

THE LEGISLATIVE COUNCIL SELECT COMMITTEE INQUIRY INTO P.V. FORTESCUE MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY, 2 MAY 2011

Mr PHILLIP WILKINSON, ASSISTANT COMMISSIONER OF POLICE, PLANNING AND DEVELOPMENT; **Mr MARK MILLER**, PRINCIPAL LEGAL OFFICER, TASMANIA POLICE; AND **INSPECTOR BRETT SMITH** WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED

CHAIR (Mr Dean) - Welcome, gentlemen.

Mr WILKINSON - Inspector Smith has prepared a document for our use and has brought copies for the committee. It is an overview of the whole situation.

The level of involvement we have all had in the matter to date varies. Mark has been involved from the beginning in a legal capacity. I say 'beginning', but his involvement is perhaps longer, though from a narrow perspective. I currently have control of the project, by virtue of my role. It has passed through to Assistant Commissioner, Planning and Development. Retired acting Assistant Commissioner Brazendale had it. He was in my position prior to his retirement and I have picked it up as a result. Inspector Smith was tasked with trying to pull all the information about the *Fortescue* together some time ago by former acting assistant commissioner Brazendale. None of us really has comprehensive personal knowledge of all the details. We are happy to share what we have pulled together and know, but you should understand that nobody here was involved directly from day one.

CHAIR - That was the concern of the committee; we were not sure whom we should have from police to provide evidence to us. We left it to the service to identify who should be here today.

Mr WILKINSON - In the current situation we are the best people, but in the early days, to the best of my understanding, it was the former commissioners who had the most direct influence.

CHAIR - If issues arise through the process then we will need to address them at the time. It might be necessary for the committee to seek other persons from the police service to provide information to us.

Mr MILLER - The project from go to whoa had very few people actively involved. Very few people had any knowledge, let alone in-depth knowledge, of how it progressed. It was principally former commissioner Mr McCreadie, Mr Johnston and to an extent Mr Darko. Other than Mr Darko, no-one in the department or service now has much contemporary knowledge, from the outset at least. We have assembled the documents as best we can. There is a bit of anecdotal stuff from various people. As we would readily admit, there were some deficiencies in the documentation and oversight of the project. That is reflected in what is available but the inspector has done the best he can. We are confident that every document we have relating to it is here or referred to.

Mr WILKINSON - We are confident that we have whatever documentation exists.

CHAIR - That is good. Is there anything you would like to say at this stage, or should we go straight into questions? You have provided this document and we will need to look at that.

Mr WILKINSON - It is quite literally hot off the presses, so that is why we didn't give it to you earlier. No, there is nothing that I want to add.

CHAIR - Okay, we will go straight into questions. As of today, where are we with the PV *Fortescue*? What stage is it at? It is now a serviceable vessel; is it performing to the initially contracted requirements?

Mr WILKINSON - I will give a brief response, but I think Inspector Smith is the best one to give the detailed response.

It is not performing as we would have expected it to perform initially, but the boat is, nonetheless, performing in a restricted capacity and we believe that over time its capacity will expand and will be enhanced as people become more familiar with it and we get a better understanding of exactly what its capacity is. In terms of its detailed technical capacities, Inspector Smith has a good understanding of those.

CHAIR - I think it would be helpful to us to understand what it was contracted to perform and what is currently the situation.

Mr SMITH - Sure. Originally we wanted an offshore patrol vessel. We wanted it to have a range of 500 nautical miles and issued under Class 2B survey. The significance of 2B survey is that it is surveyed out to 200 nautical miles, as are most commercial vessels of that type and size. Effectively what we have is a vessel which, as a result of a number of deficiencies that we have identified, some defects that we have had modified and in the main rectified, has significant operational limitations. At the moment, and until the full development of our operational envelope, which was recommended by Alan Muir, who did the independent review, it has been limited to inshore waters, which is out to 15 nautical miles of the shore. However, there is a rider on that in that in the event that there is a necessity to go beyond that, sole discretion to use the vessel is with the master.

Again, you could probably appreciate a situation where there was a problem 30 miles out to sea, the weather was good, the skipper felt that he was comfortable in taking the vessel there to do the job and the crew was confident, then the job would be done. So there is that proviso in there and, as always, I think the law of the sea ought to prevail and the discretion to utilise the vessel rests with the master. That is how we are using the vessel at the moment.

In terms of operational range, its range is out to about 435 nautical miles with a 5 per cent margin. We actually wanted to contract 500 nautical miles, but we have only been able to do that with the addition of the fuel tanks that Mr Muir commissioned as part of his report, and we had those put in. We accept 435 nautical miles as being okay.

On the vessel itself, I will just give you a bit of an overview and the thoughts of the crew. I have been on the vessel extensively myself. It is a vessel that does not perform well in

a head sea. We believe that is as a result of the shape of the bow - and I think that is confirmed to some degree in Mr Muir's report as well. Its performance in a following sea can be questionable and, to be perfectly frank, according to the skipper, he has concerns about the vessel giving an uneasy feel. That is not to say that the vessel cannot handle the conditions, it just feels a bit uneasy - and I have felt that myself.

However, there are positives. It is a very stable platform to work from. Its stability at rest is very good. In fact, the skipper reports that the incidence of seasickness has actually decreased over time. The back deck configuration is very good and very workable and usable. The accommodation is considered adequate, although the sleeping accommodation has been reduced. But it is manageable with a crew of four. I suppose one of the other positives is that we have been able to fit it out with really good electronics.

CHAIR - Just on the accommodation, what was it required to provide in the first place?

Mr SMITH - Specifically I think we contracted it to have a crew of five. Unfortunately the way one of the bunks has been designed means it is only for a very short person, so maybe it is for a crew of four-and-a-half! However, it will sleep five at a pinch.

Having said that, I must add that I have slept in it, and it is quite comfortable. It has to be balanced; there are some positives. But the performance, particularly in a head sea and a following sea, is an issue for us. That has an impact on crew comfort and our capacity to sustain long hours in the vessel.

CHAIR - I suppose the obvious question is whether this vessel, the way it is currently constructed, is capable of performing better in those conditions? Is there anything they can do to make it perform better, or should it be thrown out?

Mr SMITH - Advice from Alan Muir as part of the review process basically indicates that in realistic terms there is nothing more we can do fundamentally to the boat to enhance its performance, other than perhaps completely cutting it in half and rebuilding it and changing the shape and so forth.

CHAIR - So the position is that this vessel cannot ever provide what was originally contracted - that is what you are saying, is it?

Mr SMITH - In effect, yes. There is nothing that we can reasonably do to change the vessel itself. Having said that, we have operated the vessel now for 81 days and there has not been a situation where we haven't been able to perform the work that we needed to do. That includes rescues - and, in fact, the vessel has done a couple. It was involved in the one off Bruny Island a couple of nights ago. One positive out of that was that the forward-looking infra-red camera was very effective and was found to be quite a good search platform in those conditions.

To sum up, the vessel has capacity, but is it the capacity that we wanted? No, it is not.

Mr WILKINSON - To just clarify one thing - it has met the required survey centres, so it is in the 2B survey. It is surveyed to go out 200 nautical miles. The operating envelope that Inspector Smith is talking about is one that we have put on the boat in addition to that.

So when you are talking about contract, it was contracted to a 2B survey, and it is has been put into 2B survey. I just wanted to draw that distinction between the two.

Mrs TAYLOR - How can that be, when it can't perform? How can it be in the 2B survey, when it can't go out 200?

Mr WILKINSON - What we are saying is that we are not prepared to send it out 200.

Mrs TAYLOR - Well, you can't because you would run out of fuel for a start.

Mr WILKINSON - Well, no. It will do 430-odd nautical miles, so in terms of fuel, you could go out and back.

Mrs TAYLOR - In a calm sea!

Mr SMITH - Yes, and it could do that, depending upon the conditions, and that is the nature of boating. We have developed the operational envelope around particular sea states - about what we can expect the boat to do in certain sea states. Again, as an operational guide for the skipper, his primary responsibility is the safety of the crew.

Mrs TAYLOR - How long has it actually been operational? You have said 81 days -

Mr SMITH - It has had 81 days at sea.

Mrs TAYLOR - And how long have we had it?

Mr SMITH - The boat was launched on 1 June 2009. It has been in and out of reparation phases. We have had an actual downtime in that period of 249 days. The big ones were having what we call the phase 1 modifications from the Muir report put into effect in Launceston. On that occasion it was out for 25 days. We had a further 20 days when we did the stage 2 modifications and rectifications. They related to the galley and putting in the bigger fuel tanks. The big one was 42 days after it was launched when we had the issue with spray. The designer considered the option of spray rails up the side and that has had a significant effect.

Mr WILKINSON - When talking about patrol days it might help to put it in context of the number of patrol days we expected. It is not what you might -

Mrs TAYLOR - That is what I am saying, because if you do the maths you actually had it, outside those outages, about 400 days. Of that you have had 81 operational days, so how many days would you expect if it were able to perform?

Mr SMITH - We expected to do 60 patrol days per year.

Mrs TAYLOR - Okay, so you have reached that -

Mr WILKINSON - That was just to put it into context. This is not something that goes out every day.

Mrs TAYLOR - No, so it is as you would expect; it hits the average.

Mr MILLER - I also observe that the limitation on 15 miles is only an interim measure. These parameters that have not been finalised have been sent to me for legal advice. I have recommended that we get another maritime expert to run an eye over them, not being at all qualified in that area myself. I have had a look at it from a legal point of view. The 15 nautical miles comes about by my agreeing with a request from the inspector in charge of marine to that effect. If he asked for 30 I would probably have readily agreed to that as well. One of our line officers did have concerns about the content of the parameters and duty of care issues. They arise from recommendations in Mr Muir's report. We are not saying that will be the final position. The final position may be that the boat is not retained. The service will review it in the context of compliance.

Mrs TAYLOR - Did you say 'not retained'?

Mr MILLER - It won't necessarily be retained. That is still an open question.

Mrs TAYLOR - Can we sell it?

Mr MILLER - You can sell anything. The market could be difficult, particularly in this part of the world.

Mrs TAYLOR - I understand it can do some things -

Mr MILLER - Yes.

Mrs TAYLOR - but realistically it can't do much, because it is limited by how far out it can go. That is not such a problem because you need vessels that can operate closer in shore, but you also can't use it in head seas and tail seas.

Mr WILKINSON - It is all about putting it into context. You can use it, but it is about how hard it is on the crew because it rides hard. It has quite a blunt bow so when it heads into large waves it hits quite hard, which is very wearing and tiring for the crew. That is a limiting factor. It is not that the boat is going to sink -

Mrs TAYLOR - I understand, but you said 'following sea' as well.

Mr WILKINSON - Yes.

Mr SMITH - It has a tendency, depending on the type of wind and wave, to go to one side as a big wave passes underneath the boat. The boat will drop to one side, depending on which wave hits the bilge keels on either side. We don't really know if it is unstable; it just feels uneasy. A lot of what we are talking about is the confidence that our people have in the vessel. That is really integral.

Mrs TAYLOR - You don't have volunteers lining up to go on the *Fortescue*.

Mr SMITH - I have been out of marine division for nearly 12 months now. We fill the sea patrols. The vessel only came back at Easter. It did everything we wanted it to do. Bear in mind that the skipper is getting to know the boat's limitations and will use it to

those conditions. If right now we had to go straight out and rescue someone it would depend on lots of things.

Mrs TAYLOR - Which is a worry.

Mr SMITH - Perhaps when compared to other boats.

Mrs TAYLOR - No. If you are the person out there waiting to be rescued and you have to decide whether to send the *Fortescue*, and you can't because it is too far or our sailors will all get sick. The issue is that it is a rescue vessel.

Mr HARRISS - In that context, let me say that the vessel was procured to replace the *Freycinet*. What could the *Freycinet* do?

Mr SMITH - The *Freycinet* was a fibreglass vessel and about six feet longer. When you compare the vessels, it is like comparing apples and oranges, given that one is -

CHAIR - Maybe apples and lemons!

Laughter.

Mrs TAYLOR - That is unkind.

Mr SMITH - The *Freycinet* is a very different feel of boat. Again, Mr Wilkinson and I were having this discussion this morning about this very question, and I have thought about this over a period of time. It is not necessarily about comparing the boats because they do have different pros and cons; it is about the confidence that the crew has in the boat. If you were to ask the crew which boat they have more confidence in, they would say the *Freycinet*. That is really what it is about. I have had many a trip on the *Freycinet* and it is a completely different boat. It is a fair bit slower, but it does punch a lot better into a head sea and there are no issues in a following sea. It actually has quite a significant keel. We had it for 27 years and were pretty well-versed in the use and operation of the vessel.

To be fair to the *Fortescue* we have only had it in operation for a pretty limited time, and we have had a lot of downtime with it, so we haven't really tested it in a situation where we have made a decision 'No, we cannot use it.' One thing the skipper is adamant about is this: he said, 'I will always try, but if I feel that the vessel can't do it, I will disengage.'

Mr WILKINSON - This is again by way of observation - don't take anything we say as us sitting here thinking we are defending the *Fortescue*; we are not. It is what it is, but this is just about giving you information about what it can and can't do. For example, the *Fortescue* is very fast; it will do nearly 30 knots. So if you are sitting out there being rescued and it is coming towards you at 30 knots that is probably good news. But if it is too rough, it might not be coming at all. Those are the sorts of pros and cons. It is a planing hull, so it is fast, but it probably doesn't have the sea-keeping abilities of a slower boat.

CHAIR - The *Fortescue* was contracted to perform to a certain level and it was designed to take the place of the *Freycinet*, which was able to perform to a certain standard. What

will the police service now do that they don't have a vessel that will perform the way it was required to do in most conditions? What will you do when you have an operation or a search-and-rescue that is well and truly outside 15 nautical miles in fairly ordinary conditions? How will you respond?

Mr WILKINSON - I am not trying to dodge the question, but it will depend on a range of circumstances and what other options we have available - for example, where is the *Van Diemen*. If the *Van Diemen* is available, obviously we will deploy that vessel, if indeed the *Van Diemen* can cope with those conditions. A helicopter is probably one of our first response options nowadays in any event. We would look to use private vessels if they were available and if, again, they could cope with the conditions. You have set a parameter of conditions that the *Fortescue* cannot cope with. That judgment would be made by the skipper of the *Fortescue* on the day, given all the circumstances - sea state, crew, the situation they were dealing with, who is being rescued and what risk they are facing, and obviously that varies in the circumstances. If the *Fortescue* wasn't able to respond, our response would be pretty much what it would be if the *Fortescue* was able to respond but was on the slip. We would look for other vessels that could do the same job or aircraft.

CHAIR - Whereas if the *Fortescue* fitted all the contracted conditions, that would be there.

Mrs TAYLOR - What is the gap in service as the result of limitations of this vessel?

Mr SMITH - It certainly has not the capacity of the *Van Diemen*, but they are different vessels.

Mrs TAYLOR - What should you have that you don't have?

Mr SMITH - Can we confidently say we have two ocean-going vessels that have the capacity to go to the 200 nautical-mile limit in a range of sea conditions? The answer is no; we have one. We also have the *Vigilant*, which has been a bit of a tried and true performer but, again, it has operational limitations. As Mr Wilkinson said, we still have other strategies and options available to us.

Mr WILKINSON - It's probably worth mentioning now - and you're probably aware - we have commenced a review of our total resources from go to whoa. There is no doubt that the problems we've experienced with the *Fortescue* have increased our focus in that area and we expect in time that we will do a wholesale review of everything. That will include whether the *Van Diemen* should be in the mix or what that should be like and in an ideal world what our total mix of vessels should be, because they have tended to evolve over time. We have tended to have what we have and then we've matched that to the situations we're confronted with. The use of helicopters, for example, has really changed the way we do a lot of search and rescue work and that hasn't been factored into a comprehensive review to see what the gaps are when we have helicopters or fixed-wing planes for searching or what the most cost-effective and realistic options are now. It might or might not be a fleet of big boats.

Mrs TAYLOR - That's part of the issue. Whatever the gap is, if it means that we have to replace the *Fortescue* with another vessel that will do the job it was meant to do, then that has a significant bearing on the State Budget, whereas if that gap can be solved by

helicopters or some other way then that is a very different situation. What went wrong? We need to know what went wrong and what we have to do to fix the situation as it is at the moment.

Mr MILLER - That's a question that requires a very lengthy answer.

CHAIR - I think the committee needs that. We all had that same question: what went wrong and why are we in the position we are in? There has to be a reason for it.

Mr WILKINSON - We've been talking about what extent the metal didn't meet the contract. It's probably not so much the contract that's the issue as that the metal didn't meet our requirements and whether or not the contract fully reflected our requirements. We have a boat that is essentially new, a new design; it's not a tried and tested model.

Mrs TAYLOR - Hadn't it been designed before? Not for the police, I know -

Mr WILKINSON - No, it's essentially different to the boats it was modelled on. I understand that there are some similarities -

CHAIR - Are you saying it's different from the Victorian Coast Guard vessels?

Mr WILKINSON - Yes, that's my understanding. Essentially we've had a boat designed for us that was new, and its sea-keeping capacities and how it was going to perform et cetera were estimated but not known, which apparently is quite normal for boat design. If it's not something that exists, that you can test and try, you design it and then prove that design.

Mrs TAYLOR - That sounds like an experiment.

Mr WILKINSON - Essentially, as I understand it, that's the way it is done - not done by somebody who is ill-informed. Naval architects - unless they're building something they've build before - make all the best judgments they can based on their skill and experience and what they know works. They put it all together but they don't really know how it works until it is all put together. You will see in the documentation we've given you there is a whole range of things that haven't worked together once the boat has been finished. The plans were passed but nobody really knew precisely how it would perform until it was out on the water in use. What went wrong was that we didn't quite know what we were getting. We thought we did but what we have is what it is; it is just not what we really expected. Is that a reasonable summary?

CHAIR - It was to mirror, to some extent, the Victorian Coast Guard vessels - the two that had already been built -

Mr MILLER - Sorry, Mr Dean, but that is one of the misconceptions, I think, or one of the issues that is glossed over. The suggestion was that Tasmania Police could piggy-back on the back of those vessels but they had not been completed; they were not in service. In fact they were not in service until December 2007. We are talking about piggy-backing on an existing design, but not one that had been tested in the water itself. So we have the difference between the Victorian boats and our boats - and I think the Victorian

boats are at Portland and Warrnambool - but we were not stretching something that had already proved itself.

CHAIR - I see. Would you be aware whether the Victorian Coast Guard vessels are performing as they were contracted to perform?

Mr WILKINSON - No, I am not. What I can say is that they are different vessels and they are for a different purpose. The coastguard only go out to do rescues, whereas our vessels need to be able to do patrols for extended periods of time; that is the way we use them. The coastguard want a fast response vessel that basically will be sitting ready to respond to a call, then shoot out, do a rescue and come back. That is a little bit of what our vessels do but the bulk of the patrol days that Brett is talking about is just that - the crew get on and off they go for an extended period of time. So the use of the vessel is quite different. My understanding is that ultimately the design of the two vessels is quite different as well, so they are not only used for different purposes but also the changes to the design mean that they are quite different in their characteristics as well.

Mr MILLER - And during the course of the discussions with the builder over the variation of the contract issue, he described them as completely different boats. Having said that, it was probably in his interest to. One of the fundamental differences is the motors.

Mr SMITH - I have not seen the coastguard boats - this is from what I know and what I have gleaned from information - but the coastguard boats are about 12 metres long. They have jet-propulsion engines. For us that was certainly not good because we wanted diesel engines and shaft drive, so there is the capacity to go forwards and backwards. It is pretty limited in jet boats to go backwards. We think that is handy, particularly around the west coast where there are big rocks. As a result we placed the engines further forward, which effectively changed the centre of gravity. I do not want to get into too much technical detail in the absence of not being qualified -

Mr WILKINSON - But you can picture that in a jet-propelled boat the engines are further towards the stern and for a shaft-driven boat, because it has to have the shafts going down to the propellers, the engines move forward.

Mr SMITH - It has to have the right angle with the shaft, whereas a jet-propelled boat has a cylinder at the back that just pushes water out at a phenomenal rate, similar to a jet engine on an aircraft. If you look at the hull of the *Fortescue*, you will see a flat area underneath the vessel. Alan Muir queried that during his inspection. He said clearly that is where the water intake is for a jet engine. So there is some similarity with the coast guard vessel. The *Fortescue* was actually extended by about three-and-a-half metres to take into account, predominantly, the necessity for us to put a dinghy on and off the back of the vessel.

It has on the hull what we call bilge keels - two wings that sit on the outside. I do not know much about it but I have seen a report from MAST, who are of the view that perhaps it is not the best design. They have put that in writing.

Mrs TAYLOR - Was there a need to buy a new design or could you just have bought a design of patrol boat that existed elsewhere that worked perfectly well and would do the things you wanted it to do? Why a new design? In this case obviously you're looking at

a design that, it is now apparent, is not well-designed, because you've made the changes to that original design. If I were buying a new car and it was supposed to do whatever its specifications were and it clearly didn't meet them, I would take it back to the manufacturer and say, 'Sorry, take your car back because it doesn't work'.

Mr MILLER - No, but not if you designed it yourself.

Mrs TAYLOR - Exactly, so why did you design a boat when you're policemen rather than boat designers?

Mr WILKINSON - We didn't design it; a naval architect designed it but he was in our employment. Obviously that had an impact in terms of avenues of recourse that were available to us. As to your original question why we had a boat designed rather than buy a boat off the shelf, I don't know the answer to that question. I can only surmise that it's to do with time and opportunity. There was money available for a limited period of time and it appeared at the time that there was a belief that the boat could be built and in the water within the desired time frame and that was seen as an opportunity. I can understand that because opportunities for that sort of funding don't come along very often.

Mr MILLER - It was an established boat-building company and an established naval architect so there would have been an expectation, no doubt, that we'd get what we asked for.

Mrs TAYLOR - I suppose someone will ask the question as to why you employed the architect?

CHAIR - Absolutely. Who in the police service was in close negotiation in relation to the design of this vessel? Who played that major role with Mr Hunn? Who were the police officers who were engaged mainly in talking with Mr Hunn and negotiating the position, getting the design that the police service wanted and its contracted needs?

Mr WILKINSON - One thing needs to be made clear: it was the design the police service could afford. All these things are compromises, so if there'd been enough money we might have had another *Van Diemen*.

CHAIR - Sure there is a money restriction, but who in the police service was a close negotiator?

Mr SMITH - I will take you through the sequence of events as I understand it from the documentation we have. I don't know personally because I wasn't involved but I can tell you from what I have read in documentation. The department appointed a project manager, a State servant, from Asset Management Services. That person, from the documentation, appeared to work directly for the Deputy Commissioner at the time.

CHAIR - Who was that?

Mr SMITH - Jack Johnston.

There were some specifications sought from Marine and Rescue Services staff and they were provided. Once they were provided, those specifications were effectively turned into what we called the Offshore Patrol Vessel Specifications document. That contained in part those specifications that were provided by Marine and Rescue Services. Mr Hunn was engaged to design the vessel. There followed a number of meetings between Marine and Rescue Services staff, Mr Hunn and the builder of the vessel - relatively infrequent, as I understand. There were some concerns raised towards the latter part of the build process with the designer and there were some meetings around rectifying those issues. Was there a police officer hands-on at the building site keeping on eye on things? No, there was not. In Mr Muir's report that is one aspect he is critical of.

CHAIR - Would you agree with that in hindsight?

Mr SMITH - I do, having a practitioner at the site with the designer, who is a theoretical designer, having that hands-on input at the site.

CHAIR - There has been a suggestion made by way of correspondence to this committee that every effort was made to keep the police away from the site. Are you aware of that?

Mr SMITH - I've heard lots of things. Do I know it? No, I don't.

CHAIR - That has been provided to this committee in written form and I was wondering whether or not you were aware of that or whether or not it is true.

Mr WILKINSON - I'm not aware of it, but I couldn't say that it was or wasn't true. I don't know what the arrangements were with the manufacturers about police visiting. I know there were times they visited to see how it was progressing but I don't know what the nature of that relationship was.

The first time the boat came into my personal area of interest was around its being late. It's not that unusual for a project, but given it had a relatively short time the degree to which it was late started to look quite concerning. There was quite a bit of regular discussion about when it was going to be launched. There was no real concern about the boat itself, other than that the project was running late. It seemed to be pretty much on budget but running over time. After it was launched - and I went to the initial launch out at Prince of Wales Bay - it sat in the water a bit strangely but it wasn't fitted out at that stage. I was told there was more work to be done. It was only when there were apparent problems with the boat in the water, which attracted a fair bit of comment from our own people and from the public about how it performed and how it looked, that we started to have concerns - has this been built the way we wanted it to be built? We started to explore avenues for recourse should the contractor not have delivered what we wanted. It was only then that I became aware not that we had had Hunn employed but of the implications of having him employed. They are quite different. He's working for us. He's a respected naval architect and giving us expert advice, but it was only later that it dawned on me what the implications were.

CHAIR - What was your position at that time?

Mr WILKINSON - I think I was still Assistant Commissioner Planning and Development. I didn't have direct control over it but was involved in discussions around it because by

this stage it was of concern to all the relevant members that this was a major project and it didn't appear to be on track. I was aware that we had employed Mr Hunn before it dawned on me - and it seems obvious now I look back - what the implications of the employment were. That is obviously not an impossible situation to be in; you could have him employed and not necessarily have drawn the implication of what that is going to mean should you need to seek recourse.

Mrs TAYLOR - I was just looking at the legal end of who might have seen that implication perhaps or should have warned you of that implication.

CHAIR - It might help if we could be advised of the contracted position and whether or not the legal officer for the police service was involved in that. Was it shown to you? Did you have any involvement?

Mr MILLER - The contract was executed on 25 June 2007 and I didn't have any involvement at all in that. It was done in the Crown Solicitor's office, which is not unusual because they're the ones with the commercial expertise in contracts. I do some simple contracts but more complex contracts are done with the Crown Solicitor's because they have the expertise.

My first involvement with the boat was that I was aware of the fact that there were some issues raised in Parliament around the failure to tender, and I was aware that there were some issues around the delays. My first involvement was in late September when Mr Johnston came to me and asked for advice about the contractual position in relation to trying to speed up the process and basically what could we do to try to enforce the time lines. That was probably the same day that Mr Hidding asked some questions in Parliament, 26 September 2007, about the progress of the boat.

I looked at the contract then, and it was the first time I had seen it, and what was apparent to me was that, whilst it provided for a bill period of 33 weeks, there was no clear mechanism for kicking that time off. So at 33 weeks from commencement they would be in breach of contract but there was nothing to start off commencement. There were some motherhood statements about time being of the essence, et cetera.

I gave some advice about that that we couldn't do much from a contractual point of view to try to spurt it along. I was asked to attend a meeting with Mr Johnston, Mr Darko, Mr Phillips and Mr Hunn where to the best that I could I rattled the sabre, so to speak, to try to raise with Mr Phillips and Mr Hunn the prospect of an action for breach of contract if it wasn't moved along. Throughout that meeting and for more than two years thereafter, I was under the misapprehension that Mr Hunn was employed by Sabre Marine because the contract said that Sabre Marine would design and build the boat. I wasn't told anything different -

CHAIR - So you were never consulted at all in relation to the employment of Mr Hunn and what the implications might be?

Mr MILLER - No. Here I was rattling the sabre towards him, thinking that he was employed by Sabre Marine. That was apparent to Mr Johnston and Mr Darko but no-one told me what the true situation was. I have since seen correspondence dated within days of that meeting from Sabre Marine that refers to 'Mr Hunn (your man)' sort of thing, but

no-one shared that with me. Then I had no further involvement until after the boat was in the water and there was some talk about the way it sat in the water and the amount of spray. So there were issues starting to come through and it was about December 2008 that that startled to rumble and Mr Brazendale had some conversations with me about the contract position and the possibility of a rectification works, et cetera.

About that time we had a request to formally acknowledge a variation of the contract, which was forwarded to Mr Darko and then to me for advice, and basically we were asked to sign off on effectively a variation to the contract which would recognise that we designed it through employing Mr Hunn and Sabre just built it. That is when I sought advice from the Crown solicitors and it was quite a protracted period there. I took a simplistic view once I saw some documents that, yes, it was apparent and essentially a contract of employment, that it was apparent that we had engaged the designer as an employee, but the Crown came up with some more refined questions like, 'To what extent was it based on an earlier design that they may be liable for?' or 'Were any of the variations actually designed by Sabre?', et cetera. At the end of the day we accept that we carried the can for design and effectively had no recourse to them for design issues as distinct from workmanship issues.

The effect of that is that the Crown effectively has self-insured, so for any design rectification issues we have no recourse at all. What has been spent, about \$400 000?

Mr SMITH - I can give you the exact figure. The contract price was \$1 179 000 - we are up to \$1 612 412.

Mr MILLER - We are still in dispute with the builder and there are some issues we say are workmanship, but clearly the bulk of the expenditure has been on design issues that the Crown will just have to wear.

CHAIR - I think there will be some questions around the moneys shortly but Adriana's question was why was Mr Hunn employed?

Mr MILLER - We don't know. I have a view, but that's all it is, based on what I've read.

CHAIR - Care to share that with the committee?

Mr MILLER - I am happy to. Mr Hunn has suggested to me that he doesn't know but he thought it was to enable Tasmania Police to have a greater degree of control over him.

CHAIR - Control over him?

Mr MILLER - Yes, in terms of him being employed, although he couldn't elaborate on exactly what that meant. The process, from what we can piece together about the level of scrutiny of his work, would suggest that there wasn't any increased level of control than if he'd designed it from, say, the marine base. Some people have suggested that it was because he didn't have insurance of his own - and he had confirmed that with me - but that was a decision that he made and it wasn't a hurdle because Sabre Marine was quite willing to take him under its insurance umbrella, and had done so in the past and did so for the Victorian boats. So that wasn't the issue. Mr Johnston would know, obviously, but my belief is that it was that Mr Hunn played a big part in the probity

process, the fitness-for-purpose process and the value-for-money process and was proffered as an independent expert. My belief is that there was a recognition that if he then bobbed up at Sabre Marine's employee he wouldn't be seen to be independent.

Mrs TAYLOR - If he bobbed up as your employee he's not independent either.

Mr MILLER - He's not independent of us but that wasn't disclosed until later, but that's a separate issue. He has professional responsibilities and I'm not criticising him in that regard but obviously from one view he was never independent, whichever way you looked at it.

CHAIR - Who employed Mr Hunn?

Mr MILLER - The instruments under Mr Johnston's hand as acting secretary of the department.

Mr WILKINSON - Which was the arrangement at the time, but those employment authorities had been delegated since. At the time they rested only with the secretary.

Mr MILLER - I think this has been well-aired, but he was employed from the date of the contract. From the date the contract was executed he was employed contrary to the terms of the contract.

CHAIR - Was that an employment position for the duration of the construction of the vessel?

Mr WILKINSON - It was 12 months, wasn't it?

Mr MILLER - There is a bit of a discrepancy there. There is a letter in the contract but one makes reference to 12 months and the other makes reference to the duration of the contract.

Mr SMITH - 'Until commissioning of the vessel'.

Mr WILKINSON - His actual employment was for 12 months, wasn't it?

Mr SMITH - The document says 'Until the commissioning of the vessel', but there was a request after 12 months as to whether or not his contract would be renewed and the response back from the project manager was no.

Mr MILLER - But he continued to be paid thereafter.

Mr SMITH - It says '25 June 2007 to 24 June 2008 on a casual as-required basis during commissioning of the replacement vessel'. Because the vessel's commissioning went beyond that period, I think there was a tacit acceptance that Mr Hunn was still engaged. In fact he was engaged to do some things and was paid to do some things as well.

Mr HARRISS - The document you're referring to there, Brett, is that a letter to Mr Hunn indicating his length of employment et cetera?

Mr SMITH - Yes.

Mr HARRISS - On who's signature?

Mr SMITH - Scott Wilson-Haffenden, the acting director of Corporate Services.

CHAIR - Can we have a copy of that?

Mr SMITH - Yes, sure.

Mr HARRISS - Mark has indicated that it has been well-documented and well-reported that the same day the contract was executed Mr Hunn was employed, but, as a casual observation, it seems that it may not have been necessary to employ Mr Hunn - he is the naval architect. The department had engaged him to design the boat, hence Sabre Marine subsequently asked him for a variation to the contract to reflect the fact that he wasn't their employee/designer. It would have been just as practical, would it not, to have retained Mr Hunn as an external person, not an employee of the department, and have come to some arrangement with him for a fee to oversee the fabrication of the boat? It just seems that it was entirely unnecessary to have him on the staff of the department - and I am referring to Mark's letter to the Auditor-General dated 23 April 2009, where you set out the circumstances as you understood them and inquiries of Mr Darko and Mr Martin suggest that the decision to employ Mr Hunn was taken to extend the Crown's insurance cover to him because he had no PI insurance. The fact that he didn't have PI insurance may not necessarily have been an issue in any case because if at any subsequent time his design was found to be negligent then you could pursue him outside his PI insurance if that is what you wanted to do.

Mr MILLER - To the extent of his financial capabilities.

Mr HARRISS - Indeed, whatever they may be.

Mr MILLER - It wouldn't affect your cause of action.

Mr HARRISS - No. So to have him in the employ of the department in essence took away the department's opportunity or flexibility to pursue any legal action.

Mr MILLER - That is right. We have discussed it in terms of where we are at now, and hopefully that is as bad a situation as we get with the cost of repairs, but potentially if you have a situation where you have a fatality or multiple fatalities resulting from design errors then you could be looking at a cause of action that runs into tens of millions of dollars or more. So to go ahead without appropriate insurance would be very imprudent.

Mrs TAYLOR - But you have already indicated that Sabre Marine were willing to take him on under their insurance, so that was not an issue.

Mr MILLER - As far as they were concerned, Mr Phillips has confirmed to me that they were ready, willing and able to design and build the boat, as they did with the Victorian boats.

Mr HARRISS - With regard to the Victorian boats, Mr Hunn had designed them as an individual, not as an employee of Sabre -

Mr MILLER - I am not sure of the exact relationship, but in collaboration - either as their consultant or their employee; I am not sure which. But he certainly had the benefit of their insurance cover. That is what Mr Phillips said to me and that was how he envisaged that it would happen here. We had some discussion at one point as to what that would be worth in terms of a contract cost because the way the contract was executed a component of that would reflect the fact that they carried an insurance burden. In effect, we would ordinarily expect to discount it. I have varying figures but I think the figure that was put at the end of the day was \$20 000. I think it started off a lot more; it might have depended on the point we were at in the contract negotiations. But the Crown ultimately agreed to the variation in recognition that if we hadn't and there had been litigation, that is the result the court would have arrived at on the evidence. We had the naval architects saying it was so, we had the builders saying it was so and we had nothing to the contrary.

Mr HARRISS - So the contract was for design, manufacture and supply and then Sabre requested a variation to that -

Mr WILKINSON - Once we started to have problems. Their request to change that really started once we had problems with the boat and it looked like we weren't happy with the design or were going to take issue with some aspects of the design; that is when they sought that variation.

Mr MILLER - They didn't ask us to employ Mr Hunn. The organisation made that decision and then when the issues started to arise they said, 'Can we have in writing what reflects the reality of the situation, but you designed it through Hunn'.

Mr HARRISS - Nonetheless, Sabre were the other party to the contract. They signed the contract, acknowledging that it was design, manufacture and supply -

Mr MILLER - Yes.

Mr HARRISS - They were happy with that. Then smoke starts to arise and they request a variation. Up to that time, though, they were happy; they signed the contract. Who drafted the contract?

Mr MILLER - Melvyn Carr produced it and I understand it was based on a draft that Sabre proffered that had been used for Victorian boats.

Mr HARRISS - We will check it out but you could presume then that the Victorian boats were designed, manufactured and supplied?

Mr MILLER - Yes. I did note, going through some material last night, that when the announcement was made in Parliament, and the media releases were made in late June 2007, it was just announced that Sabre would build it. I could not see anywhere any suggestion that they were to design it. That would be consistent with the decision having been made to engage Hunn.

Mr HARRISS - Does the documentation that you have provided for us give a chronology of when the construction started, when Sabre requested -

Mr MILLER - Yes.

Mr WILKINSON - Index 4 has a very simple time line. There is a lot more detail in the rest of the document but that is a very simple one to follow. It is cross-referenced to the documentation as well.

Mrs TAYLOR - Mark, is it fair to say that it was a surprise to you when you found out that he actually was employed?

Mr MILLER - Yes, I felt a little silly. I should not say that I haven't threatened our own employees in the past but I have usually known they have been employees at the time. I was concerned - I guess would be a better word - in terms of the ramification because I immediately realised that the Crown had to bear the cost of any design issues. I actually took some advice from Mr Turner, in the civil division, about the prospect of suing your own employee for negligence. As a matter of legal theory, we could sue Mr Hunn for negligence. That was his view, but as a matter of legal reality, no, it just wouldn't work.

Mrs TAYLOR - Did you say the Crown Solicitors were the people who drew up the contract?

Mr MILLER - Yes.

Mrs TAYLOR - So why do they not bear any responsibility?

Mr MILLER - They drew up the boat contract and the contract reflected their understanding that Sabre were to design and build. I was asked to give advice in September 2007 about possible contractual remedies to speed it up. Mr Carr was asked to give similar advice in December of that year and it is clear from his advice that at that point in time he still thought that Mr Hunn was engaged by Sabre Marine. In fact he knew no different until I wrote to them - I think it was in January 2009 - and it came as a surprise to them as well. Effectively no-one within Crown Law knew any different.

CHAIR - So from your understanding they were never consulted about that at all?

Mr MILLER - No.

CHAIR - You were consulted, they weren't consulted.

Mr MILLER - That's right, and I think Mr Johnston has acknowledged to them that he didn't seek any legal advice about the issue. They have had some discussions with Mr Johnston as to why, where and how in the context of making a decision about agreeing to the application to vary the contract. Mr Johnston imposed some confidentiality around those discussions because they were at a time when he was facing charges and he had some concerns about that information being provided to certain people. They have told me that the discussions didn't advance the issue much from their point of view. Until I wrote to them in January 2009 they were unaware of the change as well. I know there was a great

level of concern about that and the effect of it. The Solicitor-General was involved and had great concerns about it as well.

Mr HARRISS - To what extent, Mark?

Mr MILLER - About the departure from the contract without legal advice and the ramifications of it.

Mr HARRISS - So the department made the decision, so his employment was effected without any legal advice as to the ramifications of it.

Mr MILLER - Yes.

Mr HARRISS - We can make any observation we want, I suppose, about the fact that a contract set out what it set out and one party asked for a variation and almost on a whim the variation was agreed to.

Mr MILLER - It's not unknown for contracts to be varied in terms of the existing provisions or the scope of the contract might be extended or contracted. It is a pretty fundamental change not to get advice. The timing of it was pretty fundamental too, I would suggest.

Mr HARRISS - Yes, execution of contract - employment same day. You have set out on page 3 the imperatives to proceed down the path that the department proceeded. That was for a range of reasons: money having been allocated by the Government; the replacement requiring the vessel to be already under construction or be constructed in faster time frames. All those things were to get another boat in the water to replace the *Freycinet* quickly. None of that eventually occurred. They were the imperatives surrounding the contractual process. Inquiries were made about the similarities between the Victorian boats and what the department required. It was confirmed, according to the minister's response, that there were sufficient similarities. Mark's letter to the Auditor-General of 23 April 2009 said that someone had recent discussions with the general manager of Sabre Marine and Sabre Marine's solicitor and described the police vessel as a completely different boat. The committee is going to have to decide those issues. There has been a response by the Government as to the inquiries having been made and that there were similarities, but the fabricator of the boat says they were completely different.

Mr MILLER - You have to also acknowledge that it was in his interest to say that because he was engaged in discussion where he was denying any involvement or liability for the design of the boat. I understand that it was always recognised by Tasmania Police that they were not so close to be described as sister ships; that was never suggested. I think a perhaps more fundamental concern, one that's only come to me in recent days in the process of reviewing this documentation, is that in even accepting they were very similar to the Victorian boats there wasn't enough process around the suitability of the Victorian boats as modified. Even if we'd gone with an 11.9-metre vessel and the operational limitations, we were going into something where we didn't know what we were getting in that respect. I think that has been lost sight of because from the way it's been documented and reported I think a lot of people have assumed that the Victorian boats were in the water, but they weren't. I did some work last night to try to identify whether they were still in service. From crude descriptions I think there are in excess of two

dozen squadrons in Victoria, but they are at Warrnambool and Portland. The contract was reported in the *Mercury* on 26 August 2006 that Sabre Marine had been engaged to build two vessels for the Victorian Coast Guard and it was envisaged that the first of those would be delivered within six months. I found an article in the *Hamilton Spectator* of 26 March 2011 which talks about delays. They had a tender process and I think someone went broke and they went through it again, which was the tender process that we relied on. The article says:

'In August 2006 the boat was suggested to be a mere six months away after it was announced that Tasmanian company Sabre Marine & General Engineers had won the tender to build both the Portland and Warrnambool boats, valued at \$1.26 million. In January 2007, the boat was expected to be in Portland waters but by July 2007 it had been delayed again and was expected by August. On 23 November 2007 the boat finally arrived in Portland and was officially launched yesterday.'

Which was March 2011. So they weren't in the water and there were delays with these boats. There is some material in the file from Mr Anderson, an e-mail where he gives some advice about value for money. He doesn't mention the contract price of the Victorian boats, which was about \$1.3 million for the two. Obviously what we got is radically different in terms of size, fit-out and engines but that detail is not mentioned.

Mr HARRISS - You said early on, Mark, that your advice was sought by Mr Johnston as to the powers delivered to the department in the contract to enforce time lines.

Mr MILLER - Yes, to speed up the build.

Mr HARRISS - Were there any enforcement capabilities in the contract to achieve what Mr Johnston was asking?

Mr MILLER - No, other than time being of the essence. Mr Carr pointed out in his written advice that one of the fundamental key steps in the process was the delivery of plans to Tasmania Police. He pointed out that that would normally set the process off, but that was in the context of him understanding that the plans were to come from Sabre Marine and not from our own employee. He said that would normally start off the process and you would go from there. We had no more than a clause that made it clear that time was of the essence, that it was to be an urgent matter.

Mrs TAYLOR - There was no starting date in the contract.

Mr MILLER - Yes.

Mr HARRISS - What are the particular or peculiar capabilities or talents of Mr Hunn that he was engaged by Tasmania Police to design the vessel and then subsequently employed by Tasmania Police? Why Mr Hunn?

Mr MILLER - I don't know. Obviously the decision was made for whatever reason to go with a Hunn-designed vessel, which was to be a variation on an existing design.

Mr WILKINSON - He had done some work for us before so he was known to the organisation. He had been involved in a review of our fleet in 2000, I think, so there is some relationship with the organisation.

Mr MILLER - I understand him to be a longstanding naval architect who designed many vessels.

CHAIR - Were the original contract and the altered contract run by the Crown? They were not run by you, as the legal adviser for the police service, so were they presented to the Crown for advice on whether or not they met all the necessary legal requirements?

Mr MILLER - Mr Carr was asked to prepare a contract. He was proffered a draft from Sabre Marine, as I understand it. He was obviously given instructions. He opened his file as early as March 2007 but he wasn't given instructions to draw up a contract for Sabre Marine until early June 2007. It incorporated the specifications in the contract, timelines for build, details for sea trials, a whole range of things, and he was happy with the form of the contract.

Mr WILKINSON - We have the contract that was drafted by the Crown, which was for Sabre Marine to design and build, and the variations didn't come up until December 2008 when they sought to vary the contract to reflect what had actually taken place, as opposed to what the contract said.

CHAIR - That variation was also a part of Mr Carr's position in this whole thing. Did he participate in that variation to the contract that occurred in December 2008.

Mr MILLER - I wrote to him for advice about it and he was involved in the decision-making process, as was the Crown Solicitor, Mr Morgan, and the Solicitor-General, Mr Sealy.

CHAIR - Were the implications of the changes to that contract clearly pointed out and was the Crown accepting of them?

Mr MILLER - Yes. It dragged on for months - there was toing-and-froing - and the advice was to agree to the variation on the basis that it only reflected the reality of what had occurred. But Mr Carr had no involvement in the decision to vary it on the day it was signed.

CHAIR - I take it there was correspondence between the Crown and the police service and you would have that on record, so could I ask that any of that documentation be tabled for the benefit to the committee?

Mr MILLER - Throughout the process?

Mr WILKINSON - The totality of their advice?

CHAIR - I am just wondering how much there would be.

Mr MILLER - There's a fair bit. There is not a lot around the contract at the time but there's a fair bit in the six months from December 2008.

CHAIR - When you say 'a fair bit', we don't want heaps and heaps.

Mr MILLER - Most of a couple of these files. I haven't considered the question of privilege, which I don't think is an obstacle because I took instructions from the commissioner today that he was happy to waive privilege if it was necessary on any issues surrounding it.

CHAIR - At this stage I have not, nor have any other members of the committee, seen any documentation relative to the contract and the variation to the contract.

Mr MILLER - I will get that together.

CHAIR - I am interested in a comment you made. Earlier you said about the need the move this on because of the money being available, the position there was that that wasn't really a necessity. The money was made available - the money, with the advice or support of Treasury, can be carried on from year to year, so what did you mean by that?

Mr WILKINSON - I wasn't involved in it, but subject to that proviso it is my understanding there was an opportunity for the funding that was subject to some time lines. My understanding of the sequence of events was that when the deputy commissioner of the day met with the marine division - bear in mind, as you would be aware, the replacement of the vessels had been sitting on our books for years as a thing that needed to be done - but there was a meeting with the marine division in December 2006 on the issue of the need to replace the *Freycinet*. There was some discussion about people who were going to lose licences as a result of Operation Oakum, which was the significant abalone poaching operation. That was going to send money back to the Crown for these licences being forfeited, so there was a bit of discussion that there might have been some money potentially available to come back to the department. That money obviously isn't forfeited to the department but it is to the Crown. Shortly after that, sometime in early 2007, there was a business case put together to get support for a new vessel. It is my understanding that there was some opportunity to gain funds, provided they could be expended within a time frame, which is what put the pressure on for the boat to be built in such a tight time line. That is my understanding of what the process was.

CHAIR - You'd be aware, I think, since then Treasury has indicated that there was no issue with the money being held over for the next year.

Mr WILKINSON - I'm certainly not in a position to disagree with that, but that's my understanding.

Mr SMITH - That is the position that was in the Auditor's report, wasn't it?

CHAIR - Yes, the Auditor makes reference to that.

Mr WILKINSON - Given that it was something that had been on our books for eight or nine years -

CHAIR - But having said that, and I think, Assistant Commissioner, you would be aware of the fact that any moneys provided in those sorts of circumstances it is quite possible to hold those moneys across to another year with the necessary approval to do so.

Mr WILKINSON - Yes. I think all things can be done with the necessary approvals.

Mrs TAYLOR - That's the point about asking these questions. We're not on a witch-hunt because it's done, but we need to find out where the steps went wrong to make sure that that doesn't happen again and that they are remedied. That is really important. If I can go back to the contract and the fact that there was no beginning time line, that would seem to be an oversight in a contract. Why would the Crown solicitors not have put a beginning time line in a contract? If you say a contract is this long, and there are clauses about going over time, it seems an oversight to me that you would not have put a starting date.

Mr MILLER - I don't want to be critical of Mr Carr because he is a very skilled practitioner but I would regard it as a deficiency but things are always easier with the benefit of hindsight. It may be, and I don't know, one way is a commencement date and a build period, another date is completion by, and when you have the latter you sometimes have penalty provisions for late delivery. It may be that he was influenced by the fact that Sabre Marine had indicated to Tasmania Police that there were a number of issues that could delay the build. The fundamental one was that they had to - you may know something about this yourself - construct a new shed and get planning approval for it and build it before they could build the vessel.

Mrs TAYLOR - But if in a contract you put penalty provisions for late delivery, there is no point in putting that in unless you know a date for when late delivery starts.

Mr MILLER - There was no mechanism for ensuring that it was built within 33 weeks, or whatever period.

Mrs TAYLOR - I think all those little things are important.

Mr WILKINSON - That has certainly been our approach to the whole exercise, that what is done is done, but organisationally we have made a conscious effort to try to take the learnings out of it and make sure that we don't repeat any mistakes that we've identified. It is a big call to make but I am pretty confident that we have taken some learnings out of it and we are certainly doing our project management differently when it comes to those sorts of things now than we were.

Mrs TAYLOR - Because it's not just the matter of employment, it's all those little things.

Mr WILKINSON - No.

CHAIR - On the employment, do you have a copy of the instrument of employment for Mr Hunn on record?

Mr SMITH - Yes. It is meant to be on the file, I am not sure where it is, it is probably between my office and Mark's.

Mr MILLER - I will have a look. It is certainly about because I believe the contract refers to the duration of the period as distinct from the covering letter which referred to 12 months.

Mrs TAYLOR - I hope that at the end we will have all those little things documented, Mr Chairman, things like saying it had to be done quickly. It is never a good thing to rush, we know that. It just seems that fundamental little mistakes have been made and we would like to have a recommendation that makes sure that those things are heard for future reference.

CHAIR - The Auditor-General covered that pretty well on the operational urgency and so on. The report made fairly clear that the Auditor-General was never satisfied that it existed.

Mr HARRISS - A fundamental concern that I have - to go right back to the start of your evidence of the capability of the vessel of 500 nautical miles, an identified number of days at sea continuously - is that they were known matters to the naval architect and the boat manufacturer. How then could it have gone so wrong? They were basic fundamentals of the design and construct. Why then, when the vessel went in the water, was it not capable of 500 nautical miles, five to seven nights at sea -

Mrs TAYLOR - Five people - five berths.

Mr WILKINSON - I am not evading the question, I just don't know the answer. It doesn't fully meet the specifications - it does meet some but it doesn't fully meet them. I guess with what we know now, it was never going to. That particular design was never going to. It is now performing as well as it can perform. If someone with expertise that you have no reason to question - and I say this as a generality - comes along and says 'I can do this, here is the product you will get', you have no reason not to believe them because they are respected people in their fields. I might be more cautious if I were in that situation now, but in general you take the advice of experts - we all have to. I certainly can't look at a boat design and say, 'Ah, that will be a problem in a head sea.' We have to accept the advice of experts.

Mrs TAYLOR - Sure, but most of us would have an avenue of recourse if what was promised wasn't delivered.

Mr WILKINSON - Yes, and we basically closed that avenue off ourselves.

Mr SMITH - I would like to make a comment about the specifications because there are two things that I think are fundamentally different. Alan Muir in his report talks about the boat 'mostly complying with the specifications.' It is actually whether or not the vessel meets our needs. In this case I think that 'specifications' and 'needs' are perhaps two different things, particularly when you talk about the 200-nautical mile survey limit, because that survey limit was also, as I understand it, given to those 12-metre coastguard boats. One might assume that that was one of the key drivers for thinking, 'Well, if that boat will go 200 nautical miles, maybe it will do it for us.'

CHAIR - Hence my original question of whether those boats have delivered what they were contracted to deliver. We don't know that, do we?

Mr MILLER - No, we don't know.

Mr WILKINSON - They clearly passed their survey requirements though, otherwise they wouldn't be in operation at all. That is essentially a licence to operate.

CHAIR - Just to come back to the cost again: as a result of the contractual variation and the implications for the police service, what has it cost the Police department now?

Mr WILKINSON - Everything above the original contract price of \$1.17 million.

Mrs TAYLOR - But that is just the cost of the vessel.

Mr WILKINSON - Correct.

Mrs TAYLOR - That is not your resource cost in terms of downtime and other things you have had to get in to take its place or legal wranglings -

Mr WILKINSON - That is the straight-out cost off our budget.

Mr MILLER - It includes the legal costs at the Crown. There are still matters in dispute that might lead to further costs, and some of those are over invoices submitted for variations that are said to have been requested by the department and added to the costs. If that was so, that would just have reflected a wider scope and not necessarily any of the decisions or any of the defects.

CHAIR - So do we know what has already been accepted by the police service and paid out, and what is still outstanding and currently in dispute?

Mr SMITH - Are we talking about the legal issues as they relate to the disputed invoices or are we talking about the additional works that we think we need to do to the vessel?

CHAIR - I think we would like a breakdown of the lot, if we could.

Mr MILLER - We could probably start out with what we have paid to date.

Mr SMITH - That is \$1.612 million. That is what we have paid for the vessel and it normally doesn't include the proceeds from the sale of *Freycinet*. That is Michael Hunn's figure, \$65 428; that is what we have paid Sabre Marine to date \$1.243 million, and I think that includes part of the disputed invoices that we have conceded. There are some that we have conceded, based on our owning the design of the vessel, and that is as of 10 March this year. The legal fees are there. That \$280 000 is effectively made up of the stage 1 modifications, the stage 2 modifications, the naval architecture consultancy, the noise suppression insulation - bearing in mind there were two lots of that because the first lot of noise suppression material wasn't as effective as we would have liked. We have had three leaks in the vessel, and the costs are itemised there.

Mrs TAYLOR - So they're not even responsible for the leaks?

Mr SMITH - I think we're working through that at the moment.

CHAIR - If you could get rid of this vessel and start again, you would do it, quite obviously?

Mr WILKINSON - If we had something to replace it with. If we could replace it with something better then I am sure we would, but we would rather have this than nothing.

CHAIR - So the additional outstanding matter that is in dispute is -

Mr SMITH - It is about \$100 000, but we've made some concessions on that.

Mr MILLER - It was \$105 000 - it might be closer to \$90 000 now. We are still in negotiations but I would expect it will be somewhere in the middle.

CHAIR - But you're saying that over and above that there are still other things that need to be done to this vessel?

Mr WILKINSON - There are things we know need to be done.

Mr MILLER - There's also an appreciation, although I don't think it is quantified, that it will be more expensive to maintain.

Mr WILKINSON - Yes, that's certainly our expectation and that is documented although not quantified that it will be a more expensive boat to maintain. It will require a rigorous maintenance regime to maximise its life.

Mrs TAYLOR - What is its expected life?

Mr SMITH - I had a meeting with Alan Muir in Launceston some time ago. In his report he put down that the boat - and I quote - had a 'shortish finite life'. Inspector Ross and I clarified that with him as to what it meant and he said, 'Ten years, but that's dependent upon how hard you run the vessel or the other unexpected things that might pop up in the meantime'. His view was that it was effectively 10 years.

Mrs TAYLOR - Do you have a plan for a new vessel that will do what the *Fortescue* was supposed to do?

Mr WILKINSON - No, not at all. What we have is a plan to review our total fleet, so rather than just look at what the *Fortescue* does or does not do we will look at everything and try to come up with -

Mrs TAYLOR - That's why I asked about what is the gap in service not about the *Fortescue*, but what you are missing. Can I suggest that when you find that out that you have some plans ready in case somebody says there is \$1 million you could have now if you had a plan.

Mr WILKINSON - I don't think we'll be interested in a plan. I think we will want to see a boat in the water.

Mr MILLER - I don't think we intend to design again.

Mrs TAYLOR - Everybody should do it once.

CHAIR - The documentation that was provided to Treasury on the recent exemption, the first document, as I understand it, wasn't accepted and the secretary requested further information to give support to it, do you have that on record?

Mr SMITH - We would have, yes.

CHAIR - Could they be tabled for our information? This is the document that was provided to the Treasurer in seeking an exemption from the tender process.

We have covered the contract and the implications and I think it's agreed that the implications probably weren't fully understood at the time of the variation of the contract. Is that right?

Mr MILLER - We don't know. You would like to think so, but we don't know.

CHAIR - But your opinion as the legal officer was not sought.

Mr MILLER - No.

CHAIR - And quite obviously there is no correspondence existing between Mr Carr and the department in relation to those implications. Is that documented?

Mr MILLER - There's some recognition of that in the correspondence in early 2009.

CHAIR - That's when it came to light - in 2009 - but nothing prior to that?

Mr WILKINSON - No, essentially until Sabre Marine said, 'We didn't design it; you did'.

CHAIR - Could that 2009 document be tabled where it was identified that the implications came up?

Mr MILLER - That would be within the ambit of the request you made for the legal documentation. I wrote to Mr Carr on 27 January 2009 and I commenced by reminding him that he'd done the agreement providing for Sabre Marine to design, manufacture and supply the vessel. I went on to say, 'It has recently been established that, notwithstanding the terms of the agreement, Tasmania Police employed Mr Michael Hunn to design the vessel'. It was set in the contract and a deed of variation has been proffered to us and we sought his advice about it. I expressed a view that it seemed clear we had designed it and asked for advice about the appropriateness of the amendments. There was a bit of toing-and-froing required because we sought instructions from Mr Hunn, Mr Darko and Mr Martin, who prepared the contract of employment.

CHAIR - I think the Auditor-General referred to the unusual situation where moneys were paid to Sabre Marine before the signing of the original contract.

Mr MILLER - I'm not aware of that.

CHAIR - They had made a deposit of \$750 000 before the end of June and yet the contract had not even been signed.

Mr MILLER - I know there was some sort of account set up that contract moneys would be channelled through, and that may have occurred before the contract was executed. I wasn't aware of any suggestion that they had been paid money before the contract was executed.

CHAIR - Is it unusual for that to occur?

Mr MILLER - To set up the account?

CHAIR - To put \$750 000 into an account before the contract is even signed.

Mr MILLER - It wouldn't strike me as odd if you knew that an agreement had been reached and there was a contract to reflect the agreement. It would be unusual to pay moneys before there was any -

CHAIR - Right, it would depend on the contract position.

Mr MILLER - Yes. As if often the case with things that go wrong, there is a wide range of factors that affect the outcome. From my assessment, the decision to grant the exemptions and the preconditions for that, the extreme urgency and the unforeseen circumstances all contributed, so there has been a whole range of issues. I think the Auditor-General didn't accept that that was appropriate.

Mr HARRISS - Yes. The Auditor-General comments to the effect that it could hardly be unforeseen when some many years previously it was identified that the *Freycinet* would need to be replaced, so there was nothing unforeseen about it.

Mr MILLER - And obviously Treasury would be aware - and we don't know what the knowledge of the department was - that it did not have to be spent in the financial year, that it could be carried over. That should have been factored into the equation too. Those TIs are there for a reason, as are tender processes. That is perhaps a safety valve or check that hasn't done the job it was meant to do.

Mr WILKINSON - There can be no argument from anybody that the replacement of the *Freycinet* was not foreseen. It was also foreseen by Treasury because the strategic asset management plan that forecast the replacement - and we had earlier ones - was signed off by Treasury in 2005. I don't profess to know what went on, but Treasury grants these approvals and manages these processes. If I were now making an application to Treasury for a variation of something that was within their power to grant, if they granted it I would assume that everything had been done properly and that I'd met whatever their requirements were.

Mr MILLER - To put it in a contemporary context, the need to refurbish Devonport has been accepted for years and years. If the department was offered money with a time proviso on it then it would certainly be urgent, notwithstanding that it had been foreseen.

CHAIR - The *Freycinet* has been sold and is on the east coast at St Helens. What was it sold for?

Mr WILKINSON - \$100 000.

Mr SMITH - It was sold to the St Helens Marine Rescue Association.

CHAIR - Thank you all very much for spending this time with us.

THE WITNESSES WITHDREW.