sense, but our role is to make sure that no safety issues occur during that period so obviously we increase our surveillance and our survey regime because we have concerns. So if we are nervous about an operator, we'll step in and do something about it.

**CHAIR** - Is it your role to give the receivers of the company, at this point in time, an assessment of both vessels? Have you been requested to provide that?

**Mr ALWAY** - We've been requested for some information on the *Southern Condor* relating to the survey that is coming up in February, so we have provided that to the receivers.

**CHAIR** - And nothing on the *Matthew Flinders*?

**Mr FINCH** - No, because it's a Commonwealth vessel.

**CHAIR** - So you have no role in that at all?

**Mr FINCH** - No.

**Ms FORREST** - I think MAST would have been informed, but I just want to know whether you know about an instance where one of the Southern Shipping vessels docked at Naracoopa at the boat ramp. What involvement would MAST have in that event?

**Mr FINCH** - We weren't informed that the vessel was going to dock at Naracoopa. The first we heard was from Diana Reed who rang on a Sunday to say that the vessel was there. They were in a pilotage area. They didn't have a pilot. They did not have an exempt master. We fined them, sent them an infringement notice for that. That was the *Matthew Flinders*, which is over 35 metres so it needs a pilot. They then wanted to take *Southern Condor* in there and we said they couldn't until they had given us a safety management plan that showed that it was safe. Naracoopa is a fairly hazardous place. There are lots of rocks around there. We did not want them to use the boat ramp. They offloaded a dump truck, and it certainly wasn't designed to take that kind of load, and I believe there was some minor damage to the ramp as well. We did take action about that, but again we only found out after the event.

**Ms FORREST** - Is there other action that should be taken with regard to that in your view? I know that no-one knew until the boat was backed up to the boat ramp.

**Mr FINCH** - It is covered by the Pilotage and Navigation Regulations. There is already a set of regulations that deals with that but it is very difficult to stop people before they choose to break the law.

**Ms FORREST** - What was the fine that was imposed then?

**Mr FINCH** - I think \$600.

**Ms FORREST** - That will stop them again, won't it.

**Mr FINCH** - We issued four infringement notices against Southern Shipping last year, and the next step is to start taking matters to court, but if you take matters to court they usually become protracted, and if you just take the first instance to court then the magistrate is likely to fine the infringement notice. That is our experience. So you might as well start off by building up a record of these people breaking the law, and then when you go to the Magistrates Court you can say you have a number of previous convictions for this particular company or particular person, and then the magistrate will take it up more severely.

**Ms FORREST** - So Southern Shipping haven't been given approval to dock either ship at the boat ramp at Naracoopa.

**Mr FINCH** - They are specifically prohibited from doing it.

**Ms FORREST** - Even if they had a pilot on board?

**Mr FINCH** - Yes.

**Ms FORREST** - They still wouldn't be able to?



**Mr FINCH** - No, for a whole range of reasons. We said we wanted them to have a safety management plan in place.

**Mr HARRISS** - Just as an overall situation with regard shipping in Tasmania, how would you rate, if you had to rate it, the performance of this particular company and its safety record over, say, the past five or 10 years, with other shipping operations in Tasmania?

**Mr FINCH** - We have some really excellent shipping operations in this State. Bruny Island Charters or World Heritage Cruises are up there with some of the best operations in Australia, absolutely fabulous operations, and very profitable. We very rarely have any problems with any of those operators. They carry lots of people routinely and their businesses grow rapidly. So on that scale Southern Shipping was a very poor operator.

**Mr HARRISS** - Flowing on from that then, Colin, you have just chronicled for Ruth the process that unfolds when you have to build your case, if you like, before you head off to court. A casual observation might lead me to think that the laws under which you operate could be a lot stronger and, if I were to draw some comparison between the laws on the sea and the laws on the land, an errant driver of a motor vehicle would not get away with that sort of activity for that length of time. Is that a reasonable observation and, if it is, or even if it is not, but particularly if it is, should the laws under which you operate be toughened up so that you have more opportunity to act more quickly?

**Mr FINCH** - We tried to deal with the survey standards of the vessel to make sure the vessel was kept in a seaworthy condition before there were any incidents or accidents involving the vessel. The safety record of Southern Shipping last year was not good but it was better than it might have been if we had not been perhaps so determined to improve the vessels. There were some operational issues. There was the log loader that ended up in the Brid River. There was a grounding at Grassy. But in general, given the state of things, it was reasonably under control and we were increasingly tightening the regime. The legislation we have is by-laws largely and they have a prescribed limit on the fines that you can set. We are currently talking with Parliamentary Counsel about moving from by-laws to regulations. When the act was originally drafted Parliamentary Counsel suggested the use of by-laws because they felt they would be easier for us to manage and change, more flexible than regulations, and there is some truth in that. But both have to go through the Subordinate Legislation Act provisions so they are both in many ways quite similar. We will probably do that. That would increase the fines that you could raise. There is a case I think in some of what we do for stiffening the penalties beyond I think it is a 500 penalty unit limit of a regulation for some offences. If you look at it compared to environmental regulations, for instance, ours are relatively low penalties.

**Mr HARRISS** - Does that give you some frustration?

**Mr FINCH** - Not a lot of frustration because we do not have a lot of bad operators.

**Mr HARRISS** - The instance Ruth just mentioned at Naracoopa is pretty concerning, isn't it, the fact that a company would totally disregard the legal impositions on them and dock a ship under such circumstances - dangerous for a whole range of reasons. Was the \$600 fine the maximum which you can apply?

**Mr FINCH** - It is the prescribed penalty for an infringement notice. We could have got a larger penalty by going to court so this is partly swift justice. You can say, 'You did something wrong' and on Monday there is a penalty, so that is good. But it is also a question of trying to build a case. The next offence would have definitely been a trip to the Magistrates Court.

**Mr HARRISS** - Thank you.

**CHAIR** - Colin, I want to talk about the sand dredging. Is it your understanding or is it your opinion that the lack of sand dredging has caused a lot more of the issues that have occurred to both the *Matthew Flinders* and the *Southern Condor*?

**Mr FINCH** - There is no doubt that the grounding of the vessel has caused problems with damage to propellers, damage to the shaft that has led to damage to the seal work between the shaft and the ship so you get oil leaks. There is no doubt that has been a problem but the issue I think really is that a fully 6-metre vessel, which is *Matthew Flinders*, is a large vessel to take up the Brid River. You can only do it at certain stages of the tide, really at the top of the tide. Southern Shipping last year decided that they wanted to bring a ship in, unload, load and go out on the same tide, which made it difficult. Then they decided that the crew would only be paid for half an hour before the vessel departed. Presumably they paid them half an hour after it landed. So that made it even more difficult because it is very difficult to maintain the maintenance on the vessel if the crews are continually changing and they do not get a chance to oversee the vessel. So there are a number of operational issues combined with what is a difficult port.

I am not so sure they often hit the sand at Bridport as hit the training walls so that is what would cause the damage when they hit the rock training wall and one occasion, in October I think, there was a story that they hit a rock shelf underneath the barway at Bridport. It would be pretty difficult to remove that rock shelf and I am not sure what the point of that would be anyway. There comes a point when that is the seabed and that is as low as you can go.

**CHAIR** - So there have been ongoing issues with Southern Shipping over removal of rock walls. I know I have had conversations on the phone with people telling me that they are moving the rock, 'Quick ring up somebody'. It has been ongoing since Mr Gabriel has been in charge of the company, would that be fair to say?

**Mr FINCH** - It did precede Mr Gabriel. Certainly he did decide to build an eastern wall using the rock from our western training wall. Eventually we got him to reinstate the rock and take it away.

**Mr ALWAY** - The tidal factor of Bridport puts operating constraints on a business operating out of there. I guess that is obvious but they are always working around the tide to enter the river and to unload and load the vessel and then to get out again, whether they try to do that at the time the tide is high or whether they wait for an incoming and outgoing, but it is always putting operating constraints around that.

**Mr HALL** - If I could move on to another matter, Madam Chair.

**CHAIR** - Absolutely.

**Mr HALL** - I think the island has something like 15 per cent of the State's cattle herd and 6 per cent of the sheep, so there are obviously significant livestock movements. With regard to safety and other protocols moving that stock backwards and forwards, do you have any role in that or does that jurisdiction belong to somebody else with regard to the treatment of stock?

**Mr ALWAY** - There are a number of jurisdictions involved. Usually AMSA have an involvement as well.

**Mr HALL** - Who's that, sorry?

**Mr ALWAY** - AMSA, Australian Marine Safety Authority.

**Mr HALL** - Okay.

**Mr ALWAY** - Because the vessels ply between the mainland and Tasmania as well as Flinders and Tasmania, we've been careful not to double up on regulation, if you like, so AMSA has taken the responsibility for approving stock pens on the vessel and carriage of livestock under Marine Orders 43.

**Mr HALL** - Do you know of any issues that they've had?

**Mr ALWAY** - Certainly with the *Southern Condor*, about six months ago, during the time that they were carrying logs, a lot of damage was being done to the deck and therefore the base that the posts that take the livestock rails go into were damaged, missing and couldn't support the livestock rails properly. For that reason we agreed with the company that they'd fit livestock rails only back to the aft end of the wheelhouse and we applied a condition on the certificate to do that. So they ended up with four small areas just under the wheelhouse area and not the whole deck.

**Mr HALL** - It worked okay?

**Mr ALWAY** - Yes.

**Mr HALL** - What's the transit time for crossings; say, from Bridport to Flinders?

**Mr ALWAY** - It varies with the weather but I guess about eight hours.

**Mr HALL** - And the facilities at either end, the yards or anything else, don't fall into your jurisdiction at all? The loading facilities wouldn't, I presume, not the actual yards themselves. Is that the delineation between those two sets of infrastructure?

**Mr FINCH** - Well, Flinders Island and TasPorts at the Bridport end are private property so we have no jurisdiction over them.

**Ms FORREST** - Are the holding yards on King Island part of the port infrastructure?

**Mr FINCH** - They're part of TasPorts.

**Ms FORREST** - They're Tasports' responsibility then.

**Mr HALL** - How does that compare to Bell Bay?

**Mr ALWAY** - I'm not sure that stock is unloaded at Bell Bay. I stand to be corrected there.

**Mr HALL** - You might be right. It may not be.

**CHAIR** - I believe it's not unloaded at Bell Bay.

**Mr ALWAY** - I guess there are security issues as well around that.

**CHAIR** - I'm interested in whether the minister or the department, or the Transport Commission for that matter, has requested MAST to provide any information in regard to safety records and compliance issues for LD Shipping, which is actually managing the contingency service at this point in time. Can you give the committee that information?

**Mr FINCH** - The minister's officers broadly discussed the survey status of Southern Shipping. There's been an issue for quite a lot of the last year over having really only one engine available following a grounding at Grassy in May last year, I think.

**Mr ALWAY** - It was early last year.

**Mr FINCH** - That caused a problem with the gearbox which did quite a lot of damage to the rudder, the propeller, the shaft and gearbox. The gearbox had to be rebuilt and had to come from Europe. That got put in place and they've had ongoing problems with the gearbox ever since. The vessel's been running around with one engine, which means that it doesn't make good progress across Bass Strait and it's been limited on livestock to voyages of no more than 24 hours. If they can't get the livestock, particularly to Welshpool, in less than 24 hours they're gone - they can't go. It's had a weather limit of force 5 so you can't operate in conditions where it's stronger than that because obviously it just can't navigate. We did all sorts of manoeuvring trials to make sure the vessel could safely berth, a whole risk management plan, before we allowed the vessel to sail with one engine.

**CHAIR** - So it's your understanding that it's still sailing with one engine?

**Mr FINCH** - Yes.

**CHAIR** - It is certainly my knowledge.

**Mr FINCH** - It is at the moment.

**Mr ALWAY** - They operated for about four or five months with both engines operating and both gearboxes were fine. About three weeks ago it developed a noise in the port gearbox again - the one that was replaced - so they were operating with a single engine then and having the port engine as backup for manoeuvring. They have since taken the gearbox out and it is being looked at at the moment so they are operating on the starboard engines at the moment under strict operating conditions that we have agreed.

**Ms FORREST** - Are you talking about LD shipping?

**Mr ALWAY** - Yes.

**Ms FORREST** - You said Southern Shipping at the beginning.

**Mr ALWAY** - Sorry.

**CHAIR** - So the minister's office is well aware of all those issues and that they are current at this point in time?

**Mr FINCH** - Yes. And I should say DIER is aware as well. We have explained that to DIER.

**Mr HARRISS** - I will make an observation, Madam Chair, and then probably seek a response. My observation would be that the company which has been providing services to Flinders Island over a reasonably extended period seems to have had a pretty rugged disregard for their obligations to safety. Then the matter which Ruth mentioned a moment ago, docking the vessel at King Island without any authority whatsoever, is that too harsh an assessment that they have a rugged disregard for what their obligations have been?

**Ms FORREST** - And for the law.

**Mr HARRISS** - Indeed, yes.

**Mr FINCH** - I think that is true and I think that covers the whole compass of what they did. We certainly had lots of reports about them not being very good payers of both their employees and suppliers. We certainly found that people who worked for them would come and go and when you asked why they weren't there any more it would be a consistent answer. So they had a disregard for their obligations generally, not just the safety or maintenance but just about anything.

**Mr HARRISS** - So, Colin, in the wash-up again can I return to the point we visited a while ago as to whether there should be much more stringent opportunity for MAST to either shut down or at least put out of service for an extended period what I might refer to as 'hoon drivers on the waterways'?

*Laughter.*

**Mr FINCH** - The way we prefer to look at it is that we try to rehabilitate them from being bad operators to being good operators that is what we would see our role as being - to make sure that they operate vessels safely. I would not like to see us given powers to close people down - it could be too arbitrary. In many ways we may not understand their whole position.

**Mr HARRISS** - On safety grounds?

**Mr FINCH** - On safety grounds there is no question: if the vessel is not seaworthy we will stop them operating and we can demonstrate that with *Southern Condor* all the way

through. There were a couple of occasions when he sailed when he did not have a certificate of survey but it is very difficult to stop people doing that.

I am pretty confident and particularly in the last year that any time the vessel was unseaworthy we stopped it operating. We were pretty well on top of all of that.

**Ms FORREST** - Before you move from that point, is it possible to get a summary of the dates and times - it is probably all contained in those two or three folders there - that outline when the survey, or the restriction or the refuse to sail or whatever it is you have imposed was applied and the grounds for that and what the response was? Is it possible to get -

**Mr FINCH** - Well perhaps we could give you a summary of pretty well what we have done in the last 12 months that might explain things better.

**CHAIR** - It would probably help the forest industry, I would expect.

**Ms FORREST** - The papermaking industry.

**CHAIR** - You may or may not wish to answer this question, but would you like to share with the committee whether at any stage your organisation was somewhat lenient on Southern Shipping because of the mannerisms of perhaps any particular person who worked at Southern Shipping?

**Mr ALWAY** - I am happy to answer that and I think the answer is no, we have not been lenient. We have applied the same rules, by-laws and regulations to Southern Shipping as we have to other operators equally.

**CHAIR** - Without any fear of any repercussions at any time?

**Mr ALWAY** - No. There have been repercussions, and we've feared them, to be honest, but no, there hasn't been any leniency given to Southern Shipping.

**CHAIR** - It's certainly been something that has been indicated to me personally, that people were quite fearful at different times through threats and -

**Mr FINCH** - Well look, there were quite a lot of threats of legal action. That's not that uncommon and, obviously, being part of government we have a lot of legal resources we can draw on for advice, but I never felt particularly concerned and they were never followed up. So when it was, 'My lawyers in Melbourne will look at this and you'll hear from them in due course' -

**CHAIR** - So you didn't get, 'I'll have your house by tea-time tonight'?

**Mr FINCH** - No.

**Mr ALWAY** - There were personal threats.

**CHAIR** - To yourself in particular because you had put restrictions or -

**Mr ALWAY** - I think Colin put a transcript in here of a phone message that we received, and I received a couple of threatening text messages as well. I made reference to them here but didn't have the transcript of them.

**CHAIR** - We'll leave that there.

**Ms FORREST** - I think we might have covered it, but I wondered if it was possible to have a copy of those records, or the summary that you said you would be able to provide detailing the infringements, I guess, and the actions taken and the dates and all that relevant information? Is it easier to provide that information in its entirety, or is it in a summary form?

**Mr FINCH** - It's probably more digestible in a summary form; there are three volumes otherwise. A summary of it might be easier, and then if you want more detail we can provide it.

**CHAIR** - Also would it be possible to receive the transcript you spoke of, just for the committee's records?

**Mr FINCH** - Sure.

**Ms FORREST** - Any of those relating to that matter.

**CHAIR** - Yes. Thank you very much, gentlemen; we certainly appreciate your time. We understand it has been a difficult time for your organisation, and I hope that any new contracts that are put in place to service particularly the Furneaux Group will not give your organisation as much grief as perhaps has happened in the past. Thank you.

**THE WITNESSES WITHDREW.**

**Mr NATHAN SPICER**, GENERAL MANAGER, BUSINESS DEVELOPMENT, TASMANIAN PORTS CORPORATION PTY LTD, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Thank you, Nathan, and could you indicate whether you came to this committee by invitation or whether you were following a summons?

**Mr SPICER** - I was invited to the committee.

**CHAIR** - Obviously, Nathan, you understand that some of this committee work has arisen out of some issues with island transport, and in particular transport and facilities servicing the Furneaux Group. Can you explain to the committee how access to your port facilities is arranged and what sort of supervision and compliance is required after that event?

**Mr SPICER** - Access to the island particularly is through a licence agreement, so the ships have a stevedoring licence. The larger container vessels dock in, and then an alternative party like Patrick do the stevedoring, so we have a stevedoring licence with them. Because of the volume, I suppose, of the islands et cetera, the shippers then often do the stevedoring themselves. So we have a stevedoring licence for all the vessel operators, and that incorporates access to the port as well as their ability to load and unload the vessels when they are on the island, and also at Bell Bay if required. Obviously Southern Shipping have their own facilities at Bridport. LD Shipping use our facilities at Bell Bay as well as the island facilities both at Whitemark, though probably not as much, and mostly at Lady Barron.

**CHAIR** - So you have no infrastructure at Bridport that you -

**Mr SPICER** - No, as I understand it, Southern Shipping are leasing that from the previous owner, so that is not TasPorts' property at all.

**Mr HALL** - Does that occur in other ports around the State or is it a bit of an aberration that TasPorts don't actually have control of that bit of infrastructure there?

**Mr SPICER** - We have control over probably all the major ports around the State. I suppose it doesn't limit any operator deciding that they want to set up their own facilities for operational or commercial reasons for competitive advantage. We are not obliged to be part of that. The main port that we don't own is Port Latta. We manage that for Grange Resources, formerly Australian Bulk Minerals, but they own the facility. That's probably the main one we don't own.

**Mr HALL** - In general terms, do those facilities operate in a satisfactory manner where they are owned privately and have a commercial interest in them?

**Mr SPICER** - Like Bridport, for example?

**Mr HALL** - Yes.



**Mr SPICER** - We don't monitor it at all. It's a completely commercial entity outside of TasPorts, so we have no jurisdiction or authority.

**Mr HALL** - There's no jurisdiction by anybody, no monitoring at all?

**Mr SPICER** - No, not by TasPorts.

**Mr HALL** - MAST?

**Mr SPICER** - I'm not sure. I assume MAST would have some requirements given that they are maintaining safety procedures that you heard Colin talking about previously.

**Mr HALL** - Yes.

**Mr SPICER** - But from an operational perspective TasPorts has no involvement with ports outside of our jurisdiction.

**Ms FORREST** - You probably heard the questions I asked of our previous witness about the issue with docking at the boat ramp at Naracoopa which is, again, not a TasPorts facility at all.

**Mr SPICER** - Yes.

**Ms FORREST** - What was TasPorts' response to that?

**Mr SPICER** - As you heard, the King Island Ports Corporation is a fully-owned subsidiary of TasPorts. Our general manager is Diana Reed and I think you heard Colin say that when it occurred she called him to advise that it was occurring. I suppose it was more from that regard. We weren't aware that there was an intention to call in there at the time either, so I suppose it was just as much a surprise to us as it was to MAST.

**Ms FORREST** - So you had no knowledge that Southern Shipping was even approaching the island for potential docking at Grassy?

**Mr SPICER** - I'm not aware of the details of that specific incident but I imagine we did, and often Southern Shipping would call at the ports unannounced, even at Flinders Island on occasions.

**Ms FORREST** - So is that a reasonable thing to do? Do you normally require some notification and some checks to put in place to be sure that they're coming in in a safe manner?

**Mr SPICER** - Part of the licensing agreement is that Southern Shipping notify our radio room or our control room of intended vessel movement, particularly into a port, so as a general rule they would have announced when they were leaving Bridport their estimated arrival time on Flinders Island or King Island if that's where they were going.

**Ms FORREST** - So they often ignore that - is that what you are saying?

**Mr SPICER** - Look, I'm not sure of the exact number of times and it's probably not recorded by our radio room, but there were numerous occasions where they had rocked up unannounced or with very short announcement, so they were an hour or so away from, say, Lady Barron, when it probably took eight hours or more to get there.

**Ms FORREST** - So when those events occur, what is TasPorts' response - when you're given a very short period of notice or no notice?

**Mr SPICER** - We would often communicate back to Southern Shipping what their requirements were and remind them of the licence agreement, and one of the conditions of the licence agreement, as I understand it, is to notify us. From a big-picture perspective it's a relatively minor thing compared to a lot of other issues that we had, but we would keep pushing back on them and reminding them of their obligations.

**Ms FORREST** - I'm just looking at painting a picture here. We have heard from MAST that Southern Shipping seems to have a bit of a disregard for a number of matters, one being the law and their contractual arrangements or licence arrangements, at least from what you're saying. Was there any record kept of this and over what period of time are we talking? I'm talking about breaches of their licence arrangements.

**Mr SPICER** - I'm not sure of the detail of what records have been kept. Every time a breach occurred, we would write them communication for the more serious ones. Again, every time that they didn't rock up late, I imagine we wouldn't have written them a letter but someone would have spoken to them, reminding them of their obligations.

**Ms FORREST** - Are we talking just the last six months, two years?

**Mr SPICER** - I would suggest at least the last two years, if not the whole time they were operating. I have been with TasPorts for two years and there have been issues for the two years I've been there.

**Ms FORREST** - Is there any requirement for TasPorts to inform your stakeholder ministers of this sort of event, where there is a breach of a licensing arrangement?

**Mr SPICER** - No, we didn't inform the stakeholder minister of the breaches of the licence agreement on every occurrence. If there were major breaches where we suspended the licence, we certainly made it known to the stakeholder ministers that we had suspended their licence and the reasons for it.

**Ms FORREST** - How often would you have suspended their licence?

**Mr SPICER** - Probably half a dozen or more times.

**Ms FORREST** - Over what period?

**Mr SPICER** - Probably more over the last 12 months. A lot of the major suspensions were due to non-payment of accounts. We had terms set up, they wouldn't pay them so that prompted us back in February 2008 to put them on a prepayment regime because they were defaulting. We found that until we suspended their licence, no matter what we did -

sending lawyers' letters, collection stuff - the only prompt for them to pay was for us to say, 'We're suspending your licence until we've received funds in our account.'

**Ms FORREST** - Could provide the committee with records of the correspondence and communication you had with Southern Shipping regarding their suspensions and notifications of breaches of their licence?

**Mr SPICER** - Yes.

**Ms FORREST** - And the communication you then had with the stakeholder minister regarding that?

**Mr SPICER** - I could provide the documents sent to Southern Shipping - it was all through the lawyers. As you can imagine it needed to be a formal process that we undertook. The communications I was involved in with the minister's office was more via the phone; it was an update as to what was occurring as opposed to a formal notification from TasPorts. So it was a pick-up-the-phone, talk to the head of office or one of the advisers.

**Ms FORREST** - On the records that you can provide where you have had the formal communication with the company, is it possible to identify which ones would have triggered a phone call to the minister?

**Mr SPICER** - Yes, we can estimate it. My phone records will not be a 100 per cent certainty that this was definitely relayed but every time that we did suspend the licence there was notification given.

**Ms FORREST** - It would help to have that information to show us over what sort of period and what notification the minister has received.

**CHAIR** - I want to talk a little about the Lady Barron facilities that TasPorts manage and own. I recall in early December when we had GBE hearings and you were part of the TasPorts management team that came along, that it was indicated then that there was an audit being carried out of the facilities to assess whether they were suitable and up to standard. Has that audit been carried out and, if not, why not, and when is it likely to happen?

**Mr SPICER** - I am not across the detail of what has occurred on Flinders Island since our scrutiny committee meeting in December. My preparation was more specifically around the Southern Shipping issues. I can look into it. Our General Manager, Infrastructure and Property, would be the one who runs that sort of process so I will take that on notice and get back to you.

**CHAIR** - That would be excellent. There is a shed at Lady Barron that has a lease that Southern Shipping was not able to access and that caused a huge issue, and continues to, for the island residents when they collect their goods at the other end. Are you au fait with that?

**Mr SPICER** - I have been talking with residents and also the council on Flinders Island this week and the shed had come up, so I am across the detail of the shed. We lease the shed to an individual on the island who used to do the receipt and delivery of the Southern

Shipping containers. I understand that he is also contracted currently by LD Shipping. The issue on the island is that he has a sole lease to that. I am advised that he has two years to run on that lease and some of the issues I suppose are because of another operator who now wants to compete against this individual for the receipt and delivery.

**CHAIR** - But given that the general public could not access that facility in the middle of last year, why on earth would a three-year contract be renewed when it was not being utilised. It could not be utilised by the whole community in the middle of 2009.

**Mr SPICER** - I am not sure when it was renewed. I have been advised that it has two years left to run on the contract. I am also aware that Southern Shipping tried to gain access to it but we were unable to lease the shed to them because we had legal obligations to the individual on the island who currently holds the lease. That is all I can say on that. From a commercial perspective we are not able to take it off anybody because we have a legal obligation in terms of a lease.

**CHAIR** - But if it is only servicing a very small amount of customers it virtually means that the customers who choose to use - for instance, Southern Shipping in the past and now perhaps Furneaux Freight in the future - they actually cannot collect their goods from the store because they are not under the auspice of the gentleman with the lease on the shed who has the receipt and delivery service. Isn't that in itself not helping the island residents in any way, shape or form?

**Mr SPICER** - I cannot comment on the islanders' view of the whole situation. However, historically there was only one operator signing it. They needed a lease, we had the facility to lease, there was an agreement put in place at the time that we deemed commercial so that is what we have undertaken. I would certainly imagine it would give the current occupant a competitive advantage because he has access to the shed that no-one else has access to.

**CHAIR** - Is it possible for the committee to get a copy of the lease that you have with the operator?

**Mr SPICER** - I can provide a copy of the lease.

**CHAIR** - Thank you. It certainly has been an ongoing issue for the island. With no form of interest in the Bridport end of the run, has your organisation talked about the lack of sand dredging and the issues that that has caused for both *Matthew Flinders* and Southern Shipping sailing at a regular time?

**Mr SPICER** - We haven't, no. Bridport is nothing to do with TasPorts so that has not come into any investigations that we have had.

**CHAIR** - I feel sure that that would have been one of the excuses that was used on occasions when Southern Shipping could not comply with time frames in terms of their licence operations. So it was not something that was ever discussed.

**Mr SPICER** - Not that I am aware of. I cannot see how that time frames would be an issue from our perspective of licence agreements because it is all about them giving us notice of when they are going to arrive. Even if they cannot leave when they thought - as you

heard Colin say, it is an eight-hour window they have - from the minute it sailed they would know it would be eight hours before it arrives.

**Ms FORREST** - With regard to the transport of livestock, the cattleyards on King Island are on TasPort's land I understand, and managed by TasPorts.

**Mr SPICER** - Yes.

**Ms FORREST** - So how does TasPorts assess the suitability or otherwise of both the port side and onboard facilities for the transportation of livestock on both islands?

**Mr SPICER** - As far as the transportation side is concerned, King Island is operated as a subsidiary and we do not have any involvement in the day-to-day running of what they get up to, so I am not sure what their procedures or processes are. I am not in a position to talk about livestock.

**Ms FORREST** - You are getting a fair bit of money out of them though into TasPorts. If they had made a request, say, for money to upgrade the stock facilities, is that something that you would look at?

**Mr SPICER** - We would definitely look at it. They may even be able to fund it with their own, I suppose, revenue structure as well. That would need to be a request that their management would make to their board and then their board would determine how they fund it. King Island Ports Corporation said they can fund it internally, we've loaned them money, we've got a loan outstanding with them and they also go direct to Tascorp for loan or for capital as well.

**Ms FORREST** - Is there any discussion or intention to re-look at that situation with the wholly-owned subsidiary of King Island Ports under TasPorts or is that something that's not on the radar at the moment at all?

**Mr SPICER** - I think Dan mentioned at the scrutiny committee in December that it's something that has been flagged in the past and something that will be looked at into the future so there's no schedule of events tabled for that to occur at the moment but I imagine that there would be some discussions to be had both within King Island Ports Corporation and TasPorts over the next 12 months.

**Ms FORREST** - Then, King Island aside, for the other ports where livestock are shipped to and from that TasPorts does have jurisdiction over, what role does TasPorts have in assessing the suitability or otherwise of facilities both on board and port side?

**Mr SPICER** - I suppose on board the vessel would be a MAST responsibility or one for AMSA, the Australian regulator, so if the vessel has capabilities or it's surveyed to take the livestock then we don't check that or go over the same ground. As far as our stockyards go, there are certain standards that need to be complied with and, as I understand it, when we're constructing or maintaining them we make sure that we adhere to those standards.

**Ms FORREST** - Do you do inspections of those sites?

**Mr SPICER** - We would, yes. We've got staff, so even on Flinders Island we've got one employee, or it's currently two but I think one's about to retire or go to part-time. He conducts inspections regularly at those sites. The process is that he's on site when vessels are loading or unloading cattle - just to maintain control of the port infrastructure as well.

**Ms FORREST** - Do you have any input at all, then, into the routes that are taken with livestock on board or is it, again, not your responsibility?

**Mr SPICER** - When you say route, you mean the vessel?

**Ms FORREST** - Yes, the route; obviously some routes are longer than others and the welfare of the animals on board could be impacted.

**Mr SPICER** - No. Where the vessel travels is purely up to the shipper in question.

**CHAIR** - Nathan, in relation to the logs that are sitting on Lady Barron at this point in time with no vessel to remove them do you keep an eye on that type of thing?

**Mr SPICER** - We do. We keep au fait with what's happening. As we understand it, FEA is in discussions with LD Shipping as far taking the logs off the island is concerned and I suppose we're keeping an eye on that hoping it comes to fruition sooner rather than later. But we don't have involvements; it's not our place to start to enter into commercial discussions with either of the two parties but I would expect FEA needs the logs off so they'll come to an agreement.

**CHAIR** - But they're sitting on your infrastructure and causing issues with other parts of the business that's carried out on the wharf. Wouldn't that be part of your role as the owners and managers of the wharf?

**Mr SPICER** - I suppose if it impinges on our operation and our ability to perform a service, it definitely would and we'd have, I suppose, the ability to request FEA to move the logs outside the port precinct. As a general rule they are given a lease over land to assemble their cargo for when the vessel calls in. Again, I'm not sure of the detail as to how many square metres they've been given access to, how many they're using, et cetera, but if it was impinging, we would go and talk to them about overstepping the boundaries that we previously set up.

**Ms FORREST** - So your managers on the island don't give you regular updates, if you like, on what's happening, given that we're in a contingency type of arrangement that realistically, people aren't terribly sure of what's happening?

**Mr SPICER** - They do give regular updates. The person on the island fits into the operations area of the business. I suppose the reason I'm here today is that our CEO started on Monday so obviously his background of all this is problematic and I'll be bringing him up to speed as quickly as possible. The Southern Shipping issue, as you can imagine, also cuts across all areas of our business. So given my role in the communication, and also dealing with government, I understand a reasonable amount of all the high-level stuff and a little bit of the detail of all the different areas, be it finance, operational or property.

Regarding Wayne Beeton, the person on the island, we communicate regularly with his manager in operations and that would be fed up to our chief operations officer.

**CHAIR** - You mentioned that you had a lease with FEA, is it possible for the committee -

**Mr SPICER** - I am assuming that we have given them a licence as part of an agreement, and that is an assumption I've made. As a general rule when people come and ship from the ports we allocate areas and there are agreements in place.

**CHAIR** - A copy of the agreement would be most suitable and appreciated.

**Mr SPICER** - Yes, I will find out what agreement we have.

**CHAIR** - I now move to the relationship between TasPorts and LD Shipping. Obviously that will predate some of your history with the company but can you give the committee some understanding of what that relationship is and where it is at this point in time, given that I believe you have some role in LD's movements back and forth to the island as the contingency plan? Do you have any involvement at all?

**Mr SPICER** - Not with LD Shipping, no - not from its shipping line operations. LD Shipping started running from Bell Bay to Flinders Island infrequently on 1 December 2008 - a little over a year ago - and since then the frequency has picked up, particularly since November last year, when the Southern Shipping issues arose, and he has been running about two services a week between Bell Bay and Flinders Island.

Our involvement with LD is probably different to Southern Shipping's in that he uses Bell Bay, whereas Southern Shipping uses Bridport. We have accommodated him - there are two berths, a common-user berth in Bell Bay that he often uses or where ANL used to call at No. 2 berth in Bell Bay, which has a shore crane, and he often calls there as well. But we don't have any involvement with his operations or scheduling or any involvement in how he runs his business. It is a similar relationship that he would have had with Southern Shipping.

**CHAIR** - He just has a licence and he works with that licence?

**Mr SPICER** - Yes. The difference is he has a licence for Bell Bay as well, whereas Southern Shipping can call in there if required but his mainland of Tassie is Bell Bay. That is the difference.

**CHAIR** - Is it your understanding that there has been a smooth relationship with LD Shipping, or problematic from time to time?

**Mr SPICER** - I think there have been events that have occurred where we have had to have a conversation or send letters with regard to the stevedoring licence, but I wouldn't call it problematic, I think it's relatively smooth. We have a big focus on safety and if we see things going on from time to time we send letters to the shippers reminding them. An example could be people not wearing vests when in a port area, things like that, but nothing major, not to the extent of the issues we had with Southern Shipping.

**CHAIR** - No non-payment issues?

**Mr SPICER** - No, not that I'm aware of.

**Ms FORREST** - And no suspension of a licence at all with LD?

**Mr SPICER** - No, I don't believe we've suspended his licence.

**Ms FORREST** - There have obviously been some breaches, though, from what you're saying.

**Mr SPICER** - No, just some minor stuff. There have been times that there have been some queries over the stevedoring at night time and the suitability of lighting, et cetera - relatively the minor side of things. They might have used ship lights but our recommendation would be the shore lights needed to be turned on and for whatever reason that hadn't occurred. We have been monitoring that so it is not perfectly smooth, without any incident at all - we didn't want to try to relay it as that - but there have been some questions that you have about normal operational stuff where people have different understandings of what they are required to do.

**CHAIR** - Has TasPorts given any advice at all to the minister or the department, the Transport Commissioner, in relation to the contingency plan that has been put in place?

**Mr SPICER** - We have. We have a barge called the *Kulanda*, and some time ago, early in 2009, we did a trial run between Bell Bay and Flinders Island to see if it could work for an emergency service should Southern Shipping stop running so that the island wasn't completely stranded. TasPorts feels we have an obligation to the island and, while we don't run the shipping services, we wouldn't want to see them cut off, and King Island Ports Corporation supplies the fuel to the island as well. So we ran two containers over. From an efficiency perspective, it's sort of a measure of last resort - that is probably the best way to describe it. It doesn't even steam as fast as the Southern Shipping vessels so it takes a lot longer to get there, and its capacity is only 70 tonnes so it is a lot less, probably two or three containers at most. We ran one vessel as a trial run to see if we could do it, and we could, so we advised government that as a measure of last resort we would be able to step into the breach, but by no means would it be a long-term solution.

**Ms FORREST** - Could that vessel get to King Island?

**Mr SPICER** - I imagine it could, yes.

**Ms FORREST** - I wouldn't want to be on it.

**CHAIR** - It is just going to take a lot longer.

**Mr SPICER** - I'm told it's an old World War II landing barge. That's the description I've been given of it.

**Ms FORREST** - So can you transport cattle on it?



**Mr SPICER** - No, as I understand it, it doesn't have pens on it. We actually use it as a work boat, so it is a work platform for when we are doing our maintenance work around the State, and we can do some modifications to secure containers and the like.

**Ms FORREST** - I guess one of the big issues for both islands is getting the livestock off; not so much for King Island as they have abattoirs on the island, but Flinders Island certainly. So if there is no feed and the animals need to be moved off for slaughtering or whatever, then -

**Mr SPICER** - As I understand it, a concern some of the farmers have is the transit time to get the cattle across, because the animals arrive in more distress the longer it takes. Given the speed, it's probably something that if push came to shove we'd be able to consider doing it, but it would take longer and, again, other vessels would be a better solution, I imagine, particularly for cattle. Our trial obviously didn't include cattle; it was just cargo.

**Ms FORREST** - Could you put a cattle truck on it with cattle inside it?

**Mr SPICER** - I believe you probably could. We've sort of had some loose conversations around it, but again, it does take longer. I think it takes up to 12 hours instead of the eight for the Southern Shipping boat, depending on weather.

**CHAIR** - Obviously quite a high number of stock leave the island, and they pay per head -

**Mr SPICER** - Yes.

**CHAIR** - to leave the island, and that money goes as a loading fee, if you like, for wharfage. Do you ever, as an organisation, say, 'This amount of stock has left the island and we've generated this much income'? Is there ever an opportunity to put that amount of money back into facilities on the wharf? I know it is in the big-picture stuff, but is it something that has been discussed, given the condition of the infrastructure?

**Mr SPICER** - Well, as I understand it, the infrastructure is adequate for what it's doing, and even for the stock side of things. That is my view of it. We've had conversations with the council, and our general manager of infrastructure and properties had conversations with the mayor and others. Within TasPorts we don't look at it from the aspect of where we get the revenue from and then investing purely where that has come from; we look at all that is required around the State. To give you an example, over previous years we've invested more in Flinders Island than we've taken out revenue-wise. After meetings with the council - I had some meetings last January - feedback-wise we had similar comments from them. After further investigation I went back and presented to them that we'd actually spent more money than we received from the island. But I suppose it wasn't our view; we didn't say, 'Well, we generated \$100, therefore we can put \$100 back in'.

**CHAIR** - Are you in discussions with both the department and Flinders Council at this point in time in relation to a new contract or arrangement for the Furneaux Group?

**Mr SPICER** - Do you mean the review they're undertaking?

**CHAIR** - Yes. Are you in discussions?

**Mr SPICER** - We're not having formal input into it. I haven't had any conversations and I'm not aware of anyone else from TasPorts having discussions specifically around the contract negotiations that are occurring. I'm aware that they're doing some stuff but I'm not across the detail. I've been talking to council this week but on other issues, not about contract negotiations for the new shipping requirements.

**CHAIR** - Well, perhaps not so much in the contract negotiations but in what's required by the island in regard to -

**Mr SPICER** - We're aware that the council - and my understanding is that DIER has also - has undertaken some studies with consultants, so those consultants approached us probably four or five months ago for information on volumes so that they could paint a picture for their report. So we've provided the consultants with the volumes that have gone off and onto the island, but that's where our involvement has been, in assisting with the history of what the island movement might look like for Flinders.

**CHAIR** - Are you absolutely certain that all your information is correct? Do you think there is any chance that there have been berthings at Lady Barron you don't have any official records of?

**Mr SPICER** - I suppose given the size of the community, I'm assuming so - and I would never be 100 per cent sure on this; I am not based there so I haven't seen it with my own eyes, but we have a person on the ground who is aware of when the ships are in and he keeps a close eye on it. I suppose second to that probably another issue we have had with Southern Shipping is that we had reason to believe that the manifests he was providing us weren't actually the full volumes he had on the vessels. I'm sure we've captured every single vessel movement; I'm pretty confident of that, and I would also assume based on the conversations I've had that what has been declared is probably not exactly what was on his vessels. We have actually had correspondence with Southern Shipping to do an audit of his manifests and that was due to occur I think the day after the -

**Mr HALL** - Why would Southern Shipping want to do that? Why would they understate their manifests?

**Mr SPICER** - Because they pay wharfage rates on the tonnes. You know, we're not talking millions of dollars here, but -

**Mr HALL** - No, we're probably talking fairly small amounts.

**Mr SPICER** - Relatively speaking, but compared to probably the size of their business so they would therefore give us less costs to TasPorts for their operation. The audit was going to see what they told us and what their record showed they billed their customers and then we were going to compare the two.

**Ms FORREST** - When was that going to occur?

**Mr SPICER** - I think it was a day or two after the receiver was appointed. It was scheduled via correspondence with Southern Shipping and then events unfolded and it hasn't occurred.

**CHAIR** - Do you still intend to go through with that process?

**Mr SPICER** - I'm not sure. From a revenue perspective it's unlikely we're going to recover any additional revenue given that they're now in receivership.

**Ms FORREST** - Do you have any idea of what sort of numbers we're talking about that you may be owed?

**Mr SPICER** - It's probably in the thousands of dollars but not hundreds of thousands of dollars. It's not that sort of magnitude.

**CHAIR** - But in relation to the information that was prepared for the GHD report, I expect that that would actually make the figures there not accurate, so therefore what is required in the future might not necessarily be identified. Would you expect it would be a reasonable thing to do?

**Mr SPICER** - To do the audit?

**CHAIR** - Yes.

**Mr SPICER** - I think we'd go forward and probably what is happening going forward is going to be more relevant than seeing what happened in the past. I suppose our understanding was that the numbers were close but not quite. It will probably impact on the GHD report slightly but I do not think it will have a material impact, like they need two extra ships a week. I haven't read the GHD report to tell us where they've done it because we have given them information, but I don't think it is a material difference. He's trying to save percentages of his costs.

**CHAIR** - Thank you very much, Nathan; the committee certainly appreciates your attendance today.

**THE WITNESS WITHDREW.**

**Mr ALTAN DJENAB**, PARTNER, [PKF Chartered Accountants] CORPORATE RECOVERY, Level 14, 140 WILLIAM STREET, MELBOURNE, VIA PHONE LINK, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Thank you, Mr Djenab, as you have just declared, you were summonsed to appear here today. You have requested that this hearing be in camera and as we are looking for some answers to questions, particularly on behalf of the communities of the Furneaux Islands and the far north-east, we are just looking to have your reasons for wanting to be in camera.

**Mr DJENAB** - It is because I don't have an understanding of the basis of today's discussions in terms of the extent. I'm just a little bit mindful of my role as the receiver manager of Southern Shipping and whether anything I say today might actually jeopardise my role and responsibility as a receiver. That's the only reason.

**Mr HARRISS** - Paul Harriss here, Altan. Our Standing Orders provide an opportunity for in camera hearings but the committee does need to deliberate on any request as such. I would appreciate some further explanation as to what areas a public hearing such as this might trample on in any of the considerations you've got on foot at the moment.

**Mr DJENAB** - Well, it probably won't. If it's anything to do with issues around my role as a receiver manager of the company in terms of sale of assets and values and that sort of thing, that's really where I was coming from. I'm concerned about the fact that we're going to an open auction of selling vessels and that's the sort of thing that I'm mindful of disclosing. If it's in relation to operational factors and whatnot of the contract - and again, I don't really know a lot about that anyway - I don't really have any issues on those matters not being in camera.

**Mr HARRISS** - That's clarified those issues for me. I'm not wanting to sort of jump in front of the Chairman here but there'd be questions that I'd want to visit with you in regard to the operations of Southern Shipping over the past few years, what got us into the situation that we now are in. I wouldn't want to personally know about anything related to your process in terms of selling the assets or what values you might put on the assets, what your reserve price is, or any of that sort of information. That's immaterial to me.

**Mr DJENAB** - I understand. That is fine. That is probably where I was coming from. I wasn't entirely sure whether the questioning was going to be around that but if it is anything to do with the operations I am publicly saying I have no issue of commenting with that in camera because, I will be quite frank, regarding the issues pertaining to the operations over the last one, two, three years, whatever, we have limited understanding ourselves, given the fact that we have been the receivers of the company for only two weeks and the contract was terminated upon our appointment as receivers anyway.

**CHAIR** - Ruth has a question as well, Altan.

**Mr HARRISS** - Just before that, Madam Chair, if I might, just for Altan's benefit as well, it would be appropriate to indicate to him that there is one television station which is interested in these proceedings and that is the ABC. They have been filming all of our proceedings this morning so they are here in addition to the fact that we are recording the proceedings for parliamentary processes.

**Mr DJENAB** - Right, okay.

**Ms FORREST** - I tend to agree with the comments of Paul. It would be fair to proceed with our questioning and if we get to a point where you feel that a question raised concerns you, you could make a request at that time.

**Mr DJENAB** - Okay, that is fine.

**CHAIR** - Thanks for that, Altan. Obviously as Ruth said, anything commercially sensitive we can hold to the end and go down that path. We appreciate the opportunity to have that conversation with you this morning. We will make a start and don't hesitate if there is something that you feel we need to take in camera.

**Mr DJENAB** - Okay.

**CHAIR** - I will kick off. Were you appointed to this position by means of an order of the court or under the terms of a charge instrument and can you explain to the committee either way?

**Mr DJENAB** - Yes. Dennis Turner and I were appointed as joint receivers and managers of the company pursuant to a debenture charge.

**CHAIR** - Right, that is enough for the moment.

Do you and your colleague hold office in addition to Mr Gabriel or in substitution for Mr Gabriel?

**Mr DJENAB** - We are the controllers of the company. Mr Gabriel's duties as a director are suspended as part of the ASIC requirements through the course of the receivership.

**CHAIR** - In this receivership situation how are the interests of other creditors and in particular the staff of Southern Shipping advocated and safeguarded? That is obviously one of the really important questions for a lot of people.

**Mr DJENAB** - Sure, yes.

Regarding the role of the receiver albeit the appointment is by a secured creditor, the receiver managers still have an obligation to look after the affairs of all creditors including the employees of the company and in accordance with the Corporations Act, upon realisation of the assets of the company the proceeds of those realisations will flow through in accordance with the act. Then the employee entitlements have a priority ahead of the bank insofar as any floating charge realisations being debtors, cash at banks, stock and that sort of thing.

I do understand or I have since found out that there were a number of actions by unsecured creditors against the company prior to our appointment. I have only just recently written to three or four solicitors who I understand were representing unsecured creditors and it would be fair to say that there may be an expectation that during the course of the receivership or sometime down the track there will probably be an

unsecured creditor out there who will petition to wind the company up and therefore there will be a court-appointed liquidator. Once a court-appointed liquidator is appointed and should we still be the receivers and managers of the company then the liquidator will take over the affairs of the unsecured creditors and most likely the employee issues, unless we are so far down the track with regards to dealing with the employees where we may continue to deal with the employee matters as well as the secured creditor issues.

**Mr HALL** - With regard to those unsecured creditors, do you have any idea of the quantum that they might be pursuing?

**Mr DJENAB** - Greg, I don't, because there seems to be a fair bit of innuendo regarding the books and records of the company. We have taken possession of the books and records. We have downloaded information off the company's server. Our preliminary review would suggest that the accounting software package, MYOB, which details all of the outstanding creditors listing, suggests that the level of creditors listed on the records at the moment would appear to be understated.

**Mr HALL** - Okay. And you mentioned before that one of those solicitors acting on behalf of those unsecured creditors, I think that is what you said, might apply to have the company wound up.

**Mr DJENAB** - What has happened is I actually had a meeting with the solicitor representing the landlord at Bridport where the *Southern Condor* is berthed, and that particular solicitor, who again is purely acting for the landlord, had put me on notice that there were a number of actions against the company. We weren't aware of what those actions represented, and any unsecured creditor action again I understand prior to the appointment of the receiver had been defended by the company director, but now upon appointment of the receiver manager we have no reason to be defending any action by any creditor of the company and if a creditor chooses to make an application to wind the company up then there is no reason for the receivers and managers to stop that process.

**Mr HALL** - No, and if that process does occur, what sort of time line do you think - that is a bit hypothetical, I know -

**Mr DJENAB** - I think once the winding-up application has been made, it could be anywhere between, say, six weeks to 10 weeks. That is probably start to finish. I suspect that most of these creditors have probably issued statutory demands, complaints and that sort of thing anyway. They have probably just been stopped from going to the next process, so I suggest that that process may take at least a couple of months.

**Mr HALL** - Thank you.

**Ms FORREST** - So the unsecured creditors take priority over the workers' entitlements and that sort of thing? Is that what you are saying?

**Mr DJENAB** - No. The assets are broken into floating charge assets and fixed charge assets, the floating charge assets represented by cash at bank or any stock or any outstanding debtors. All of those asset collections take priority to the secured creditor, so regarding the receivers and/or the liquidator in due course, should one be appointed, whatever realisations there are that are floating in nature, those assets rank ahead of the secured

creditor, and any assets that are then sold subject to the bank's debenture charge security will then flow through to the bank. But there are also other charge-holders, so even though we are appointed by one of the banks in terms of their debenture charge, there is another debenture charge holder and there are other specific charge-holders who may have leased a motor vehicle or a truck or plant equipment that also have a right to their own assets, so there are a number of charge-holders involved there. But the unsecured effectively rank last.

**Ms FORREST** - Can I go back to a point we probably skipped over when we were talking about your appointment as receiver? Can you describe the precise circumstances of your appointment as a receiver?

**Mr DJENAB** - Regarding the debenture charge-holder in accordance with their own loan contract, there were defaults in accordance with the loan agreement, and as a consequence of those defaults and ongoing discussions with the company it led to the point where the charge-holder exercised its right to appoint a receiver or receivers.

**Ms FORREST** - Over what period of time are we talking about?

**Mr DJENAB** - In terms of discussions?

**Ms FORREST** - Yes, defaults.

**Mr DJENAB** - I am not totally clear because there have been a number of meetings between the secured creditor and a client that we were never a party to, but I suspect that there have been discussions over a 12-month period.

**Ms FORREST** - So you can't really put a time frame on when the defaults became -

**Mr DJENAB** - Not specifically, no, because there were some variations to original agreements and I'm not 100 per cent sure what the basis of those variations was and therefore whether the future default was a new default or a default under the original agreement.

**Ms FORREST** - So is that something that you will be drilling down into to try to establish, or is it something that's not really part of your investigation?

**Mr DJENAB** - Sorry, I missed that question.

**Ms FORREST** - Is that something that you will pursuing further to get a fuller understanding of or is that not really important in the process you are undertaking?

**Mr DJENAB** - No, it's not important to us. Once we're appointed receivers and managers our role is to effectively preserve assets for the benefit of not just the appointor but all employees and creditors. Our focus on day one of any appointment is to salvage whatever assets there are for the benefit of those creditors and effectively that has been our role since day one.

**Ms FORREST** - Can you tell us, then, in relation to that, what's happening to the vessels?

**Mr DJENAB** - We have engaged Dominions to act as our selling agent for those vessels and there will be a national advertising campaign to advertise the sale of the vessels and expressions of interest will be sought and hopefully we can find a suitable buyer.

**Ms FORREST** - Has that process been started?

**Mr DJENAB** - If the first advertisement has not already been published it's probably only days away, that was my understanding. I haven't spoken to our selling agents for a couple of days but that was the estimated time line when we met last week.

**CHAIR** - Altan, was there ever an option to do something in the short term with the vessels?

**Mr DJENAB** - We have looked at that and prior to the appointment of the receivers our appointor had discussions at government level in terms of seeking indemnities in favour of a receiver to enable the receiver not to bear the risk of chartering or leasing the vessels out to another operator, because there are insurance issues for a receiver with a receivership of this nature. That was explored prior to the appointment and government made it clear that it had an alternative contingency plan and didn't need to effectively work with the receivers in that regard. Upon our appointment we've had a number of operators approach us to lease the vessels from us and, again, we have sought sufficient indemnities to do that, and if we had received sufficient indemnities to do that we could have progressed that in the short term pending any sale. Unfortunately we don't have those indemnities and we don't have adequate insurance in place to enable the receiver to actually allow those vessels to leave where they are at the moment and to be chartered.

**CHAIR** - But the Government could have given you that indemnity?

**Mr DJENAB** - Well, not only us but also the prospective operators who have approached us wanting to charter the vessels have also approached government. We have explained to both parties what we are looking for and why we need it, but the level of indemnities we are seeking is far from adequate to allow us to enter into any deal and effectively we would be taking 100 per cent risk at the moment if those vessels left the port. That is a risk that we obviously can't take without having the insurances behind it.

**Mr HARRISS** - Altan, Paul here. Could you give us a snapshot of the sorts of indemnities that you were seeking and how difficult they are to provide?

**Mr DJENAB** - Look, again I won't quote values because I don't want to jeopardise the process of what we're doing, but the indemnities that we would be seeking would have to be in line with sworn valuations of the vessel. The last thing we want is to allow the vessels to be with another operator on some type of lease arrangement. If, for whatever reason, the vessel sinks, our insurance would not cover us for that the moment vessels were to sail. There have been some offers from prospective shipping companies who are looking at leasing the vessels from us who have proposed that they get their own insurers to insure us but, again, we've sought advice in that regard. There are a number of complications with a receiver relying on a third party's insurance policy and whatever representations or possible misrepresentations may be in that policy that we wouldn't know, so to safeguard the receivers our view was that the best way to move would be to have a concrete indemnity at government level and if that indemnity was in place then in the event that something should happen to those vessels, even our appointor would have



the comfort of knowing that we have an indemnity in place to the value of sworn valuations.

**Mr HARRISS** - It would seem to me, and I'm certainly not an expert in the field, that that's not rocket science, is it?

**Mr DJENAB** - No. We don't think that we've asked for anything that's totally unreasonable. In fact, we've currently got boat specialists inspecting both vessels; the *Matthew Flinders* is currently in Melbourne and the *Southern Condor* is at Bridport. They're both not in survey. There have already been independent people providing cost estimates of getting it back into survey. Via Dominions we're engaging another specialist to do a desktop review of those costs. We've got an obligation to go back to our appointor and detail those costs. They'll make a decision, obviously, as to whether it's going to be spending the money to get the boats back in survey but we all agree that to maximise the value of the boats, the preference will be to get them into survey.

So that's one side of the receivership that's sort of progressing but, at the end of the day, we don't think that we're being unreasonable by seeking full indemnities to make sure that if something happens to those vessels the receivers don't wear the risk and also, given the fact that our own insurers are saying, 'Look guys, whilst they're berthed there you've got insurance put in place but if the vessels leave there then you don't have insurance', well, as you said, it's not rocket science. I just think everyone needs to understand the risks associated and if we've got an indemnity backing us then we've got something to work with.

**Mr HALL** - Were you surprised that that indemnity wasn't provided?

**Mr DJENAB** - We are, because it's only been two or three weeks since we've been appointed but we can see the requirements of the vessels, in particular *Southern Condor*. We understand why that vessel needs to be used right now and the demand for the vessel and we just thought that having discussions at that level prior to the appointment would easily flush out everyone's needs, and therefore once a receiver was appointed the whole thing could be smooth sailing. Again, at government level, it's all been, 'Well, there's a contingency plan in place and we don't need to worry about that'. Well, I'm not sure what that contingency plan is because the vessels are still with us and the service is not being provided between Bridport and the islands.

**Ms FORREST** - Can I drill down into that point for a moment? You've made it fairly clear that the Government, or the minister or his office, informed you that they didn't need the vessels, *Matthew Flinders* and *Southern Condor*, because they had a contingency plan. You said you don't understand what that plan was. Is there any information you've got at all that, in the communication between the Government and yourselves as receivers, as to how they'd establish this contingency plan in such a way that they didn't need these vessels?

**Mr DJENAB** - Our understanding is that they'd already approached another operator. I don't know what the discussions were between that government level and that operator, but that particular operator has approached us saying, 'I need access to the *Southern Condor* because I don't have the capacity to fulfil what Southern Shipping was doing', and we're saying, 'You had better go back and talk to the Government because the Government has

said there is a contingency plan in place and we are now assuming you are the contingency plan and you are saying you do not have the capacity that you need to have.'

**Ms FORREST** - It is almost comical in a way, but it is not funny at all. As you have suggested, the current provider of the service, LD Shipping, has approached you to try to secure the vessels that have been used on the route because of their suitability for the route.

**Mr DJENAB** - Correct.

**Ms FORREST** - And the Government has said their contingency plan does not require that because they don't need those vessels?

**Mr DJENAB** - All the Government has said prior to and after our appointment is 'We have a contingency plan in place; we do not need to negotiate with the receivers' and within days of our appointment as receivers and managers, notices were issued in terms of terminating the existing contract. On that basis our appointor has said, 'We don't need to take any risks then with our vessels because the Government has a contingency plan that means that the services will continue' and that there is no pressure on our appointor or us as receivers and managers to take any risks and worry about the vessels because there is a contingency plan in place.

**Ms FORREST** - Are you aware whether LD Shipping approached the Government to indemnify them for the vessels? The Government said they did not need to indemnify you as receivers because the vessels were not needed, but obviously LD Shipping believes they are, so do you know if they approached Government for that indemnification to enable them to use the ships?

**Mr DJENAB** - Yes they have, and I am not sure who at government level. I have had discussions with LD Shipping myself just to reiterate our position and he is more than understanding and accepts our position and welcomed the frank discussion and said that he would re-approach government. Since those discussions we have received further correspondence from the Government as late as yesterday. I do not know whether you call it miscommunication, but the proposal put forward to the receivers regarding the indemnity I do not consider to be an indemnity at all. That only came through yesterday and I am not even sure whether we have responded to that at this stage.

**Ms FORREST** - Are you able to provide copies of the correspondence you have had regarding this issue with the Government?

**Mr DJENAB** - I will be honest; I don't know. I need to seek my own advice as I am just not too sure what I can or can't provide.

**CHAIR** - Altan, we can ask the government department for that.

**Mr DJENAB** - Okay.

**CHAIR** - If we have any trouble we might have to follow up with you.

**Mr DJENAB** - That's fine. I am not trying to be difficult in that regard, I am just being honest in that I haven't sought advice. I would much rather do that before I commit.

**Ms FORREST** - With regard to the discussions you have had with LD Shipping, how recent have those discussions been? They were going back to the Government, you said, to talk about indemnification again.

**Mr DJENAB** - This week.

**Mr HARRISS** - Altan, in terms of the time lines that relate to the discussion you just had with Ruth, you indicated, as I recall, that somebody with authority in government circles had advised you that the vessels would not be required given the contingency plan.

**Mr DJENAB** - No, they never said to us that the vessels weren't required. All they said to us was that they didn't need to work with the receivers and managers, or words to that effect, because they had a contingency plan in place.

**Mr HARRISS** - Can you identify a date of that communication?

**Mr DJENAB** - Our appointor had discussions at government level prior to our appointment within days leading up to our appointment as the receivers. That is the first communication to our appointor. Our appointor was keen to make those inquiries at government level because we sort of knew this was going to happen. In order to provide some type of a service subject to the boats being in survey we said let's sort out the indemnity issues sooner rather than later so that we can push forward with the rest of the contractual issues.

**Mr HARRISS** - As the Chair said a moment ago, we can ask the government representative when we have them before us about the time lines of that, when your appointor had those conversations with the Government, and get a handle on that.

**CHAIR** - Altan, did you as receivers have discussions around the fact that if you were able to keep the vessels in service or in survey and comply, it would have been a much more streamlined process and people may well have been able to recoup some of their moneys?

**Mr DJENAB** - I suppose what we are really talking about there is do we have a going-concern business that we can sell, or do we have assets without a business that we can sell. That is how I categorise maximising value to creditors. I am not too sure whether that meant we would be maximising the value. There is no doubt that if the ships are in survey that surely has to maximise a greater return to the creditors.

**CHAIR** - They would have had a contract to go with them had they still been in survey.

**Mr DJENAB** - I do not think it was an issue of whether the ships were in survey. At the end of the day the contract has certain default clauses for insolvency clauses and I think that the mere fact that the company was placed in receivership gave the right at government level to exercise their right to terminate the contract, which they did.

**CHAIR** - Thank you.

**Mr DJENAB** - Just on that, there were discussions prior to the appointment also about Government not terminating the contract, as a best case scenario suspending the contract to allow the receivers and managers to go to the open market to try to bundle the whole thing up as a going concern on the back of a prudent operator having some type of an assignment or taking over the existing contract.

**CHAIR** - And the result of those discussions was -

**Mr DJENAB** - It was 'No, thank you' and that is why they terminated the contract.

**Mr HALL** - Altan, can you indicate to the committee in general terms what sort of due diligence CBA would have undertaken last year when it granted a fixed and floating charge over the business of Southern Shipping?

**Mr DJENAB** - The relationship between the bank and the company has been greater than 12 months, but PKF was engaged last year to undertake an independent review for CBA.

**Ms FORREST** - What time last year was that?

**Mr DJENAB** - It would have been March/ April last year.

**Mr HALL** - How would you describe the accounts and the accounting records of Southern Shipping at the time of your appointment? Can you express a view with regard to the condition of the accounts and the accounting records of that particular company?

**Mr DJENAB** - I would rather not, and I only say that because that type of information was detailed in our report to CBA and I do not believe I have authorisation from my appointor to divulge that type of information yet.

**Mr HALL** - I understand that.

**Mr HARRISS** - There is a capacity for the committee to in fact go into private session and then you might be of a mind to share that information in the full knowledge that it would never be publicised or published by the committee. Is that a consideration? I do not need an answer on it right now, we can think about that as we continue on.

**Mr DJENAB** - That could be a consideration. I would just like to talk to my other receiver and seek some advice.

**Mr HARRISS** - If I go back to the March/April period that you referred to last year when you were engaged by your subsequent appointors, is there anything in particular that you could indicate to the committee was the outcome of your deliberations at that time?

**Mr DJENAB** - I cannot discuss any aspect of the report. The only general thing I would say is that one of the reasons for the review was that the ship was encountering a number of breakdowns and there was a high quantum of repairs and maintenance that was required, and naturally the bank was concerned that the ship was breaking down, which means that you are not getting your income streams in, and so that was probably the start of why the bank sought our assistance to go and do a review.

**Mr HARRISS** - Yes, that is fine, thank you.

**CHAIR** - Altan, given that Mr Gabriel is a co-signatory of the Minimum Service Level Agreement between Southern Shipping and the Transport Commission, will you be pursuing him for recovery for his part in breaching the agreement to the detriment of Southern Shipping?

**Mr DJENAB** - No, I don't believe so. That would probably be something from government level to him as the individual, or any creditor who has a claim against him individually. I don't think we would have a claim against him personally. Our role is at the company level.

**CHAIR** - Are there any other questions, members, in relation to things that you believe Altan can provide to the committee?

**Ms FORREST** - I think the other matters all relate to where we were heading, that you were a bit uncertain about going into it, Altan, at this stage without taking some further advice.

**CHAIR** - Altan, if it is agreeable with you, the committee will deliberate at the end of these proceedings. There may be something that we may like to request in a more secure manner in camera and so would it be possible that we could make that request to you at a later time?

**Mr DJENAB** - Yes, for sure. As I said, that just gives me an opportunity to seek my own advice and naturally get my joint receiver manager as part of those discussions.

**CHAIR** - Thank you. We certainly appreciate the information that you have been willing to share with the committee. It has certainly been a very difficult time for a lot of people, and you have probably met and come across many of those people as you have been going about your business.

**Mr DJENAB** - Sure. I appreciate that.

**CHAIR** - Thank you very much for your time today, and obviously the committee secretary will be in touch.

**Mr DJENAB** - Thank you very much.

**THE WITNESS WITHDREW.**

**Mr NORM ALAN McILFATRICK**, SECRETARY, AND **Mr DAVID HAMILTON PETERS**, TRANSPORT COMMISSIONER, DEPARTMENT OF INFRASTRUCTURE, ENERGY AND RESOURCES, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** (Mrs Rattray-Wagner) - Welcome, gentlemen.

**Mr McILFATRICK** - I am appearing here by summons.

**Mr PETERS** - I am appearing here by summons.

**CHAIR** - Thank you. I will begin by perhaps going back in time and asking if you could please explain the process of the review which took place in the first half of 2007 leading up to the renewal of the minimum service feed between the Transport Commission and Southern Shipping and Mr Geoff Gabriel.

**Mr PETERS** - It wasn't actually a renewal. The original agreement between the former Southern Shipping company, which had different ownership, was up for review at the time that the then owner was looking to sell the business. There was a transition arrangement but it was in many ways novating the previous agreement into a new agreement with Mr Gabriel's company but it was based on the takeover of Mr Gabriel's company of the previous ownership. So it was not so much a renegotiation of an agreement with Mr Gabriel; it was a renegotiation of somebody else's agreement as the transfer to Mr Gabriel took place.

**Ms FORREST** - Did you review the terms at that time?

**Mr PETERS** - Yes. There was a review of the agreement by the lawyers for Southern Shipping and Crown Law.

**Ms FORREST** - Were there amendments and changes made at that time to the contract?

**Mr PETERS** - There were.

**Ms FORREST** - What led to those? We're just trying to get a bit of an idea, I think, of the history of this arrangement.

**Mr PETERS** - It was substantially the same agreement that Mr Gabriel bought off the previous owner but it was renegotiated in terms that brought it more in line with Crown's current legal arrangements which included provisions such as the no-confidentiality clauses and what have you. There were other matters to do with the transition that were negotiated out as to who got paid what over what period of time.

**Ms FORREST** - The transitional arrangements only you're referring to there, are you? Those changes that were made, who got paid what and when, were they transitional changes you're talking about, not changes that would relate further down the track to that contract?

**Mr PETERS** - Well, they cover the period between when Mr Gabriel took over the company and when the contract was finalised.

**Mr McILFATRICK** - I think, in broad terms, that the fundamentals of the contract, in terms of delivery, fee scales, et cetera, were retained. It was more administrative changes and updating the contract to Crown Law requirements.

**Mr PETERS** - That's my recollection.

**Mr McILFATRICK** - There was, as you would recall, a move to government contracts having no confidentiality clauses in them so those sorts of things were incorporated. I have to say also there were some what you would call redundant clauses in the contract which were maintained because there was no requirement to remove them but they were somewhat drawn up in the early days based on the arrangement at the time but that may be that those arrangements didn't transfer to the new agreement such as, for instance, at one stage in the early contract I believe there was a financial lien on the company or arrangement with government with the company which no longer existed. The scrutiny required on those financial arrangements was maintained in the contract as if there was a financial arrangement with government such as a loan or a credit arrangement. That no longer existed but the ability to look at the accounts on that basis was still maintained in the contract.

**Ms FORREST** - Obviously you must have taken some legal advice during that process because Crown Law had some views on things, the confidentiality clauses and other matters that you've alluded to there, Norm. Are you able to provide a summary or a list of the amendments that were made by the department to the deed at the time and provide any view on why the deed itself was not subject to rigorous legal scrutiny, or was it?

**Mr PETERS** - It was, and my understanding is that we have supplied this information to the committee as a result of a summons that was put on us last November.

**Ms FORREST** - That was the legal advice that went around that whole process?

**Mr PETERS** - That's correct.

**Ms FORREST** - The amendments to the deed as a result?

**Mr PETERS** - The legal advice, as I recall, the documents tendered to the committee last December were quite detailed.

**Ms FORREST** - Did they include all that?

**CHAIR** - Yes, there was very little, I recall, actual variations.

**Mr McILFATRICK** - There were not substantial variations.

**CHAIR** - No.

**Mr McILFATRICK** - We will have a look at that documentation and make sure it covers all the legal advice we had at the time.

**Mr PETERS** - We have tendered that on the basis that it is.

**Mr HALL** - I suppose this is a fundamental question. How much due diligence did the department take when they assessed Mr Gabriel's past record in dealing with financial matters? Did you look at the fact that maybe he was only a 'man of straw' - if we put that in inverted commas - and were you satisfied that he had the capacity to undertake this particular enterprise?

**Mr McILFATRICK** - I'll let David answer the detail but let's put it in context. The payments made to Southern Shipping are made in arrears after a service is provided. There is no outstanding financial commitment like a loan or a credit arrangement with the company, so we are not a bank or a creditor of that company in that sense.

We wanted essentially to maintain shipping services under the contract and the arrangements were when those shipping services were provided we would pay our subsidy in arrears. So the amount of financial due diligence scrutiny required for that type of arrangement is different to where we were supplying a substantial amount of funds to the company and having a loan arrangement with it.

**Mr PETERS** - Yes, at the time of the request by the previous owners to transfer the agreement to the new owner we gave both Crown Law and independent financial advice to carry out due diligence on the arrangement. The upshot of that was that at the end of the day there was no cause for the commission not to agree to the transfer of ownership under the original agreement from the original owner to Southern Shipping under Geoffrey Gabriel.

**Mr HALL** - But was any account taken of some of the past performances in regard to the capacity to carry out an operation like this?

**Mr PETERS** - The advice we received led to us believe that there was no reason that we could - if I can just go back. The agreement with the previous owner was that if they wanted to transfer the agreement to somebody else we could not unreasonably withhold that and stop the transfer. Our legal and financial advice was that we had no grounds to not approve the transfer to Mr Gabriel.

**Mr HALL** - Do you think in retrospect that was, perhaps, a good course to go down, given the amount of angst and grief that the former operator has caused? Do you think that there were other avenues you could have taken to make sure that whoever was taken on was going to be able to do the job?

**Mr McILFATRICK** - Remember, our primary concern as a transport commission was to deliver a weekly service to the island. In 2008-09 there was only one week where that weekly service was not delivered and most of the weeks there were at least two services, for the primary reason that the ships were doing the job that we contracted them to do.

The amount of financial scrutiny the purchase of service provision requires is completely different to the amount of financial scrutiny required of someone taking a financial interest in that company. Given that we couldn't unnecessarily withhold the transfer I don't know how we could have done enough due diligence to stop the transaction



happening. Even if we found there was some previous history, which I am sure we would have considered, the fact was that there was a commercial arrangement happening between two parties and the transfer of the relationship was on the basis that we believed that party could continue the service, and the service was continued for a number of years. I guess in hindsight we probably would have made the decision to continue even if we had the knowledge of foresight that we have now, because the service has been delivered.

**CHAIR** - David, can I ask you why Mr Gabriel was named and signed as a separate party to the deed? Why did that happen?

**Mr PETERS** - That was a legal arrangement. I cannot explain the basis of the arrangement other than in the original agreement there was a guarantor plus an operator. The decision by Mr Gabriel to go guarantor for his own company was one he made that was accepted by Crown Law. It wasn't a matter that we put any particular store in because essentially the trustee arrangements were a legacy agreement of the deed in any case.

**CHAIR** - I didn't realise that you could be a guarantor for your own company.

**Mr McILFATRICK** - Personal guarantee.

**Ms FORREST** - Just with regard to that - and I understand your comments about there being no loan arrangements so the due diligence wasn't required to the same degree that it would have been if there was that financial aspect involved - did Southern Shipping seek the department's consent prior to encumbering this business in favour of the Commonwealth Bank in July last year?

**Mr PETERS** - No, it didn't.

**Ms FORREST** - Would you have expected it to?

**Mr PETERS** - It was a requirement under the agreement. Again, these provisions largely related back to the days when there was a loan in place between the Government and Southern Shipping. Again, it was, in our view, a legacy provision that was there. They were required to advise us of that and they didn't. They were required to ask for our consent. They did not do that. They did advise that there was a mortgage with the Commonwealth Bank. We didn't take any action about that at the time.

**Ms FORREST** - So why didn't you, when they were in breach of the deed? A deed is a deed.

**Mr PETERS** - In hindsight, we could have written back and said, 'That is a breach of the deed. In future you should ask our permission before you do it'. However, we still would not have withheld our consent. We didn't think it had any material impact on the provision of the service that we'd contracted for.

**Ms FORREST** - Along that line, you said you wouldn't have withheld consent. Would you have gone through a proper process of doing a due diligence on the company at that time? If they're mortgaging their company or their business I would have thought their capacity to continue to deliver the service under the terms of the deed could be impacted,

and wouldn't that then fall to the Government and hence the reason it is in the deed that you need to seek consent from the department?

**Mr McILFATRICK** - Can we step back to my earlier discussion? When that was put into the original deed, the Government had or was proposing to have a financial commitment to the company. So having an encumbrance noted in the agreement was so that the Government could make sure that their financial commitment was not influenced by a further encumbrance. If we had the first mortgage, for instance, they couldn't go and get a second mortgage. But we no longer have financial arrangements, so although they were in breach and they certainly should have let us know and asked our permission, it wasn't as significant as if we had had a financial arrangement with the company.

**Ms FORREST** - I accept that, Norm, but the question is that even though you might have given consent, wouldn't that have at least raised an alarm bell here?

**Mr McILFATRICK** - They were wrong. No, it wouldn't have raised an alarm bell if the Commonwealth Bank was giving them a financial arrangement because that probably would have reassured us at the time that the Commonwealth had assessed that they were willing to lend them money. It was a pretty tight financial market at that time so if they were lending them money they should have believed that the company was capable of carrying out their business. They were incorrect in not advising us but I guess, in hindsight, if they had asked us and informed us we would not have withheld.

**Ms FORREST** - But would you have done a bit of work around assessing the ongoing risk to the capacity to meet the deed?

**Mr McILFATRICK** - I think, given the nature of the financial institution they were dealing with, we would have relied on the CBA's due diligence, because they are a first line lender. They are not a backyard provider. Given the circumstances at the time, I believe we would have been satisfied if the CBA was lending the money that would have meant that business had the capability to operate and repay that loan.

**Ms FORREST** - The CBA would have done a due diligence.

**Mr McILFATRICK** - Yes. And because, as I said before, our financial arrangements with the company were on provision of service to the contract, we paid them the subsidy in arrears. At that stage the arrears arrangement was, I think, six-monthly. And more recently we had agreed to move that to monthly in arrears just to help the company with cash-flow issues, but we never were paying the company before the services were provided.

**Ms FORREST** - When you made that decision to move it to a monthly arrears payment to assist the company, did you at that time investigate the liquidity of the company or their capacity to pay?

**Mr McILFATRICK** - Before making that decision we had had an assurance from the company's accountants that they were financially solvent. We had asked for that and taken some time to get that information, but that was my recollection. We would have to go back to the dates, but that was in the last year.

**Ms FORREST** - Are you able to provide that?

**Mr McILFATRICK** - I think we already have, but we can. We will check that. Certainly there was a period where we had concerns based on the feedback from the market and the shipping committee on the island, and we made formal requests for accounting information. There were delays in receiving that, and there was a change of accountants, but certainly within the last 12 months we have had an assurance from the company's accountants that firstly they were financially solvent, and secondly that they had the insurance certificates in place to cover the contract requirements. Again we asked the question and we had the information provided.

**Ms FORREST** - It wasn't very timely though.

**Mr McILFATRICK** - It wasn't timely.

**Ms FORREST** - So how long are we talking to get a response from the company?

**Mr McILFATRICK** - I would rather provide you with that appropriate information. It was not timely. Again our primary consideration with all of this was to maintain shipping services to the islands. The worst-case result for us would have been to have cancelled a contract and have no shipping services. The island agreed it was not a satisfactory service and there were issues with timing et cetera, but they had a service.

**Ms FORREST** - When the company was placed in receivership, we have been informed that the boats were taken off the run -

**Mr McILFATRICK** - And placed on the market.

**Ms FORREST** - Yes, and the receivers had discussions with the department about operating those ships providing the service because they were the most suitable vessels for the purpose, and to do that they would need indemnification and they wanted the Government to provide that to minimise their risk as receivers, because their duty is to look after the asset management, to make sure that people actually get what they deserve, as much as possible obviously. The receivers were informed that the Government were not going to go down that path, were not happy to do that, because there was a contingency plan.

**Mr McILFATRICK** - Yes, that is right.

**Ms FORREST** - So can you give us a fairly thorough discussion about the contingency plan? I would like to hear more about that.

**Mr McILFATRICK** - I will get to that, but while Southern Shipping was operating, our primary purpose was to keep the weekly service going within contract, and the island community agreed with that. When things started to get a bit doubtful that that might be a long-term scenario, we put a contingency plan in place, which was to have Les Dick shipping on stand-by. We paid them a stand-by arrangement that if Southern Shipping failed to deliver we could bring the other shipping service into play, and that is what happened. When Southern Shipping went into receivership we cancelled the contract

with Southern Shipping, as we could do under the contract, and we brought Les Dick in on the stand-by arrangement.

**Ms FORREST** - We have been informed that Les Dick's service does not meet the needs as well as the *Southern Condor* or the *Matthew Flinders*, particularly with regard to the transport of stock.

**Mr McILFATRICK** - That is correct. We are not saying that the contingency arrangement is perfect. It was a stand-by contingency in case the service of Southern Shipping failed.

**Ms FORREST** - The point is, though, that it was a contingency plan that was to be not what you hoped to have to implement but you did.

**Mr McILFATRICK** - A short-term transition; six months.

**Ms FORREST** - Okay. So, why then would the department not consider the request of the receivers to actually put *Southern Condor* and *Matthew Flinders* back into service and indemnify them to provide a service that was more suitable to the island's needs and actually would fulfil the contract or lease - why wasn't that part of the contingency plan? Why couldn't it be part of the contingency plan? We actually have a service now that's not meeting the needs of the islanders.

**Mr McILFATRICK** - Neither are two ships that are not authorised to operate, which is the current situation.

**Ms FORREST** - But if they were indemnified they could.

**Mr McILFATRICK** - Perhaps, but we couldn't initiate a contingency plan while the other one was still afoot.

**Ms FORREST** - But now that it's not, why hasn't it been considered?

**Mr McILFATRICK** - What the receiver wished to do was to have the contract in place, afoot, so that they could use that as part of the sale process. But while that contract was afoot we couldn't initiate the contingency plan and neither ship was capable of operating; they've been withdrawn from the service. So we had a situation where Southern Shipping was going into receivership and also the ships were not available for service; they'd been withdrawn for different reasons - one for mechanical reasons -

**Mr PETERS** - Both are out of survey.

**Ms FORREST** - Yes, but that can be addressed.

**Mr McILFATRICK** - Yes.

**Ms FORREST** - So, the question still remains then; we don't know how long this is going to take to sort out. LD Shipping doesn't provide a service that totally meets the needs of the island.

**Mr McILFATRICK** - No.

**Ms FORREST** - You've agreed with that so what's the barrier or the hesitation of the department to actually work through the process with the receivers to put these ships back? Now that the contract's been terminated, why can't you now go down another path and say well, okay, let's look at another plan here?

**Mr McILFATRICK** - Well, we are looking at another plan.

**Ms FORREST** - But that's not part of the plan, using those ships. The indemnification issue has been rejected to enable those ships to be used, not only by the receivers but also by LD Shipping who wants to use them.

**CHAIR** - Two other operators.

**Ms FORREST** - Yes.

**Mr McILFATRICK** - Well, we've been approached only on one indemnification issue and that was to provide some certainty about cash payments and we did -

**Mr PETERS** - The department did consider the receiver's proposition that we underwrite and indemnify them against all costs of operating the service whilst looking to sell the company. We didn't believe that was an appropriate course of action to take because there was one, and at that stage there was advice that a second operator was going to enter the market. So, to write a blank cheque for a service that it appeared the market could provide through LD Shipping and the proposed Furneaux Freight service didn't stack up as a proposition as far as we were concerned.

The second option was to suspend the contract and sell that contract with the boats. Again, we didn't think that was the appropriate action. Everybody agrees that the current contract is not a good contract and wants another. The island community wants a better contract, we want a better contract, I'm sure an operator would want a better contract, so to suspend the contract and then on-sell it when it's not a contract we want, in circumstances where there are now two operators providing the service to the island, was not the course of action that we thought was appropriate.

**Ms FORREST** - So has LD Shipping contacted you regarding indemnification of the *Southern Condor* and *Matthew Flinders* to enable LD Shipping to use those vessels on this run?

**Mr PETERS** - That's correct.

**Ms FORREST** - They have?

**Mr PETERS** - LD Shipping contacted -

**Ms FORREST** - You said you only had one.

**Mr PETERS** - Other than the receiver.

**Ms FORREST** - So there were two?

**Mr PETERS** - It was put to us that there were two operators who want the boat. Only one of those potential two operators has contacted us; that's LD Shipping.

**Ms FORREST** - So, you've rejected LD Shipping's request?

**Mr PETERS** - No. LD Shipping approached us to assist to see if we would provide an indemnity to the receiver. In discussions I had with the receiver he said he wanted an unlimited indemnity. I said that we were not in a position to provide that. Mr Dick offered that he would forgo his payments under the agreement and that could be held against any risks with the receiver. The receiver rejected that, not the department.

**Ms FORREST** - Can you provide copies of the correspondence regarding this matter to the committee, the correspondence to the receiver and from the receiver regarding the indemnity issue and anything from LD Shipping?

**Mr PETERS** - This was transacted by telephone other than a letter from the receiver to LD Shipping saying that because the Government would not provide the unlimited cover, the receiver rejected his offer. That letter had some factual errors about the discussion that had taken place so there was correspondence that went back from me clarifying that matter. If that would be of assistance to the committee I can provide it, but there was no formal offer put on the table in writing by LD Shipping or any specific requirement put on the table in writing by the receiver, although I did ask for one.

**Mr McILFATRICK** - To make it clear, my understanding of what LD Shipping put to the receiver was that they would take the *Condor* back in service and do the work that was required to bring it back in service. We already have a financial arrangement with LD Shipping through the six-month against contingency contract, which involves again retrospective monthly payments amounting to a significant amount of money. Because that cash flow was going to be guaranteed by the contract then LD Shipping were willing to give the receiver first access to that as part of a financial security, but that was really LD Shipping saying, 'We have an arrangement with the Government. We will give you first access to that cash as a security'. All they needed to do was ask our permission to have that so it was not any different financial arrangement than we had with LD, it was just giving the receiver some certainty that there was some cash flow involved. What the receiver, I believe, wanted was for us to indemnify them against any work that needed to be done or anything that went wrong with the *Condor* while it was in service and that was an open-ended commitment.

**Ms FORREST** - The correspondence related to this would be helpful I think to clarify what was asked for and what was offered.

**Mr McILFATRICK** - Well, that was a telephone conversation but we can certainly make notes of that conversation.

**Ms FORREST** - Yes, that would be helpful to the committee.

**Mr McILFATRICK** - But to make it clear, we have not made a financial agreement with anyone to support their bid for purchasing or using the ships because it would be inappropriate given there is more than one interested party.

**Mr HARRISS** - On the back of that then, Norm, you have just indicated that your understanding was that the receivers wanted such a broad indemnity to cover any costs, mechanical breakdowns or the like, and David, earlier your words were 'an unlimited indemnity'. Is that your understanding as well to cover those kind of things?

**Mr PETERS** - Very much so.

**Mr HARRISS** - My understanding is that it would be in the event of complete destruction or whatever. If the vessel sank and there was nothing to recover for the receivers then they have a problem but I did not understand it to go to things like mechanical breakdowns.

**Mr PETERS** - We discussed that in detail with Mr Dennis Turner of PKF who made it quite explicit and his words were very close to the ones I am about to say, which are whilst the boat is tied up against the wharf, I as the receiver have very little, if any, risk. The minute it goes away from the wharf I want to be covered for any risk that might take place when it is outside my control. I understand that Mr Dick had said as part of the agreement that he would maintain the boat in survey and in good condition. If when the boat came back there was anything wrong with it and Mr Dick would not repair it or pay for it then he wanted the Government to.

**Mr HARRISS** - Did you seek any legal advice as to the implications of such a request of open-ended indemnity?

**Mr PETERS** - No, at that time it was an in-principle discussion about would the department or the commission be prepared to enter into that sort of arrangement. No, we didn't take legal advice on any of it because this was in principle. If they had agreed to some form of arrangement with LD Shipping in which they wanted us to take part I would have made it clear to both Mr Dick and Mr Turner that that would then have to be the subject of a legal arrangement -

**Mr HARRISS** - Certainly.

**Mr PETERS** - but we hadn't got to that stage.

**Mr HARRISS** - But even though it was only in principle, is it possible that your understanding of that so-called unlimited indemnity might not have been as dramatic as your understanding, legal advice may have disclosed to you the fact that it could be that there was a negotiated path around that and it might not have been as dramatic as you had interpreted?

**Mr PETERS** - In the correspondence from PKF to Mr Dick he does mention that because the Government would not give unlimited coverage, the appointor was not prepared to accept his offer. But, as I said, I had a detailed discussion with Mr Turner and he left me in no doubt that when he said unlimited he meant unlimited.

**Mr McILFATRICK** - And to be fair to the receivers, they are in a position where they have to minimise the future risk to creditors. So I am not saying that his position is unwarranted but it is very difficult for any commercial arrangement or a government

arrangement to enter into an open-ended agreement, as you pointed out. If the ship was damaged significantly or sunk then we would be sunk.

In regards to the six-month contingency this has been very much discussed, and as recently as earlier this week, with the Flinders Island Council, the mayor and general manager. We wanted six months to really look at what we need to do for the long-term for the island. Given that we have already had one early imperfect transition of a business from a business operator with the two ships to a new business operator, one of the influencing factors about why we did not want to leave the contract alive in a sale process is we would not necessarily have confidence that the sale process would deliver the perfect outcome for the island.

It has given us some time to look at the receiver doing his job and we are doing our job with the island to look at the long-term requirements. We agreed with the mayor as recently as this week that they would provide a framework back to us about their ideal, we would then look at that and try to work through how we meet the ideal in the reality situation going forward. It was agreed, though - I don't think we disagreed - that the two ships that were previously owned by Southern Shipping and have gone into receivership were purpose-built for the island run so it is important that we keep dialogue with the receiver. The ideal circumstance from my point of view would be for the receiver to deal with interested parties and then come to the Government and the council collectively to look at how the Government may help in filling any gap that might exist, whatever that gap is, or how we might assist in taking the receiver's preferred option forward. At the moment because we do not know the number of interested parties, it is difficult for us to make a call on what arrangements may eventuate in the future. But I can assure you we want to work strongly with the council. Our report that we did in conjunction with the council looked at a whole lot of operational models for the future. Government and council ownership of a shipping service didn't come up as a very strong option for us - there are a lot of risks but - so I guess my preferred future would be to get the ideal and get a commercial arrangement in place that gives the island certainty and if there are safety nets to provide, it is better to provide a safety net rather than to operate the service itself. and I think council is also currently of that view, that for them to operate a shipping service would be a difficult proposition.

All of those things need to be on the table over the next few months as we go through this longer-term strategy. I agree with you that the Les Dick service is not the ideal but it is the best service we have at the moment and it is providing a weekly service - at minimum.

**CHAIR** - Better than TasPorts' option?

**Mr McILFATRICK** - All the options need to be considered, but the primary consideration needs to be that it meets reasonably - a daily service would be brilliant but it is not reasonable to expect a daily service - the needs of the community and is within both commercial and feasible reach of delivery.

**CHAIR** - I just want to clarify a point, David. There was never a request by yourself on behalf of the department to get the receivers to put their proposal in writing to you so it could be put to the minister and obviously have further discussion?



**Mr PETERS** - Not from the receiver. It was put to me by Mr Dick that maybe there was some middle ground we could find, and my words to him were, 'If we could have something in writing from you and the receiver that would assist us in working out whether we can assist'. We're in a position where if we can improve the service to the island in a way that makes sense, that's what we're here for, but until we know what we're dealing with it's very difficult to get advice on whether this is a reasonable proposition.

**CHAIR** - Given that Southern Shipping have completely defaulted on their agreement, is the department pursuing legal avenues? I mean, there's been a cost to the Tasmanian public through this exercise, for sure. Somebody fitted out Les Dick's vessel to be able to carry cool stores, so was it your decision?

**Mr McILFATRICK** - It was part of our contingency arrangements going back. Certainly all of us had concerns and this committee raised them with us at our last meeting that we needed a contingency plan. Part of that plan was to bring the contingency vessel up to a reasonable standard to provide cattle and cool storage conditions, and we assisted with that in the contingency plan. Yes, there was a cost and we would be able to provide those costs.

**Mr PETERS** - The amount paid to LD Shipping upfront as the standby fee was \$25 000 plus GST. There was a offset against that that in the first four weeks of operations the fee for service would be discounted by \$11 000, so in the first four weeks of operations the payment to LD Shipping for proper completion of the service will be \$11 000 and \$22 000 for each subsequent four-week period.

**CHAIR** - So will you be taking action against the company or Mr Gabriel personally?

**Mr McILFATRICK** - We'll be seeking advice on that. Our key focus at the moment is to get the shipping services back and to get the contingency in, which is now happening, and then to look at the longer term. Again, I'd point out that we have a contractual arrangement with Southern Shipping to supply services and we've terminated that because of their failure to provide the service. As to the peripheral cost to government, we don't have any outstanding payments to Mr Gabriel to recoup.

**Ms FORREST** - You're one of the few, then.

**Mr McILFATRICK** - Well, we'll look at that, but our primary focus at the moment is getting shipping services back on an even keel, so to speak.

**CHAIR** - The accountants who provided that advice after a considerable time, do you intend to seek recompense from them? They obviously gave misleading information.

**Mr McILFATRICK** - Not obviously. I will say that they were reputable accountants but they were new to the company, and I am sure the committee has tried to look at information from that company and it's not easy to seek or find. But the advice we received was somewhat qualified because of the short-term nature of the relationship of the accountant with the company. Given the information the accountant had at hand - and it wasn't just about Southern Shipping but the nest of relationships around that

company - he provided the best advice he could at the time, but it was qualified and based on the information that he had at his disposal.

**Ms FORREST** - So have you sought legal advice on whether that is the most appropriate way forward, Norm, in that regard? There appears to be some doubt in your mind. You said the advice was qualified -

**Mr McILFATRICK** - I have no doubts in my mind about the advice the accountant gave on the basis of the information he had. I am not here saying that I have doubts about the accountant; I haven't said that at all. I reiterated that there may have been difficulty with the accountant given his new appointment to the position, and certainly, to my understanding, it was a qualified answer.

At the same time, though, don't forget, we knew by about mid-last year that the CBA have been involved in a financial arrangement with the company and they had done their due diligence. Even though we were not asked permission for them to engage in that arrangement, we were informed soon after that the arrangement was in place.

**Ms FORREST** - So how were you informed of that?

**Mr PETERS** - A letter from Mr Gabriel.

**Ms FORREST** - So he did actually inform you in writing?

**Mr McILFATRICK** - But it was still a technical breach of the contract by not asking. I believe that was about mid-last year.

**Mr PETERS** - May, I believe.

**Mr McILFATRICK** - May 2009. I think the arrangement was put in place around that time and it was also around the time we were seeking financial information in that three- to six-month period. We were also aware of actions by others such as TasPorts for non-payment of port fees et cetera, so we were concerned, but at the same time our primary rationale was to get a contingency plan in place and to keep Southern Shipping operating on that route while they provided the service that was required.

**CHAIR** - So I guess that begs the question; obviously LD Shipping has quite a history itself for being in receivership. The question has been posed to me whether we are out of the fat and into the frying pan, so to speak, in relation to that contingency plan for the Furneaux Group? I mean, did you do the due diligence on LD Shipping or was it just the best option available?

**Mr McILFATRICK** - There aren't too many ships around that can service that island and I think in the history of island shipping services there has never been a perfect solution, and I'm not just talking about the current operators. I don't think there ever will be a perfect solution. All sorts of things get in the way, like weather and maintenance on ships, access to ports et cetera, but LD Shipping had a ship which was capable of operating to the island. In fact, as soon as we instigated our contingency arrangement with Mr Dick, that gave him the ability to have more services to the island in a commercial sense.

**CHAIR** - Albeit he is still on one engine.

**Mr McILFATRICK** - I don't believe he is on one engine.

**CHAIR** - Yes, he is; right at this minute he's on one engine.

**Mr McILFATRICK** - If you have any other suggestions as a committee about which ship we could find - they are not that easy to find.

**CHAIR** - There are a few snappy ones down here at the wharf; maybe we could use one of those occasionally.

**Mr HARRISS** - Can I go down that track, then, and take you up on the challenge?

**Mr McILFATRICK** - Maybe Robert Clifford will be providing us one.

**Mr HARRISS** - The *Condor* sits there out of survey. Was it feasible or possible for the Government to have come to some arrangement with the receivers and take up the use of that vessel in the short term? I do not know what the possibilities might be, so the question would be this, I think. What other options has the Government considered with regard to the possible use, for instance, of the *Condor* outside the proposition put to you by the receivers, and that is an indemnity? Were there any other options considered by the Government for the possible use of that vessel?

**Ms FORREST** - Purpose-built vessel.

**Mr McILFATRICK** - The *Condor*?

**Mr HARRISS** - Yes, given that you have just said there are not too many vessels around that can provide this service.

**Mr McILFATRICK** - I was talking in relation to finding contingencies.

**Mr HARRISS** - Well this is a contingency.

**Ms FORREST** - It has not sunk. It is still there.

**Mr McILFATRICK** - A contingency needed to be put in place before the vessel stopped operating so, yes, we do need to consider other options but that is for the longer term, not for the contingency.

**Mr HARRISS** - So were there any other options considered involving the possible use of the *Condor*?

**Mr PETERS** - I would go back to the statement I made earlier. There were two propositions put by the Commonwealth Bank and/or their receivers, which were that we cover the costs of the receiver running Southern Shipping's ships whilst the receivership process was in place, and again we were required to fully indemnify those operations including any losses that they may incur. We did not believe that that was a reasonable

proposition. The other option was to suspend the contract and leave it afoot for sale to the new purchaser of the boat or boats. Again, we did not think that was an appropriate option because we would prefer, and we believe all the stakeholders would prefer, a better contract to the one we had afoot.

**Mr HARRISS** - They were the only possibilities you considered. Did you seek any other advice about the potential or possible use of the *Condor* outside that proposition?

**Mr PETERS** - The short answer is no. We were aware by that time that there were a number of companies; some we knew about like LD Shipping, others we heard anecdotally were interested in leasing the *Condor* from the receiver but they were not matters we explored. As we said, LD Shipping did contact us about us having an involvement in it but nobody else did.

**Mr HARRISS** - Could the Government itself have leased the *Condor* from the receiver? You just mentioned some other parties were making inquiries to that effect.

**Mr PETERS** - Potentially, yes.

**Mr McILFATRICK** - Then we would have to find a shipping operator to operate the ship. We are not shipping operators.

**Mr HARRISS** - LD Shipping might have been your agent.

**Mr McILFATRICK** - Could have been.

**CHAIR** - Furneaux Freight knocking on the door.

**Mr McILFATRICK** - We are talking about issues here which are all possibilities but at the moment we have a contingency arrangement in place for the short term. It is not going to be a long-term arrangement. It may be part of the long-term arrangement but certainly LD Shipping is under no view that the *Straitsman* is going to be a long-term solution alone. The receiver is charged with doing the best he can for the creditors and is aware that the Government has a vital interest in this and will approach us, I believe, when he has a commercial arrangement in place that he thinks needs government assistance. The boats were not capable of going back into service. They are not within survey so there would need to be expenditure made et cetera. That is still the case so it is still an open sheet for looking at options. We have not closed the door on any of them but when you have commercial interests out there it is not Government's role to stand in the way of a commercial interest providing a service that they believe they can. Where Government can step in is to assist or provide any gap or subsidy required or to do more to enhance the service, not to actually provide the core service. That is not what our consultancy has said, that the Government should be in there operating the service. It is not our preferred position.

**Mr HARRISS** - What were the overriding reasons for the contingency plan to be developed?

**Mr McILFATRICK** - Our concern raised by both the island community and others was that Southern Shipping was at risk of defaulting on its contract.

**Mr HARRISS** - At what time did you become aware of that or when did you form that opinion?

**Mr McILFATRICK** - We have been aware that there were concerns for at least six months or more. It was a very pragmatic thing to say we can't. While we believe that they are providing their service, the island community asked us to make sure that we had contingencies in place and we agreed we would put a contingency in place.

**Mr HARRISS** - Given that the deed in many ways restricts what you can do in terms of termination, did that place any restrictions on you in developing a contingency?

**Mr McILFATRICK** - Yes, we couldn't offer someone else's service while the other contract was afoot. We could provide a stand-by arrangement, which is what we did. So effectively we have paid a fee, which the commissioner has mentioned, of \$25 000 to provide a stand-by service to make a ship available to go into the breach when required.

What actually happened is that ship became available for non-contractor commercial services. We then said that if the Southern Shipping contract was terminated or was not provided then they could step into the breach, but they needed to be available and ready - almost service ready - and we then would trigger for six months at an arrangement which reflected the arrangements of the contract which was weekly service, set fee rates - the guaranteed fee rates to the island. We could not have those two in parallel; we needed a step change but we were able to pay a stand-by arrangement and the benefit of that stand-by arrangement was that the ship was operating. Having that stand-by arrangement in place almost made it a smooth transition even though it wasn't idyllic in terms of the receivership but a smooth transition from Southern Shipping to Ld. being available, and part of that contingency had been making the ship more ready to take on cattle and cool goods.

**Mr HARRISS** - So given your concern and the island community's expressed desire for some contingency to be at least taken account of, what direct action did you take to satisfy yourself of the financials of Southern Shipping? That was the main concern about the company defaulting and not being able to provide a service wasn't it? So what direct action did you take?

**Mr McILFATRICK** - Under our contractual arrangements we asked for the financial information to be provided including insurance information. We asked for that and when it wasn't forthcoming we put in place a regime where we would put our own accountants into the company if required.

**Mr HARRISS** - Did that eventuate?

**Mr McILFATRICK** - We had that as a contingency.

**Mr PETERS** - We had engaged a firm of auditors to carry out that work and we were in the process of negotiating getting access to the books at the time the receivership was implemented.

**Mr HARRISS** - When did you start that process?

**Mr PETERS** - It would have been October 2009.

**Mr McILFATRICK** - The process of putting an auditor in place. There was previous action to ask for financial information earlier than that, which I think has already been provided to the committee.

**Mr PETERS** - We have been provided with performance information and insurance information as a result of a direct request before that.

**Mr HARRISS** - Yes, because in October last year of course the committee published its discussion paper where the committee identified its concern based on its own commercial research as to the financial viability of Southern Shipping. The committee was at liberty, of course, to draw that conclusion and the committee had become aware just through normal commercial processes between July 2007 and October last year that many, many creditors had been pursuing Southern Shipping. Had the department made similar investigations over any period of time to satisfy itself of other numerous creditors?

**Mr McILFATRICK** - We weren't a creditor to the company. This is an important thing.

**Mr HARRISS** - No, no I am not suggesting that, but to satisfy yourself of the financial status of the company.

**Mr McILFATRICK** - We were concerned enough about the financial status, given what you have just said, to robustly pursue information on the financial status from the company's accountants and when that was difficult to achieve, our next contractual step was to put in our own audit crew. By about October we had had one set of financial information and we were becoming increasingly concerned, so we had the next step in place ready to go, and around that time we would have been putting contingency plans in place.

**Mr HARRISS** - But time ran out?

**Mr McILFATRICK** - No. The contingency plan was in place and it was initiated.

**Mr HARRISS** - But time ran out with regard your own -

**Mr McILFATRICK** - Yes, well, a major creditor took action. Be clear, it was never an ability of the Government to put the company into receivership.

**Mr HARRISS** - No, but certainly to invoke the powers of the deed to conduct your own investigations.

**Mr McILFATRICK** - To conduct our own investigation. On the basis of that information, if we were dissatisfied with the information, to cancel the contract. Again, cancelling the contract would have been a last resort because service would have ceased. Not an ideal situation.

**Mr HARRISS** - No indeed. Has the department received any direct instructions from the stakeholder minister as to actions which the department ought to be taking?

**Mr McILFATRICK** - We have very regular meetings with the minister, and his direct instructions to me and the commissioner were to maintain minimum services to the island as our long-term agreement with the island has been, and we commissioned for the longer term the report by GH&D to look at future options beyond the current contract. There was a view, I believe - certainly my view is that the contract was not going to be sufficient beyond its current term, so we engaged GH&D on our behalf or on the island's behalf to look at options. The island community, through the council, engaged a separate report. We had agreed that we would do that, and in our discussions recently with the council we have agreed that all of the information we have will be shared. We will come up with our collective long-term view about the shipping services to the island and that will be based on the GH&D report and the council's own report. We had been aware for some time that the arrangement with Southern Shipping was not going to be the type of arrangement we would want to have long term, but we were contractually obliged to maintain that contract at least until the review period, which in the contract I think was 2011. With permission from Mr Gabriel we could have brought that review period forward. And really the GH&D report was a strongly-based piece of evidence that we should bring the review period forward, so the instruction from the minister was to keep the service going, look at options involving the community, and with the full intent of having a longer-term strategy once the contract with Southern Shipping had expired. There was a formal review process in the contract which we hadn't got to yet.

**Ms FORREST** - I asked questions earlier about the issue of the indemnity. Just going back there for a moment, the receivers informed us that they were seeking indemnity not covering operational costs. It was like an insurance policy they were after, as I understood it, that in my mind would not be unreasonable to seek if there was damage or the ship did run aground, and there was no negligence involved. If there is negligence there are other avenues for recouping your costs, I imagine. So this open-ended blank cheque sort of approach you are talking about is not the sort of message that came through when we spoke with the receivers.

**Mr McILFATRICK** - Obviously that is an opinion. I guess the only thing we have that does mention unlimited liability is the letter which came from the receiver, so we have that.

**Ms FORREST** - We will have a look at that, yes.

**Mr McILFATRICK** - I do not think there is any doubt that they were seeking, as a receiver should do, to protect themselves.

**Ms FORREST** - Yes, that is why I think it is not unreasonable that they would seek to protect the asset because their responsibility is to ensure the value of the asset is maintained.

**Mr McILFATRICK** - But it may be unreasonable to ask the Government to take on that same obligation that a receiver is not willing to do.

**Ms FORREST** - If they had legal advice suggesting that was there - I am not sure what that legal advice was. Did you seek legal advice along those lines of whether this was an appropriate request and whether it was something that could be considered reasonable under the circumstances?

**Mr McILFATRICK** - No. I have a lot of commercial and government experience going back 35 years and if anyone asks me for an unlimited guarantee, open ended, I don't need legal advice to make that judgment.

**Ms FORREST** - That can come back to a matter of interpretation of what the request was then?

**Mr McILFATRICK** - Yes, correct.

**Ms FORREST** - So you didn't get a legal opinion on what they were asking for? Your interpretation obviously was that it was open ended.

**Mr McILFATRICK** - No, I don't need a legal opinion. I'm paid a fairly high salary to make commercial judgments on behalf of government. I don't need a legal opinion on every request that's made.

**Ms FORREST** - As far as the interim arrangement with LD Shipping goes, I think you say that was for six months?

**Mr McILFATRICK** - Yes.

**Ms FORREST** - So there was a signed agreement with LD Shipping. Why is that not published on the departmental web site in accordance with the Treasury instructions at point 01 and point 02?

**Mr McILFATRICK** - Contracts that are of a certain value need to be published, I think. I'd need to check. I'm not sure we need to have it on the web site but if we do I will make sure it's there.

**Ms FORREST** - Can you provide the terms of the agreement to the committee then and indicate whether they are identical to the Southern Shipping deed?

**Mr McILFATRICK** - I have already written a letter, two days ago, I believe, to the Mayor of Flinders Island, informing her, in dot point form, of the terms and I can certainly provide that letter to the committee. We weren't asked by the council to provide the contract. They weren't interested in that but certainly the conditions are that it is an arrangement very similar to the weekly service and a monthly service to Cape Barren. The schedule fee rates are per the previous contract, even though the service is going to Bell Bay but my understanding is that, while there's an extra journey time, the fee rates are set. So, yes, we can provide that. Certainly I will provide any information that we've provided recently to the council.

I think another point that might be worth having on your record is the agenda that we had with the Flinders Island Council and our meeting this week which was a longer term planning meeting where we've agreed to work together, based on the reports we have, to find a long-term solution beyond this one. I know there may well be gaps in what council wants and needs and what the Government is willing to provide, but certainly I think we will get that information. I think we've set ourselves a time frame for the next couple of months so that an incoming government can have on the table the council's requirements and the Government department's view on how those requirements can be



met. In the meantime we'll certainly keep working as a department with all the players as the receivership moves through its due process.

**CHAIR** - So that will happen asap?

**Mr McILFATRICK** - Well, we met on Tuesday; a teleconference on Tuesday. Council has some actions to take away. One of the agreements was that we'd provide them with our report and they were going to provide us with their report that they commissioned. I don't remember the name of the consultant, but we're happy to action their report. They've got a consultancy report on shipping needs. We'll review it. We'll all review the information and come back together in a few weeks - probably on the island - to workshop the future options.

It's very important that we work within the six-month period, that we have the contingency plan in place and that we have the receivership moving through so that whatever happens at the end is a more robust arrangement than what we've experienced in the last few years. We're open-ended on how that might be. I don't currently have a view that the contractual arrangement that we have had with Southern Shipping is the ideal arrangement for government. The range of options is much larger than just having a contract of \$25 000 or \$30 000 a month with a shipper. There could be much better options in place and the range of options is significant. In fact, we've looked at options from government ownership right through to no subsidy at all. We've looked at council ownership; we've looked at a whole range of options. This was prior to the current situation but all of those should be canvassed and then the ideal situation for both government and the community should be put on the table for the new Government. To rush into a knee-jerk reaction to do something because we have had this trigger event wouldn't do any of us any good in the long term. We want a 10-year plan for this; we don't want a six-month plan.

**CHAIR** - Do you realistically believe you are going to be able to achieve what you have just outlined there in the contingency timeframe?

**Mr McILFATRICK** - Yes, I do. We're well aware that there are other commercial players. I've even been made aware of a new ship that is being potentially constructed. There are certainly interested parties talking to the receiver. We entered into this arrangement many years ago to guarantee a weekly service. Is that a requirement for the future? Certainly on our figures there has been only week in the financial year that a weekly service was not provided, but there have been many weeks when the demand called for more than a weekly service, so should we be setting new parameters for the community? We have talked to the islands about the importance of tourism, whereas what we have at the moment is a freight service that happens to take a few passengers and is not very good -

**Ms FORREST** - Palatial surroundings?

**CHAIR** - I don't think you would find too many wanting to go over for a cruise.

**Mr McILFATRICK** - No. I did make it very clear - and I think the island is not in disagreement with this - that our primary concern as a government is to provide a shipping service for freight. If you tried to justify as the primary service a passenger

service it wouldn't stand up, but there is no reason not to look at a freight service providing ancillary services like tourism and taking vehicles to and from the island for recreational use et cetera. We think we're in agreement with that but part of the discussion is to look widely at what the primary island needs are and then how other tourism and economic benefits can be provided by a shipping service. We know we have had at least a year of unsatisfactory and, I guess, disturbing services for the island community. We want to make sure we put in place something for the long term.

**CHAIR** - Have you looked at reviewing the processes around contracts and deeds and the like since the debacle that we've had through this?

**Mr McILFATRICK** - Well, what is the debacle? The service has gone into receivership and that is disappointing for any commercial operator. It has been an unsatisfactory service provision but in terms of the Government's agreed obligation with the island to provide a weekly service, that has been provided. We have to put it in context. It has been an imperfect situation but how far do you want governments to go? Do we want every contract the Government has for a service provision for us to have the ability to walk in and check their accounts on a monthly basis? That would not be tenable for a normal business relationship.

**CHAIR** - But the islands are unique in the fact that they rely so heavily on being able to have that access on and off the island otherwise they cannot run their businesses, they cannot survive.

**Mr McILFATRICK** - I totally agree. We need a service provision in place that meets the needs of the island. That is what the long-term view is about. You asked me a question about whether I have reviewed our process of looking at contracts. I think we look at these contracts in a lot of depth but we're constrained by the terms of the contract. In this case it's really a contract that was novated from one that was put together in 1995. It is now 2010. We need a contract that is appropriate for 2010 to 2020. We need an arrangement. Whether that is a contractual arrangement or an arrangement with government that has helped to provide more certainty, that is what we are looking at. I don't think our scrutiny of the contract would have improved the situation. I think even if we scrutinised it more, it appears that Southern Shipping still would have failed as a business.

**Ms FORREST** - When the deed was transferred from the previous owner to Southern Shipping you said there was a process of review and some things were changed, some things were left in the deed which may or may not have been necessary. That first arrangement was made in 1995, you said.

**Mr PETERS** - Yes.

**Ms FORREST** - And this was in 2009, 14 years later.

**Mr McILFATRICK** - No, it wasn't.

**Ms FORREST** - Sorry, when was this one then?

**Mr McILFATRICK** - 2007.

**Ms FORREST** - Okay, 12 years later; a number of years later, when clearly one would have expected there to be changing needs on the island. This is one of the issues we have here, Norm. You have said, and quite rightly, there was only one week in that last 12-month period where a weekly service wasn't provided. More often than not there was a service provided twice a week, so clearly there was demand for that. So in that process of review in 2007, why weren't these things looked at? The contract said it needed one weekly service at a minimum - that is what you have to provide but you could provide more - but when you have a company which is going badly and is unable to meet their financial commitments -

**Mr McILFATRICK** - No, back in 2007 it was a sale of the shipping service and our obligation under the contract was to not unduly withhold the transfer, so we were looking at a novation of the contract. I wasn't here then, but I haven't seen any strong indication that there was a community desire at that time to review the service provision.

**Ms FORREST** - But the point I'm making is that the requirement in the contract was for one weekly shipping service. Clearly from the evidence that was there at the time and continues to be there, the demand for more than a once-weekly service is consistent.

**Mr McILFATRICK** - And the demand was provided for. The contract was a safety net provision; it wasn't for us to be the commercial shipping operator. The contract was to provide a minimum service and to provide a subsidy for that, not to say that there should be more services.

**Ms FORREST** - I'm not saying that.

**Mr McILFATRICK** - No, you're saying in 2007 why didn't we review the contract.

**Ms FORREST** - Yes.

**Mr McILFATRICK** - Because there was no imperative, I believe, at that time from the community to step in and say we need more guarantee, because -

**Ms FORREST** - But when you think the contract has already been in place with that minimum requirement of 12 years -

**Mr McILFATRICK** - And providing a satisfactory safety net in that time.

**Ms FORREST** - Yes, providing a satisfactory safety net, but if the level of service had dropped back to one shipping service a week, as all that was required -

**Mr McILFATRICK** - As a safety-net.

**Ms FORREST** - Yes, as a safety-net, that clearly would not have met the needs of the island.

**Mr McILFATRICK** - That's true. So you're saying we should lift the safety net?

**Ms FORREST** - Maybe, but from what I'm hearing from you, that wasn't even part of the discussion around that time.

**Mr McILFATRICK** - No, on looking at it I don't believe at that time there was a compelling desire by the community to review that.

**Ms FORREST** - Because they were getting a twice-weekly service.

**Mr McILFATRICK** - They were getting a service. The question on the table in 2007 was whether we would allow the contract to have been novated essentially from the previous owner of Southern Shipping to the new owner. It wasn't a case of, 'Let's open up the whole issue'.

**Ms FORREST** - Okay, then the question is how often are contracts of this nature then reviewed?

**Mr McILFATRICK** - There is a review period within the contract. The next review period in the current contract -

**Mr PETER** - October 2010.

**Ms FORREST** - So when the 1995 contract was established, what was the review period for that?

**Mr PETERS** - My recollection is it was round about 2000.

**Ms FORREST** - So was one conducted in 2000?

**Mr PETERS** - I believe so.

**Mr McILFATRICK** - It's about a five-year review.

**Mr PETERS** - And then the next review was 2005, which was at the time that the sale process was being negotiated between the previous owner and Mr Gabriel.

**Ms FORREST** - So then why wasn't it conducted at that time? Why wasn't the demand looked at at that time?

**Mr PETERS** - At the time the contract was being reviewed/novated, there was no pressure for anything additional from the island because they were getting a regular service. The contract specifically says that the operator has to provide one service a week and one service a month to Cape Barren Island, and be available to carry out commercial services subject to commercial arrangement, and that is precisely what the contractor had been doing. My recollection of the time is that there was no pressure to do otherwise.

**Ms FORREST** - Is it fair to say, then, that in 2005, when the review was due and the process was going on around that change of ownership that a review of the demand of the island was not undertaken at the time it was scheduled for?

**Mr McILFATRICK** - No, the Government's view is that we don't interfere with commercial operations. If the demand was there and it could have been supplied by commercial operators - that is the ideal situation.

We have a safety net provision for King Island. If the shipping service were reduced below what was required on those islands we would need to step in as the Government, which is a safety net provision.

**Ms FORREST** - I thought that requirement was only if a ship was out of service -

**Mr McILFATRICK** - I am saying the Government would monitor King Island and make sure shipping services are being provided to the needs of the island at a minimal level. Because the commercial environment is supplying that we do not go near King Island unless requested.

In 2005 the island services were being provided above the minimum level. If they had been provided below the minimum level -

**Ms FORREST** - It would have been breach of contract then.

**Mr McILFATRICK** - There would have been a breach of contract and we would have reviewed it.

**Ms FORREST** - If you let me continue.

**Mr McILFATRICK** - I am trying to.

**Ms FORREST** - The review of the demand was not undertaken so obviously the demand was being met. The demand that it was being delivered to was above the minimum requirement. Okay? So if there had been a review of that and it was clear that say, for argument's sake, a bi-weekly sailing was necessary to meet the needs of the community then if that was in some way factored into the renewal of the contract then it would have become evident fairly quickly if the services started to drop off that the demand was not being met. Hence the contract would have been breached before we had this, as the Chair said, debacle, where you have a company going broke and then defaulting on their contractual arrangements because of insolvency rather than the warning signs going out earlier.

I am just trying to flesh out the point that this could have been identified earlier in other ways.

**Mr McILFATRICK** - I am still trying to get to the core of your question: was there a need for review of the Government's assistance at the time? I don't believe there was. From my reading of the background, there was no compelling reason given by the community why we should seek to have a different arrangement in place as a safety net.

Then the question was whether we would novate the contract to a new player and then that contract would be subject to review in 2011. What has happened between 2005 and 2010 is that we have had an uncertain delivery of the service to the contract, particularly over the last year, and we have been actively looking to look at how we could bring that review period forward given our circumstances and have started that review period by doing the GH&D and the other reports to the council. So I can't go back to 2005 and say what the circumstances were. If we had known that we would have an unsatisfactory

deliverer, and I don't think we could have said that then, but I don't believe 2005 would have changed the minimum requirements.

**Ms FORREST** - Can I go to King Island for a moment, Madam Chair?

**CHAIR** - Very quickly.

**Ms FORREST** - Norm, are you aware that before Southern Shipping was put into receivership, Southern Shipping boats docked at King Island at Naracoopa on the boat ramp when they had no pilot? They were in a pilotage area, they had no authority, they unloaded -

**Mr McILFATRICK** - I think MAST had a look at that incident. I am aware of it but I do not have the detail.

**Ms FORREST** - Are you aware that it happened?

**Mr McILFATRICK** - I am certainly aware of a grounding of *Matthew Flinders* but I don't think it is the one that you are speaking of. I am not aware of the Naracoopa one.

**Ms FORREST** - Where it docked at the boat ramp and unloaded some heavy equipment and damaged the boat ramp in the process?

**Mr McILFATRICK** - I haven't heard of that one. I wouldn't necessarily be aware of it unless MAST had brought it to our attention as part of our contract.

**Ms FORREST** - Would they normally bring that sort of thing to your attention? Southern Shipping had obviously broken the law.

**Mr McILFATRICK** - They would deal with it as the statutory authority and if that has been reported MAST would be the authority it would have been reported to. I can't recall.

**Mr PETERS** - I'm not aware of it.

**Mr McILFATRICK** - If the committee wants me to, I can certainly talk to Colin Finch to see if they have a record of that incident on King Island.

**Ms FORREST** - They are aware of it.

**Mr McILFATRICK** - Are they? Okay. I'll check our records to see if we have been made aware of it but generally they're a statutory authority that operates under their own code so they would deal with it themselves. Any action they may take would be -

**Ms FORREST** - A fine of \$600.

**Mr McILFATRICK** - Or if they'd withdrawn the ship from service, for instance, then we would know about it because it would have impacted our contract. But we have no contract with Southern Shipping for King Island.

**CHAIR** - Thank you very much, gentlemen. It certainly has been quite a saga. You probably had many phone calls and spent a lot of time thinking about how we can move forward with this and, as the local member, I'll be looking closely at any new arrangements that will be put in place. I hope to be a part of those discussions as well.

It's unfortunate that we seem to spend a lot of time dealing with this particular company which, in my view, has been a very poor corporate citizen to lots of parts of Tasmania. We thank you for your time today.

**Mr McILFATRICK** - Thank you.

**THE WITNESSES WITHDREW.**