

**THE P.V. FORTESCUE SELECT COMMITTEE MET IN COMMITTEE ROOM 2,
PARLIAMENT HOUSE, HOBART, ON MONDAY 4 APRIL 2011.**

Mr MIKE BLAKE, AUDITOR-GENERAL, AND **Mr SIMON ANDREWS**, MANAGER, PERFORMANCE AUDIT, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Dean) - Welcome, gentlemen. If at any stage during the discussion there is anything you feel would be better taken in camera we are very happy to listen and make a ruling. Our terms of reference are fairly wide, some of which you covered in your report, and particularly in report 91 where you carried out an inquiry and investigation. For the purposes of our record, could you give an outline of where you went with that, some of the issues that came out of it, having regard to our terms of reference.

You might be able to follow that up with areas or questions that you believe that it would be appropriate for this committee to delve into. There are a number of issues there that we feel you might not have been able to pursue because of the terms of reference that you had at the time. If I could just open it up at this stage and leave it to both of you, Mike, to go into where you went with your report and the background to it.

Mr BLAKE - Thanks, Chair. You mentioned report 91 and I might start with report 70 when this first started. Report 70 was when we were doing a procurement review by various government departments and because of concerns that came to our attention during the course of doing that audit we extended the scope of that audit to pick up the decision to acquire a replacement for the PV *Freycinet*. I suppose the essential conclusion from that exercise was that we did not support the view that operational urgency had been sufficiently identified to have given an exemption from tender to replace the PV *Freycinet* with a piggy-backed acquisition process through the Victorian coastguard.

That report was not supported by either the commissioner at the time or Treasury because they felt that operational urgency had been established. We simply did not agree and I think it is fair to say that our point of view was confirmed by the follow-up, which is report 91 that you referred to, so report 91, if I remind the committee, was brought forward. We would normally not have lodged the procurement work that we had done until a year later. Because of information the media got when they were advised that the legal person in the Police area had written to me advising that I had been misinformed during the course of the first audit we brought forward that process. I suppose our focus for the second time around was to see, as we always do, what action management had taken as a result of our recommendation and were we misinformed because for me to be misinformed seemed to be a pretty serious thing to happen.

My original view about operational urgency I think is confirmed by the fact that despite the exemption being granted in about April 2007, it was not until probably around about November 2007 that they actually started to do anything about replacing the boat and signing a contract so that suggested to me that operational urgency simply was not a ground and that was confirmed.

Mr WILKINSON - The argument was that there was an operational urgency requirement, that operational urgency requirement you were obviously looking into in relation to this report as well and one of the major areas that you found to be questionable, as I understand it, is if there was operational urgency, why didn't it kick in in April 2007 as opposed to November 2007?

Mr BLAKE - The indications that were given by police in a similar report or one of the reports, if not both reports, was that the costs of running the *Freycinet* were going up, it was 27-odd years old so it had been in operation for a long time, it was not necessarily still able to do the things that the police wanted it to do and if it was granted an exemption from going to tender on the basis of urgency then I would have expected things to have started a lot sooner, particularly if you were breaking off a contract had already been signed and therefore simply getting that contracted to get going on a new boat.

Mr WILKINSON - In relation to finding out the reasons for this delay obviously you spoke with a number of people. Were you going to get into that?

Mr BLAKE - Simon, I can't remember - why was there a delay? Was that solely getting a contract drafted?

Mr ANDREWS - We had full access to the Police internal correspondence and from that we determined that there were delays with the manufacturer readying his shipyard to commence building the vessel much before about October 2007.

CHAIR - The Police correspondence you referred to came through the Police department -

Mr ANDREWS - That is right.

CHAIR - and it related to this. Was it a report from the commissioner or where was it from?

Mr BLAKE - Do you mean the documentation?

CHAIR - Yes.

Mr BLAKE - Correct me if I am wrong, Simon, but my understanding is that because the boats were not exactly similar, compared to the ones that had been constructed for the Victorian Coast Guard, the shed required to house the boat while it was being constructed had to be bigger.

Mr ANDREWS - That is correct.

CHAIR - I see, that is why a specific shed had to be build for it.

Mr BLAKE - Your first term of reference is operational urgency. I do not believe an operational urgency was, in the end, proven. I doubted it at the beginning and I still doubt it now. So my view remains, and it is easy for me to say in hindsight, I accept that, but if there had been a proper tender process I believe some of these difficulties that subsequently eventuated may not have eventuated.

Mr HARRISS - Was there any breach of Treasurer's Instructions by the process which was undertaken?

Mr BLAKE - No, there was not because an application for exemption from going to tender on the grounds of operational urgency was accepted and agreed to by Treasury, so I do not believe we ever said that they broke Treasurer's Instructions. They sought an exemption and they were given one, so they complied.

Mr HARRISS - What is the process for seeking an exemption, Mike?

Mr BLAKE - The process in this case was to make a case. In fact, two cases were made. An initial case for an exemption was made to Treasury and knocked back as the Treasury sought additional information. That was resubmitted and approved on the grounds of operational urgency. So a case had to be made for why we think we warrant an exemption in this case. The TIs have a number of requirements. For example, you have to go to public tender if you have something that is going to cost more than \$100 000, which clearly was the case. So the normal process would be to go to public tender. However, if you can get an exemption from doing so on reasonable grounds, and operational urgency is one of those grounds, then the Treasury can provide an exemption.

Mr HARRISS - In terms of process, do those requests for exemption come from ministers or from departments?

Mr BLAKE - No, the Secretary of Treasury has the ability to provide an exemption in this case and he can also delegate that to other senior officers in the Department of Treasury and Finance.

Mr HARRISS - So the request would have come from the Department of Police and Emergency Management, not necessarily from the minister?

Mr BLAKE - The request went from the department, not from the minister. I think that is an appropriate place because it is the departments who must comply with the Treasurer's Instructions, not the ministers.

CHAIR - On those two applications, the first one was made for the exemption and then, as I understand it, the Treasury was not satisfied with that, so they then asked for further particulars. Do you know what the differences were in the two? Did you see the two reports?

Mr ANDREWS - Yes, we did get access to both submissions asking for the exemption. I believe it was just lack of clarity in the first submission, so Treasury requested further clarity. That is when the urgency issue I think was crystallised - in that second submission.

Mr BLAKE - My report says, 'The letter was not sufficiently detailed and it did not present clear reasons as to why the exemption was necessary.' So I can only take from that that they submitted a second application making the reasons more clear.

Mr WILKINSON - Can we get a copy of those at all, Mike? You would have seen them and they would have been part of your documentation, I would imagine?

Mr BLAKE - Yes. I would prefer you received the document from Treasury itself because that will be the original documentation rather than the copy we have. But if you cannot, we have a copy on file.

Mr WILKINSON - With the operational urgency, was one of the areas focused on the fact that, as you say, the *Freycinet* was old. It could travel only 200 nautical miles offshore and was 27 years old. Was part of the reason that it was dangerous or, alternatively, it is suitable for x amount of years but we need another boat to ensure that once it is past its use-by date there is another boat to continue on?

Mr ANDREWS - Only from what I've read it's more along the lines that the maintenance costs were starting to escalate - it was costing \$60 000-odd per year to maintain it. I can't recollect anything to say it was unsuitable to go back out to that distance, but that doesn't mean that wasn't the case.

Mr BLAKE - The report that we wrote - number 70 - indicated that the police had suggested in about 2000 that the boat was getting old. Seven years later it would have been exacerbated in terms of those additional costs. I'm not sure we inquired into safety, but costs would have been factor and I accept that.

The issue about whether we misinformed was something we also looked into. Misinformed was primarily - and I won't say 'only' - one of the factors: whether we were misled or misinformed in some way by the fact that a naval architect, or more than one naval architect, was independent of the process. Whilst we made reference to independence in our report, we never relied on independence in the conclusions that we had reached, so I don't believe we were misinformed because we never relied on the fact in the first place. Importantly, there were two naval architects who were engaged. I spoke to both of them as part of the original report we did and I was satisfied that one of those naval architects was independent - and the other wasn't; he was too closely aligned with the process. That is the conclusion I reached at the time and that conclusion wasn't changed in the subsequent report. As to whether or not we were misinformed, I'm satisfied weren't.

CHAIR - Who was the second architect?

Mr BLAKE - Mr Guy Anderson.

Mr HARRISS - Mike, you said earlier - and the content is raised in your report - that it was a police legal officer who had suggested to you that you had been misinformed. Given that it is the Police department which is seeking the procurement of the vessel, it seems a little odd that somebody from within that same department would suggest misinformation from their own department in terms of procurement of the vessel. Has the Department of Police and Emergency Management commented subsequent to your report as to their suggestion that you had been misinformed?

Mr BLAKE - I will answer that in a couple of ways. I don't know what prompted the legal officer to write to me. When you say 'subsequent', do you mean subsequent to the first report or subsequent to the second report?

Mr HARRISS - The second report.

Mr BLAKE - I interviewed the police commissioner and a number of his senior officers as part of, 'What is this letter trying to tell me? What do you expect me to do, Commissioner?'. When I received the letter my first point of call was to go to the commissioner and say, 'What's this all about?'. My focus at that meeting was, 'What are you going to do about it, Commissioner?', rather than what I was going to do about it, because it was his officer who believed that I had in some way been misinformed.

Mr HARRISS - In terms of who was who at the time, because we had an acting police commissioner, who did you meet with at the time?

Mr BLAKE - Acting Commissioner Hine. From memory, both the previous commissioners had gone.

Mr HARRISS - Jack Johnston was probably on full pay, stood aside or whatever, and Richard McCreadie had retired.

Mr BLAKE - When that happened, which would have been, I think, February 2009, I thought, 'Why am I getting this information? What do you know? What are you going to do about it?'. I left it at that and decided to bring forward the audit as we had then agreed to do. I don't believe the police have made any comments on our report subsequent to special report 91; I haven't heard about it if they have. They haven't disputed whether or not their own officer believed I had been misinformed.

Mr HARRISS - In essence, your contribution just now, Mike, has answered the other question I would have gone to concerning discussions or written communications you may have had with the Police department subsequent to that advice that you had been misinformed. You have answered that by saying that you went to the acting commissioner straightaway and put it to him and you're not aware of any action having been taken as a result of that?

Mr BLAKE - I don't know what action they took internally. As part of the follow-up, we had a look at the contract that had been drafted and that they worked under and looked at the timing - and it's in the report in terms of when Mr Hunn was or was not engaged and what contribution he made to the drafting of the contract and so on. Those things all became clear in the subsequent work we did in that the timing of the appointment of Mr Hunn as an employee seemed odd in relation to engaging a company to build a boat which was supposed to have been a design-and-construct contract rather than a construct contract, which is effectively what ultimately happened. The design was done by an internal employee as it turns out, which made the complications around who was at fault difficult because it now became the responsibility of the department to manage the warranty issues that subsequently came about, leading to increased costs.

Mr HARRISS - When you say that the timing of the employment of Mr Hunn seemed a bit odd, for the record, notwithstanding that you've addressed the matters in your report, can you give some more detail around that?

Mr BLAKE - I'm not sure we have any more. What did we say in the report, Simon?

Mr ANDREWS - Mr Hunn was employed on a fixed-term contract with Police on the same day that the boat contract was signed, which from memory was 25 June 2007.

CHAIR - That's the first contract you're talking about, not the amended one?

Mr ANDREWS - That's the original design-and-build contract.

Mr BLAKE - I can't answer you as to why that happened on that day.

Mr HARRISS - It's those issues that need some clarity, I think, and Mike has indicated that he's not able to provide the answer to that. The committee will have to deliberate on where that might be placed in terms of a question and that could really only be to the department.

Mr BLAKE - I would suggest the HR department that would be managing the recruitment practices.

Mr WILKINSON - Mike, am I right in saying that that in itself was a matter that raised people's antennae, to say 'You're employing an architect to design the boat and there's arm's length between the person who is going to design the boat and the Police force'. But on the day the contract was to be signed, the person himself was employed by the Police department. Is that correct?

Mr BLAKE - Yes, and that is why we posed that question to both the previous commissioners, leading to one of the recommendations we made in the report because they didn't know either, or they weren't conscious of it. It's all very well to say, 'Whilst I may have signed the contract, I relied on other people to give me advice in readiness to sign the contract'. I think that sort of decision should have been inquired into by the people who signed the contract, which is something we recommended should have happened at the time. I didn't pursue further the timing; I didn't go and talk to the HR people or people at that level.

Mr WILKINSON - As a result of that, are there any recommendations that you believe should come out of this committee to say whether it should or shouldn't happen?

Mr BLAKE - Other than the ones we've already made? I suppose that's hard to answer because hopefully this is a one-off sort of event. We do make recommendations dealing with one-off events but the broader issue is that when you sign a contract make sure you understand what you're getting yourself into; when you employ someone who is involved in the process, make sure you know what you're getting yourself into. Some recommendation around that would be useful for future purposes, yes.

Mr WILKINSON - Were there solicitors involved?

Mr BLAKE - I don't know the answer to that, other than the internal solicitor and I don't know to what extent. I don't know to what extent he was engaged in the original signing of the contract. He may well have been involved in giving advice later, but I'm not aware of what happened at the time.

CHAIR - If I just follow the situation where you said you weren't misled, I note that in your report you have said is you were not 'actually misled'. What do you mean by that?

Mr BLAKE - Let us go through it. The misled question went to four matters: independence of one of the architects, warranty, construction costs and similarity. Let me deal with the last few of those first. Warranty obligations - I don't believe we were misled because we never said in the first report whether there was any warranty risk at all. The warranty risk certainly came about later and again whether or not I could have forecasted that I would not like to say but it certainly eventuated and I believe part of that would have been because of the rushing for the piggy-backing of another contract. Construction costs - again we did not look at construction costs in the original report. I am sure the committee is aware that in one of my Auditor-General reports to Parliament later in 2007 we make reference to what happened to some of the money flows so the committee may wish to read that. The information is there in pages 109 and 111 of that report. Construction costs went up, we know that now, but it was not something we looked at at the time. The extent of similarity - this was a matter as you may or may not recall that a member of the opposition party in the lower House wanted me to go into that in some detail. We started to look down that track and actually spoke to somebody at the college in Launceston and decided we simply would focus on operational urgency and not try to get into a debate about what similarity in the construction of a boat means. It is a technical area that I wanted to stay away from. For those three items I don't believe there was any misleading at all because we simply never went there.

On the question of independence of one of the naval architects, I am satisfied that we were not misled. I am not sure of the exact words I used - I was not perhaps as categorical as that - because I had spoken to that architect and I was persuaded at the time of speaking to him that he was not independent. My view was that although he was not actually at that time working for the department, he was very closely connected to the department and I was satisfied he wasn't independent and therefore I did not rely on his advice.

Mr WILKINSON - In what way was he close to the department?

Mr BLAKE - I would have to go back and check my records. I have a file note in the office which I am happy to share with you but that sort of persuaded me that he was not independent.

Mr ANDREWS - To add to what Mike was saying, the architect we are referring to, he was actually engaged on like a part-time consultancy basis up until the time he was put on a fixed-term contract. It was around February or March that he was put on a contract just to give consultancy advice and that is relating to Mike's answer in that regard.

CHAIR - Getting back to the Police department's legal adviser, was his evidence presented in written form or did he go through an interview process with you?

Mr BLAKE - No, he wrote to me and we have a letter on file from him and that is where I suppose I drew these four dot points on page 61 of my report. He was suggesting that we were misinformed about matters to do with independence, warranties, costs and similarity.

CHAIR - Can that report be made available to this committee?

Mr BLAKE - It is a letter, but yes.

CHAIR - I think that would be helpful.

Mr BLAKE - We have a copy of the letter here if somebody would like to make a photocopy.

CHAIR - Thank you. Just going back to the similarities of the *Fortescue* to the *AVGC* - I think it was the coastguard vessel -

Mr BLAKE - Yes.

CHAIR - Obviously that is a matter that you are saying you didn't go into, you didn't go into the technicalities of that at all and consequently you didn't take any evidence on it but that is obviously a matter that we can proceed with further if we see that we should do.

Mr BLAKE - If it helps the committee I did talk to MAST and I almost engaged an expert from the Maritime College up north.

CHAIR - Was that Martin Reynoldson?

Mr BLAKE - I cannot remember the name but I actually spoke to them and said, 'Can you give me somebody who might want to be on the team?' We also spoke to - who is the committee that provides commercial advice to the Government - and in the end my audit team very wisely suggested to me that the similarity is so hard to quantify, 3 or 4 or 5 per cent difference in size has a significant impact on displacement of a boat, that it is simply knew that we did not have the technical competence to try to deal with it. So we spoke to ICNTAS, I cannot recall what that stands for, so your discussions with those three entities or bodies would help the committee.

Mr WILKINSON - That is MAST, the college and ICNTAS.

Mr ANDREWS - ICNTAS, which is the Industry Capability Network of Tasmania.

Mr BLAKE - We spoke to them because I wanted to get a feel for preferred local supplier status.

CHAIR - There are questions I want to ask but I think I will let you keep going, Mike, because you will probably come into that through your evidence at this stage, or not?

Mr BLAKE - Going with what, Chair?

CHAIR - MAST's involvement in this whole process.

Mr BLAKE - I spoke to MAST but we did not print the report, as I said, because we felt that it was beyond the scope of what we were trying to do in terms of our procurement arrangement. They were simply able to advise what happens in this sort of circumstance, what rules and procedures they follow to give a licence. But I would not be qualified to try to second-guess what they are going to tell you. So I suggest you talk to them direct.

CHAIR - Okay. Do you have anything else, Mike?

Mr BLAKE - I do not know that I have anything more to say. I think we have talked about the main issues in the report and I say, as I did earlier, it does not change my view that operational urgency was not a good reason for an exemption in the first place, and so it proved. Going back to your terms of reference, I think we have covered off item 1 and item 7 which seem to me to be the important factors from my point of view.

Mr HARRISS - Mike, I do not know whether it is in your report, but I recall at the briefing you gave when the report was tabled that you -

Mr BLAKE - Which report, the first or second?

Mr HARRISS - The second one.

Mr BLAKE - 1991?

Mr HARRISS - Yes. You said or recorded something to the effect that when you had interviewed people from the department, it might have been the acting commissioner but somebody indicated to you that they felt under significant pressure, were the words that I recall, and I have written it down at the briefing.

Mr BLAKE - I can only assume that that would apply to pressure to spend the money quickly. So one of the factors that came up out of the first audit, and it is in the response by the commissioner within the first report, was along the lines of, 'We had the money, we had to spend it quickly' and therefore the urgency was around funding rather than operational. Perhaps I should refer to the exact comment before I try to second-guess what he said. Do you mind if I look through this?

CHAIR - No, we do not mind, Mike.

Mr BLAKE - I cannot find it but can I say to you that I suspect that that is what the case was. Certainly when we interviewed Commissioner McCreadie his view was that he had a bucket of money which came up out of the blue because there was some surplus capital works funds available - some of this did not get into the report - and he had to spend it before the end of June. He was disappointed that I did not follow that through, but in fact I did. He made inquiries of the Department of Treasury and Finance and asked them, 'Was that a factor?' They argued that it was not. I may well have said something along the lines that the commissioner felt under pressure to get going with this quickly. It was not necessarily just around operational urgency, it was about spending the money quickly and before the end of June. It was for that reason that I made reference to this report. So my report to Parliament about the financial audits that we do of the Department of Treasury and Finance picked up in the pages that I referred to the fact that

I wanted this work done because I was interested to see when the department spent the money that had been allocated to them under the capital works program. I found that they had made a deposit of \$750 000-odd before the end of June and yet the contract hadn't even been signed. We now know that the contract was only signed in October, four or five months later. That deposit was fairly done in the sense that it was a deposit only, it was put into a trust account and the interest earned on the money was for the department's account. It said to me, 'Why are we rushing ourselves to spend this money when we don't have to?' I believe other arrangements could have been entered into with Treasury to carry forward the funds into the next year. I may have said that in my presentation. I wasn't persuaded by the argument at the time.

Mr HARRISS - Casting my mind back to that presentation, as well as what you have just said now, I got the message then and I am having it confirmed now that you seemed to be getting the message from the commissioner that it was use it or lose it.

Mr BLAKE - I was, and that's why I made inquiries of Treasury. They advised us that that wasn't the case, that the money didn't have to be spent immediately.

Mr HARRISS - And that's a standard process; we carry all sorts of money forward from financial year to financial year. It seems a little odd that an experienced head of department would feel that sort of pressure, that it is use it or lose it.

Mr BLAKE - I think you need to ask former Commissioner McCreadie that question. I wouldn't want to say what you just said. I think he made the observation to me. I followed it through and wasn't persuaded.

Another factor in my report, which is in your terms of reference, Chair, was reference to increasing costs, which we have commented on in one of the reports, as to whether the vehicle achieved its design capabilities. We have commented on it and it didn't seem to, and even as late as report 91 it still wasn't, with more work being done. I suppose that's why I recommended that perhaps it was time to start again.

CHAIR - I think there are some question marks around its capabilities and whether it will ever be capable of performing what it was contracted to do.

Mr BLAKE - I don't know what has happened since then; it was a while ago. Maybe things have changed, I don't know.

CHAIR - As to the changes to the original contract, did you look at that in any detail as to why that occurred?

Mr ANDREWS - It essentially came around that the manufacturer who built the boat asked for that change to be made. That seemed to have emerged towards the end of 2008 into 2009.

CHAIR - I guess you would have questioned the department as to why they accepted that. Did they understand the implications of that?

Mr ANDREWS - The implications were becoming clear because there was correspondence from Police to Crown Law asking about the amendment to the contract and Crown Law

identified that that was an issue, that if they changed the contract Police would then become liable for all design faults.

CHAIR - So they were aware of that advice from Crown Law prior to entering into that renewed, changed or altered contract?

Mr ANDREWS - Yes, that contract was driven by the manufacturer or the supplier of the boat.

CHAIR - Sabre Marine?

Mr ANDREWS - Yes, that's correct.

Mr WILKINSON - The first conclusion you reached was, 'The original decision to seek an exemption from an open tender process was justified by DPEM on the grounds of urgency and escalating maintenance costs for the existing *Freycinet*.' I hear what you're saying in relation to urgency; in relation to the escalating costs for the longer the vessel takes to build, did you find that that was the case as well, that there would have been an increase, and quite a marked increase, in the costs?

Mr BLAKE - That is of running the previous *Freycinet*?

Mr WILKINSON - Yes.

Mr ANDREWS - We didn't look at whether there had been an escalation in costs, only that it was mentioned that the cost prior to starting to build the new vessel was around \$60 000-odd and that they were rising, but where they were rising from or rising to we didn't see.

Mr WILKINSON - So in short, in relation to the maintenance of the *Freycinet*, they just said, 'Yes, there are going to be escalating costs in the maintenance because of its age?' Is that right?

Mr BLAKE - I am not sure we can say if anybody said to us that there would be escalating costs. I think it is fair to say we noted that up to the point we did the work that maintenance costs were going up. How those may have continued to go up or not, I don't know.

Mr WILKINSON - Because that is one of the conclusions, and this is what you were told, that the original decision to seek an exemption was, firstly, on the grounds of urgency and, secondly, escalating maintenance costs.

Mr BLAKE - Yes.

Mr WILKINSON - And then of course you say that subsequent events have shown this course of action may have resulted in both significant time delays and cost overruns.

Mr BLAKE - The cost overruns really refer to the time taken to negotiate a contract and then to construct a new boat. The original tender was in the order of \$1.1 million - though I don't recall the exact number - but by the time we had finished our work it was running at

almost \$1.5 million, so extra costs were being incurred anyway. Would they have been incurring extra maintenance costs anyway, I couldn't say, but there is no doubt that from the decision to construct a boat, signed off in October 2008, to one today or at least by the time of the report, we still didn't have a serviceable boat and it cost a lot more than originally tendered.

Mr WILKINSON - I quite agree hindsight is 20-20 vision, but if you had this open tender process you don't believe that this situation would have arisen?

Mr BLAKE - Assuming that I am right about operational urgency, and let us assume that if they had gone to tender in March or April of 2007 instead of seeking an exemption, they may have dealt with things that subsequently arose - that the boats weren't sufficiently similar. So we would have got a tender for a boat that was of the size that the constructor was constructing and we wouldn't have had perhaps the issue around whether there was a naval architect on the payroll or not because that would have been dealt with through a tender process. So I am very strongly persuaded that we wouldn't have had these outcomes.

Mr WILKINSON - I believe one of the most important things here is to get systems in place to ensure that it doesn't happen again. I know that is easy to say but if there is this open tender process, that really would be a safeguard to ensure something like this didn't happen again.

Mr BLAKE - Yes, but again an open tender process could also have resulted in something going wrong. You may have selected the same supplier and you may have made the same mistakes, but I just think the risk of that happening would have been less. That doesn't mean to say I don't believe there should be a process to give an exemption. I think exemptions are warranted in the right circumstances. Hindsight is a wonderful thing, but I wasn't persuaded and I think perhaps Treasury shouldn't have been persuaded, certainly for a contract of this size - \$1 million at that time. Does that mean somebody was wrong to give an exemption at the time? I don't know, I can't make that statement. I don't know how you can recommend that this doesn't happen again. I think the processes for an exemption should be available. I am not saying Treasury didn't do the right thing by giving an exemption. I just didn't think operational urgency was a strong enough reason at the time because this had been on the drawing board for seven or eight years already and certainly the funding issue shouldn't have been a factor.

Mr WILKINSON - You can't say it is not going to happen again. All we can do is put proper processes in place to do what we can to ensure it doesn't happen again.

Mr BLAKE - To minimise it, yes.

Mr HARRISS - I am having a quick look at this letter from DPEM's legal advisor Mark Miller where he notes that your officers who conducted that procurement inquiry were misled as to the similarities. You said earlier that you have done the best you could in your subsequent audit to determine what amounts to a similarity. As you said, a very small change in the design could have a significant impact on displacement and the like. He also talks about which party was responsible for designing the vessel. Before the department decided on an employment arrangement for Mr Hunn, with design and construct being the department's preference and Mr Hunn not being on staff, then there

would not have been any great problem in terms of some distance between the parties, would there?

Mr BLAKE - Let me answer the second question first. If it had always been a design-and-construct contract, you may still have had the difficulties that subsequently eventuated, but then the question is who is responsible for fixing that. Under the arrangement that was entered into - because, as I understand it, Mr Hunn became an employee of the department - the department effectively took on responsibility for the design failures in the boat. Therefore the contractor was only interested in anything wrong with the construction part of that. So that, to me, was critical. If you are going to make inquiries about why you engaged Mr Hunn as an employee, which we did not follow through completely, then do that. The issues around similarity were dealt with to an extent. I spoke to INCTAS and MAST and I thought about getting some support from the college about that; it all happened the first time around. So when we wrote the first report I was going down that rabbit hole, as my staff kept saying to me. They said to me, 'Now pull back from that because we just can't win that argument about what similarity means.' We chose consciously just to focus back on a procurement process and the report was written that way - the fact that I had done those things then informed the follow-up work that we have done. We had made some inquiries about similarity and consciously chose not to follow that route. That is why we concluded we had not been misinformed.

Mr HARRISS - Mr Miller uses stronger language about 'misled' as to which party was responsible for designing the vessel, the insurance obligations in respect thereof and the actual total costs associated. He is suggesting in the first that somebody had indicated some sort of an expected price and so you had been misled as to the total costs.

Mr BLAKE - Not a factor; it simply was not. Whilst we made some inquiries we deliberately chose to say to ourselves that the issues around signing the contract and the issues around similarity were not factors we took into account when we wrote our report, so I will stand by the fact that I was therefore not misled. Nobody was trying to say to me that this is a similar boat and therefore it has to be a good deal. They may have said those things but it was not a factor as far as we were concerned in the first report.

Mr HARRISS - Did you have a look at the terms of the contract and were there variations requested by the vessel manufacturer?

Mr BLAKE - Not in the first report because the contract was signed months later. The second time around we looked at the contract.

Mr ANDREWS - That is when we came across the variation in the contract with the removal of the design clause. As far as I know that is the only major alteration to that contract.

Mr HARRISS - So there was no variation as to construction of the vessel such that if you strike problems along the way, then there is a variation request?

Mr BLAKE - I think that is something you should ask the department. My view is that, yes, extra costs were incurred but they seemed to be that this boat has a shake of some sort or the engine is not working or something is not working operationally out in the middle, and whose fault is it? The design is wrong. Get the manufacturer to fix that. Yes, we

will fix it but it is going to cost you. I think that is what you should ask. That is what I assumed happened.

CHAIR - Mark Miller refers in here that when Sabre Marine consulted with police to get them to agree to a variation of the agreement et cetera, removal of the design clause was a part of that. Did that come after Michael Hunn had been employed by the Police department, because originally he was with Sabre Marine?

Mr ANDREWS - My understanding is that Mr Hunn assisted Sabre Marine with the designs for the Australian Volunteer Coastguard vessels, which were like the precursors of this vessel. He was engaged in June 2007 to design the vessel and the removal of the clause regarding the design of the vessel happened by about March or April 2008. I have it in here somewhere but it was after the vessel was under construction.

Mr WILKINSON - Simon, you're saying that he was employed by the Police after the vessel had started to be built?

Mr ANDREWS - No.

Mr WILKINSON - I didn't take that to be the case.

Mr ANDREWS - No, he was employed before the vessel commenced construction.

CHAIR - I think you covered about Mr Hunn and in report 91 you've said that this was a strange action, given that the contract signed with Sabre Marine was for that firm to design and build the new vessel. I think that that's a matter we need to take up further with the company. It is a very difficult situation to understand. I think you've used the right word 'strange' to identify that and with what you knew and what you'd done you very clearly saw that as not being an abundantly clear process.

Mr WILKINSON - Mike, if you were sitting in our chairs, where would you start to focus your inquiry?

Mr BLAKE - Look at your terms of reference, which are not terribly dissimilar to the ones that we followed. I think the issue around why and how Mr Hunn became an employee would be worth pursuing, and who authorised that process. Did anybody authorising the process understand the implications of that? To what extent did the people signing the contract know what they were signing? That's something we questioned. I suppose the other things fall out from that. The fact that Sabre Marine then said, 'We want design taken out of the contract' is obvious from their point of view because the risks then don't fall with them. I am not sure that asking questions around that is going to tell you anything more. It's a fact of life, it's happened, and any questions you pose of me in terms of if we still had the *Freycinet* running, what would the operational and maintenance costs be and how operationally it could now be functioning, the State has sold it now and I'm not sure what's happened to the PV *Freycinet*.

It is probably worth pursuing with Treasury around the funding arrangements; is my conclusion correct in terms of could the money have been carried forward - was it cash-flow urgent?

Mr ANDREWS - Just for the record, the *Freycinet* is now with the volunteer coastguard at St Helens.

Mr BLAKE - I don't know if the replacement boat, the *Fortescue*, is operational yet. It's worth finding out if that's the case.

We thought of asking, and we didn't in the end, whatever happened to the two boats constructed by the Victorian coastguard. Did they meet their design specifications? Are those boats operating effectively? We thought about going down that route and decided not to, but I suspect that may be worth doing. If you're going to follow that similarity matter, then it is probably worth finding that out.

CHAIR - How much did you do in your inquiry in relation to the position that MAST played in this? I am going from the Muir report. No doubt you saw the Muir report as part of your inquiry, did you?

Mr ANDREWS - Yes, we received a copy of the Muir report.

CHAIR - He raises supervision attention by the attending Marine and Safety Tasmania surveyor that MAST is going to be responsible for the overseeing of the vessel to make sure that it meets all the requirements, but also in a supervisory role at the same time. Did you see that as a conflicting interest?

Mr BLAKE - I don't see why. I didn't pursue that, but in my discussions with MAST as part of the first report, which, as I said, I didn't pursue in the end, it became clear to me that they had that sort of regulatory role so what you are saying makes sense to me. We looked at that in terms of were we misled, and we weren't misled. I think that's a matter you can ask MAST. No doubt MAST has some regulatory body giving a licence for the boat to be operational, but whether it has been issued or not, I don't know.

CHAIR - Mike and Simon, is there anything you would like to say in conclusion in relation to where we should be going, what should be happening and so on?

Mr BLAKE - No, I have nothing to add to what we have already said. I have already given some ideas on where to go from here. I will get you a copy of the file note that I prepared on my discussions with the two naval architects. If you want us to come back at any time, please don't hesitate.

CHAIR - Thank you both very much for giving us your time this afternoon.

THE WITNESSES WITHDREW.