STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

Inquiry into departmental and agency performance and operations

Melbourne — 6 April 2010

Members

Mr G. Barber  Mr P. Kavanagh
Ms C. Broad  Mr G. Rich-Phillips
Mr M. Guy  Mr M. Viney
Mr P. Hall

Chair: Mr G. Rich-Phillips
Deputy Chair: Mr M. Viney

Substituted members

Mr B. Tee for Ms C. Broad

Staff

Secretary: Mr R. Willis
Research Assistant: Mr S. Marshall

Witnesses

Mr J. Agnoletto, engagement partner (affirmed), and
Mr T. Peake, review partner (affirmed), PricewaterhouseCoopers.
The CHAIR — I declare open the Legislative Council Standing Committee on Finance and Public Administration public hearing. Today’s hearing is in relation to the inquiry into Victorian government decision making, consultation and approval processes. Specifically the hearing will focus on the Windsor Hotel redevelopment process. I welcome Mr Tony Peake, review partner at PricewaterhouseCoopers, and Mr Jason Agnoletto, engagement partner at PricewaterhouseCoopers. For the information of witnesses and the committee we have one substitution on the committee this morning: Mr Brian Tee is substituting for Ms Candy Broad. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and is further subject to the provisions of the Legislative Council standing orders. Any comments made outside the precincts of the hearing are not afforded parliamentary privilege. All evidence is being recorded by Hansard, and witnesses will be provided with a proof version of the transcript in the next couple of days. I would now invite you to make any opening statement you wish, and the committee will then proceed to questions.

Mr VINEY — Chair, just before we start, I am surprised you are chairing today, but I am just wondering: are you are planning to stand down from the committee?

Mr GUY — Be careful.

The CHAIR — No, Mr Viney, I am planning to proceed with the hearing this morning.

Mr VINEY — I think we should go into a deliberative meeting of the committee.

The CHAIR — Are you taking a point of order, Mr Viney?

Mr VINEY — Yes, a point of order.

The CHAIR — Mr Viney would like the committee to meet in a deliberative session. I apologise, gentlemen. I would ask the secretary if he could clear the room, and the committee will meet in a private session. My apologies, gentlemen. I hope this does not take too long.

Hearing suspended.

The CHAIR — Thank you, gentlemen. My apologies for the delay. We will recommence. The witnesses have been sworn. I would now invite you to make an opening statement, if you wish, before the committee proceeds to questions.

Mr AGNOLETTO — Thank you, Chair. I, Jason Agnoletto, and my colleague Tony Peake, both of 2 Southbank Boulevard, Southbank, state as follows: we are partners with PricewaterhouseCoopers, hereafter referred to as PwC. I was the engagement partner and Tony was the review partner involved in producing PwC’s report dated 15 March 2010 in relation to an internal audit review of compliance with relevant requirements in the receipt and processing of planning and heritage permit applications — hereafter referred to as the applications — associated with the Hotel Windsor redevelopment proposal. We attend before the standing committee in those capacities.

We have been provided with the Parliament of Victoria’s document Appearing Before a Parliamentary Committee — Guidelines for the Rights and Responsibilities of Witnesses, dated January 2008.

We would like to make some opening remarks regarding, firstly, our appointment and our role as internal auditor, and secondly, to distinguish our internal audit role from that of a probity adviser. We will then address the scope of our work undertaken in producing our report and the report itself.
In the context of the standing committee’s examination of this matter, we would like to provide some background regarding PwC’s internal audit role with the Department of Planning and Community Development, hereafter referred to as DPCD or the department.

PwC was engaged by DPCD on 7 July 2008 for the provision of internal audit services to the department. The contract for these services runs for an initial three-year period and allows management within individual divisions of DPCD to engage PwC to provide internal audit services. PwC was engaged through this agreement by the planning and local government division of DPCD to conduct an internal audit review in relation to the applications.

The purpose of an internal audit service is stated by the Institute of Internal Auditors, the peak body representing the profession, to be as follows:

- It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

We note that, whilst the standing committee requested that we appear to give evidence in relation to the ‘probity report’ undertaken by PwC, we did not conduct a probity audit but rather conducted an internal audit review.

We also note that the probity advisor’s report by RSM Bird Cameron dated 17 March 2010, which appears on the department’s website, states that RSM Bird Cameron ‘sighted the unqualified internal audit report prepared by Messrs PricewaterhouseCoopers’. In fact, our engagement was an internal audit review with an agreed scope, and we issued a report of findings, not an opinion.

I will now address the scope of PwC’s work for the internal audit review. The scope of work for this review was discussed and agreed between PwC and Mr David Hodge, the executive director, planning services and development facilitation in DPCD and was outlined in an engagement letter addressed to Mr Hodge. The agreed scope of work under this engagement letter was to:

1. Review and consider the compliance of state planning services, a branch of the department, with relevant requirements under the Planning and Environment Act in its receipt and processing of an application submitted by the applicant for a planning permit in relation to a proposed redevelopment of the Hotel Windsor. This planning permit application is referred to in the engagement letter as ‘the planning application’.

2. Review and consider the advisory committee’s compliance with its terms of reference for the provision of advice on the planning application.

3. Review and consider Heritage Victoria’s compliance with relevant requirements of the Heritage Act in its receipt and processing of a secondary application submitted by the applicant for a heritage permit.

It was agreed that the work would be undertaken in two phases, as follows:

**Phase 1 — Determine compliance obligations**

This phase involved PwC understanding and documenting the key compliance obligations applying to state planning services, the advisory committee and Heritage Victoria in the receipt and processing of planning and heritage permit applications.

**Phase 2 — Review DPCD practices against agreed compliance obligations**

Once agreement was obtained from DPCD management as to the applicable compliance obligations we would review documentation associated with the receipt and processing of the applications to consider compliance with the agreed obligations. Any areas of non-compliance would be identified and reported to DPCD management.
Two areas were specifically excluded from this scope of work:

1. The review did not include an assessment of DPCD’s decision-making processes in relation to the planning application against principles of fairness, transparency and accountability. At the time we agreed the engagement letter with the department we understood DPCD intended to appoint a separate probity adviser to undertake such an assessment.

2. The review did not consider controls and processes performed by the Minister for Planning’s office in making planning decisions.

The engagement letter containing this scope of work was signed by PwC and DPCD prior to the commencement of field work on 3 March 2010.

Our work was conducted at the DPCD offices at level 9, 8 Nicholson Street, East Melbourne, and at the Heritage Victoria offices at level 4, 55 Collins Street, Melbourne.

Our work entailed:

**Phase 1 — Determine compliance obligations**

As noted above, this phase involved us understanding and documenting the key compliance obligations applying to state planning services, the advisory committee and Heritage Victoria in the receipt and processing of planning and heritage permit applications.

These compliance obligations were identified from the *Using Victoria’s Planning System* guide. Published by DPCD, this document is available on the department’s website and is described as:

… a technical guide to interpretation and administrative procedures under the Planning and Environment Act 1987 and the Planning and Environment Regulations 2005 and their interaction with other related legislation and planning schemes.

Using this guide, and with reference to the regulatory provisions specifically noted within it and the advisory committee’s terms of reference, we documented our understanding of the compliance obligations applying to state planning services, the advisory committee and Heritage Victoria in the receipt and processing of the applications.

Once prepared, this documentation was discussed and agreed with DPCD management — being Mr Hodge and Mr Ray Osborne, the director, operations, Heritage Victoria — to ensure accuracy and completeness in identification of the relevant obligations before we began our phase 2 work.

**Phase 2 — Review DPCD practices against agreed compliance obligations**

The work involved the review of supporting documentation associated with the applications retained on file at those premises. As internal auditors we had free and unfettered access to personnel and documentation we deemed relevant to our scope of work.

At the conclusion of this work we had not found any areas of non-compliance with the agreed compliance requirements.

We then drafted a report setting out our findings. In line with our usual practice for internal audit reports, the draft was circulated and discussed with DPCD management to confirm factual accuracy prior to its finalisation. The changes subsequently made did not impact on the findings from our internal audit work.

The report of our findings was issued in final form on 15 March 2010, addressed to Mr Yehudi Blacher, the secretary of DPCD.

If I can now summarise, we were engaged by DPCD as its internal auditor, under the contract for the provision of internal audit services, to undertake an internal audit review. We agreed a scope
of work with DPCD management which we then carried out. The findings from our work were set
out in our report to the secretary of the department dated 15 March 2010.

We have now come to the end of the opening remarks, and we are available to take questions from
the committee.

  The CHAIR — Thank you, Mr Agnoletto. Mr Peake, do you wish to add anything?

  Mr PEAKE — No, thanks.

  The CHAIR — Can I start by asking you about PwC’s role on the panel with the Department
of Planning and Community Development. Is it a common occurrence that you would be engaged
to provide internal audit services? Is that a frequent occurrence?

  Mr AGNOLETTO — Yes, we are engaged as the internal audit service providers for the
department. That is a role we are contracted for three years to perform.

  Mr PEAKE — Just to clarify, we are not on a panel; we are the appointed internal auditor of
the department.

  The CHAIR — Do you undertake audits on a regular basis? Is it ongoing?

  Mr AGNOLETTO — Yes, that is correct.

  The CHAIR — Have you had experience doing previous audits in this planning area, looking
at particular planning applications of this nature?

  Mr AGNOLETTO — No, we have not.

  The CHAIR — So this is an unusual audit that you have been asked to undertake?

  Mr AGNOLETTO — It is an audit that has come up as a management request, as we would
refer to it, whereby the department has asked us to perform specific procedures — a process
compliance review — with regard to this particular application. Our internal audit activity often
includes process compliance internal audit reviews across numerous areas of the department.

  The CHAIR — But not normally planning applications?

  Mr AGNOLETTO — We have not as yet performed one over planning applications. This is a
first.

  Mr PEAKE — So we would have an annual plan that would be agreed with the audit
committee and then we would execute that plan. But in the period since we were first appointed
we have not looked at the planning area. This review came along as an extra request from
management beyond the agreed annual plan.

  The CHAIR — What were the reasons for this particular audit being undertaken? Why were
you engaged to do this particular piece of work?

  Mr AGNOLETTO — It would be a question for the department as to why they specifically
requested us to perform this internal audit. We were engaged to execute on the scope we have
spoken to, and we undertook that scope and reported on it.

  The CHAIR — Did you have an understanding from your firm’s point of view though as to
why you had to do this particular work?

  Mr PEAKE — Management requested that we do the work. The task we were asked to
perform is within the skills set that we have as a firm and we were requested as the internal auditor
to perform an extra review. We did not ask management their motives for asking us to do the work.

The CHAIR — You spoke in your opening statement about the areas that were specifically excluded from the scope of works. In your second point you stated that the review did not consider controls and processes performed by the Minister for Planning’s office in making planning decisions. One of the matters this committee is looking at arises from a document that was released suggesting a particular course of action by the minister’s office surrounding this planning application. Is it fair to say therefore that your internal audit did not look at that matter?

Mr PEAKE — That is correct.

Mr AGNOLETTO — That is correct.

The CHAIR — So the subject matter of whether there was intervention or no intervention by the planning minister’s office in responding to the internal departmental processes around this planning application was beyond the scope of your work.

Mr PEAKE — We were engaged to look at the compliance procedures inside the department, and as we said in our opening remarks, looking at the processes performed by the Minister for Planning’s office was not part of the work we undertook.

The CHAIR — Thank you.

Mr VINEY — In relation to the work you were asked to do, was there any request or involvement from the minister’s office in terms of the scope of works to you?

Mr AGNOLETTO — We had no contact with anyone outside of the department with regard to the scope of work.

Mr PEAKE — So the answer to your question is no.

Mr VINEY — And that includes ministerial staff as well as the minister himself?

Mr PEAKE — That is correct.

Mr VINEY — Was there any attempt to influence your audit process by the minister’s office or the minister?

Mr PEAKE — No, we had no contact with people from the minister’s office.

Mr VINEY — Did you feel that you had unrestricted access to the things you wanted to investigate?

Mr AGNOLETTO — In terms of executing and performing the scope of work we had agreed to, yes, we had free and unfettered access to documents and personnel as relevant to the scope.

Mr VINEY — And as a result of that process you concluded that all of the expected processes for a planning application were followed.

Mr PEAKE — A slight nuance: we found no non-compliance. Your words are a different version; we would not express it that way.

Mr VINEY — You would not express it in those terms.

Mr PEAKE — Yes.
Mr BARBER — The Attorney-General wrote to you with some helpful advice about your testimony today, and I think one of the things he said was that you should not discuss with us any advice you gave directly to the minister.

Mr PEAKE — We gave no advice directly to the minister.

Mr BARBER — Thank you. That was my question. The requirements under the act that you are auditing against — the published guidelines — do they talk about any role specifically for the minister in the process?

Mr AGNOLETTO — Without that guide in front of me it is difficult to answer that question. However, none of the compliance requirements we identified and then agreed with the department involved any requirements as to the minister’s office. We identified requirements as they related to the department.

Mr BARBER — Are you making a distinction there, or was the agreed scope that you comply with relevant requirements under the Planning and Environment Act? You say these compliance obligations were identified from the *Using Victoria’s Planning System* guide published by DPCD.

Mr PEAKE — That is right.

Mr BARBER — So everything that is in that which is a requirement, that is what you are auditing against.

Mr PEAKE — We were auditing against that document as it relates to compliance obligations undertaken by the department.

Mr BARBER — Thank you.

Mr AGNOLETTO — For the receipt and processing of the application.

Mr BARBER — So up to the point where a staffer writes a piece of advice to the minister, which usually would be in the form, I am guessing, of a proposed NOD.

Mr PEAKE — When you say staffer, an employee of the department would have written a document.

Mr BARBER — And there was a proposed NOD — notice of decision?

Mr AGNOLETTO — Our work was up until our report date of 15 March, so we looked at the retrospective process of the receipt and processing of the application. What occurred after 15 March we did not audit and were not involved in.

Mr BARBER — ‘Receipt and processing’, I think that makes it a bit clearer.

Mr PEAKE — Yes.

Mr BARBER — I do not know whether this would be considered a breach of those guidelines or not, but did you discover either any intervention or contact from the minister’s office with the staff who were conducting the processes that you were auditing?

Mr AGNOLETTO — Nothing came to our attention that suggested there was any of the like. The documents that were relevant to our scope we sighted and were able to confirm that the compliance obligations had been met, so nothing came to our attention during the audit to suggest as such.

Mr BARBER — Of that nature.

Mr AGNOLETTO — Yes.
Mr BARBER — By looking at the documents.

Mr AGNOLETTO — By looking at the relevant documents applicable to the scope.

Mr PEAKE — And through discussion with the staff in the department.

Mr BARBER — Given that you were agreeing the scope with David Hodge, who is the executive director of planning services and development facilitation, I presume that means the application was being processed within his unit.

Mr AGNOLETTO — Correct. The planning application — that is right.

Mr BARBER — Okay, because you referred at one point to state planning services, and I understand there are a number of different units that deal with planning applications depending on whether they come in regionally or what category they fall in, so in this case is he the executive director of all planning services units? Do all planning permits come up through that unit?

Mr AGNOLETTO — I believe so, but I will need to take that question on notice.

Mr BARBER — Apart from that Using Victoria’s Planning System guide, there are no other written documents that determine what the audit standard would be here?

Mr AGNOLETTO — No, that is the guide that we were provided with and which is publicly available on the internet site and is the guide that we utilised for this particular review. Our understanding is that there is no other document of relevance to the process.

Mr BARBER — There is no other internal policy manual or procedure manual or any other document that officers use on a daily basis that you were auditing against?

Mr AGNOLETTO — Not that we audited against. The Using Victoria’s Planning System guide was the document we audited against.

Mr BARBER — When you say these compliance obligations were identified using the document, in other words there is no other document that creates other obligations that at least you were interested in.

Mr AGNOLETTO — There were no other documents we were made aware of.

Mr HALL — Thanks, gents, for making yourselves available this morning. Since PwC was first engaged by the department to undertake internal audits — I am not looking for a precise answer but in round terms — how many internal audits would you have undertaken for the department since that period of time?

Mr AGNOLETTO — Our plan each year — and this is an approximate answer; I will need to refer back to documentation on our file — however, it could be anywhere between 15 to 20 reviews per annum.

Mr HALL — Right. I think you indicated to Mr Rich-Phillips that this was the first one relating to a planning application.

Mr AGNOLETTO — Correct; that is right.

Mr HALL — I think it was suggested by — I am not sure whether it was Mr Peake or yourself — that you felt that PwC had the skills set that was capable of undertaking such an audit of this planning process.

Mr AGNOLETTO — Yes.
Mr HALL — Could you elaborate on that, given that this one is the first planning application process you have been asked to provide an internal audit for? Are the skills sets within PwC transferable to other forms of audits, to planning audits as in this case?

Mr AGNOLETTO — We were engaged to perform a process compliance internal audit review. We do have the skills sets available to perform those types of reviews. We were not engaged to second-guess any decisions that had been made during the process; it was purely a process compliance internal audit review that we were asked to perform.

Mr HALL — You also said in your opening statement that field work for this particular audit commenced on 3 March.

Mr AGNOLETTO — Correct.

Mr HALL — You made reference to an engagement letter from the department for this work. What is the date of the engagement letter?

Mr AGNOLETTO — I believe the engagement letter was signed on 3 March.

Mr HALL — The same day you started undertaking the field work?

Mr AGNOLETTO — The same day, yes.

Mr HALL — I am just checking. Did you say it was completed on 17 March?

Mr AGNOLETTO — No, we reported on the 15th.

Mr HALL — You reported on 15 March. Was that the final report, or was that the interim report that you submitted to the department for its comments?

Mr AGNOLETTO — That was the final report.

Mr HALL — The final report on 15 March. What about the interim report submitted to the department for its comment and any factual matters that may have been needed to be corrected?

Mr AGNOLETTO — It was obviously before that date. I cannot recall the exact date; I will need to take that question on notice.

Mr PEAKE — I would say, from memory, it would be two or three days.

Mr AGNOLETTO — It would be two or three days before, approximately.

Mr PEAKE — And it was a draft of the final report. It is not like we had an interim and then a final. We showed them the draft to clarify any factual errors.

Mr HALL — So there was a period of 12 days from commencement to conclusion for that report. In the letter of engagement was there any time frame set on your reporting requirements?

Mr AGNOLETTO — No.

Mr PEAKE — I do not believe there was. I do not believe it had a date by which we had to report.

Mr HALL — And 12 days — is that an expected normal time frame for such a report?

Mr AGNOLETTO — Internal audit reviews vary in length of time depending on the scope involved. That period of time is obviously elapsed days. There is no standard time frame that we allocate for such reviews.
Mr PEAKE — Given we were only looking at one application, it took a lot less than if we had been looking at a large number of applications. That was just the time that was taken to, as we described, document the compliance obligations and then, by reviewing the documentation and having discussions with various parties, confirm that those compliance obligations were fulfilled.

Mr HALL — At the time of your engagement were you informed that the government intended to undertake a probity audit on the same planning application process?

Mr PEAKE — I refer to our opening remarks. At the time we and the department signed the engagement letter our understanding was that a probity adviser would be appointed.

Mr HALL — In terms of the way in which you conducted your internal audit, was there any interaction with the probity auditor through that period of time?

Mr PEAKE — No, there was not.

Mr AGNOLETTO — No, there was not.

Mr HALL — So there were no meetings or discussions about the work that each of you were doing?

Mr PEAKE — No, there was no interaction.

Mr HALL — Is it usual to have a probity audit being undertaken at the same time as an internal audit? Has it ever happened before, to your knowledge, that a probity audit has been undertaken at the same time that you were doing an internal audit on the same matter?

Mr PEAKE — I cannot recall an exact example, but I guess on a long-lived project where you have a probity adviser there may be some internal audit work done during various phases. I could not say it would not happen, but I am not aware of another example off the top of my head.

Mr AGNOLETTO — Likewise.

Mr HALL — I will leave it at that for the time being. Thank you.

Mr TEE — Thank you very much for your evidence this morning. I just want to take you through the steps that the application went through, not with a view to getting any of the details in terms of the outcomes of those steps but just so that we can be assured of the process that has been undertaken. As I understand it, as is usual with this process, the application was received and was registered by the department and that register is accessible to the public. Is that the sort of starting point of the process?

Mr AGNOLETTO — Yes, that is correct. Although our starting point was with regard to advice provided to the applicants prior to their submission.

Mr PEAKE — Then we went to the guidelines, as we described, to identify the compliance obligations, of which there were approximately — —

Mr AGNOLETTO — Thirty-six, from memory I believe.

Mr PEAKE — Thirty-six.

Mr TEE — This is where the applicants are required to display a copy of the application on public notice — the applicants are required to send a copy to the occupiers of adjacent properties and to publish it in the Melbourne Times and the Age. That is the compliance part for the applicants.
Mr AGNOLETTO — Correct. They include some of the compliance requirements we looked at. I do not have all of them in front of me, but they do sound familiar.

Mr TEE — And all of those, to your knowledge, were complied with in terms of your investigations?

Mr AGNOLETTO — The 36 I mentioned earlier were all complied with based on the documentary evidence provided by the department.

Mr TEE — In addition, the City of Melbourne was also advised of the application by the department. Can you confirm that?

Mr AGNOLETTO — Once again, without the file in front of me I cannot recall each and every obligation, but from memory that does sound familiar.

Mr TEE — And then an advisory committee was established by the minister. Can you confirm that there was a public hearing of that advisory committee where parties, including the National Trust and the Melbourne City Council, gave evidence to the advisory committee?

Mr AGNOLETTO — I cannot recall that particular requirement; I will need to refer to our work papers. What we did ensure as part of the establishment of the advisory committee was that it was constituted under the act — I think it is section 151, from memory — and that terms of reference were established and agreed, and that the advisory committee reported back on those relevant terms of reference.

Mr TEE — Part of your remit was to review the processes of the advisory committee, including those matters that we talked about which were part of your investigation.

Mr AGNOLETTO — Our scope, as it related to the advisory committee, was to ensure compliance with the terms of reference.

Mr PEAKE — Yes, so we did not review the workings or the processes of the committee itself; we looked at the compliance obligations of the committee.

Mr BARBER — There are only three under section 151. The three you just said are the only three requirements under section 151.

Mr AGNOLETTO — Correct, and it was really the terms of reference that we focused on in terms of ensuring that the advisory committee had reported back against those terms of reference.

Mr TEE — The Windsor was subject to the Victorian Heritage Register. Did you review the process in relation to the requirements under the Heritage Act for this application? Was that part of your scope?

Mr AGNOLETTO — Of course, it is a separate application to Heritage Victoria, and we did identify and agree a number of compliance requirements under the Heritage Act, and we tested for compliance against those as well.

Mr TEE — And that was, in broad terms, similar to the process that had been previously undertaken by the applicant; namely, that there were notification requirements, consultation requirements and so on.

Mr AGNOLETTO — Without that list in front of me — —

Mr TEE — In a broad sense?

Mr AGNOLETTO — Yes, that does sound familiar.
Mr TEE — Mr Blacher gave evidence here where he said your work effectively covered — this was his evidence but can you just confirm it is the case — the full process involved including the work of the advisory committee as well as the considerations under the Heritage Act. That was really your remit?

Mr AGNOLETTO — As it related to the receipt and processing of the application, that is correct.

Mr TEE — Finally, I want to touch on the issue that Mr Rich-Phillips raised in relation to the fact that the review did not consider controls and processes performed by the Minister for Planning’s office. I think in response to Mr Barber’s questioning you indicated that you found no evidence of third-party interference. You followed the process as it walked through those various steps and there was no non-compliance. I think that was your evidence.

Mr AGNOLETTO — To clarify that point, we were not engaged to identify any such matters of interference et cetera. We were engaged to perform the process compliance review, and in doing that nothing came to our attention that suggested there was any interference, but it was not a particular scope item under our engagement to focus or look for such matters.

Mr TEE — Although if you had found any interference, then that would be a matter on which you would have reported.

Mr PEAKE — We would have, yes.

Mr AGNOLETTO — Yes.

Mr PEAKE — And we did inquire of our staff. We were not present at all the conversations they had with representatives of the departments, so we inquired of our staff firsthand whether they had heard or seen anything that suggested interference. They confirmed that that was not the case.

Mr KAVANAGH — Thank you for coming today. I do not have any questions.

Mr GUY — Thank you for coming in today. Could I get this straight: PwC was engaged to do an audit of departmental processes in relation to the Windsor application?

Mr AGNOLETTO — Correct.

Mr GUY — The compliance with departmental processes that were in place and whether or not the department had complied with its own processes in relation to the application.

Mr PEAKE — Compliance obligations, yes.

Mr GUY — Yes, that is right. Can I ask: how many people in the department did you actually speak to, in a round figure?

Mr PEAKE — Approximately?

Mr AGNOLETTO — Approximately, it might have been 5, 6 or 7, but I would need to refer back to my files for the exact answer.

Mr GUY — That is okay. How long did it take you to complete that audit?

Mr AGNOLETTO — We commenced on the — —

Mr PEAKE — Twelve days.

Mr BARBER — How many hours did you bill? That is what he is asking.
Mr GUY — I was not going to ask about the bill. I was actually just trying to get a scope of how, given that you were clearly looking at just a fraction of the planning process, from our point of view, and that is just the departmental compliance, as to how large that would actually be in terms of — —

I am not asking you to reveal a commercial cost, but was it obviously fairly large, or was it pretty standard to look at things such as the procedures, the people you need to talk to? It was fairly standard is what I am saying. It was not anything overly complex that the scope you were given was asked to look at.

Mr AGNOLETTO — No, it was not a complex scope that we were asked to undertake. How many hours we actually incurred, I do not have in front of me. However, that 12 days, as I said earlier, is an elapsed time. We were not on site for the entire 12 days of course.

Mr PEAKE — Whilst we only looked at the one application, the starting point of reviewing and documenting and then concluding on what the compliance obligations were, would have been the same work required if we were testing a large number of applications.

Mr GUY — Sure, so in that process what did you actually look at? Did you look at any letters, emails or was it simply departmental file notes or was it the draft reports? What is the kind of material that you would have seen in that time?

Mr AGNOLETTO — It was a range of documents and a number of the ones you have already mentioned like letters and so forth.

Mr GUY — Yes, and who was it you actually spoke to? Only departmental staff?

Mr AGNOLETTO — Correct.

Mr PEAKE — Yes, because Heritage Victoria is — —

Mr GUY — Heritage Victoria and departmental staff?

Mr PEAKE — Yes.

Mr GUY — When you said before that you did inquire about staff in relation to what Mr Tee stated, was that ministerial staff when you said that you had inquired about staff — that is, the process with — —

Mr AGNOLETTO — Our own staff

Mr GUY — All right, okay. So you asked your own staff whether they had encountered anything they thought was in non-compliance of the departmental process and they said no?

Mr PEAKE — That is correct.

Mr AGNOLETTO — Yes.

Mr PEAKE — Including whether they had become aware of any type of interference with the application from outside the department.

Mr GUY — I am just trying to put this into perspective because, in fairness, you have made it very clear — —

Mr VINEY — You would, seeing it is a fairly clear answer: there was no interference.

Mr GUY — No. Mr Viney, the witnesses have been very clear. In the processes they were given to look at — that is, the operation of the department — they have looked at the department, and from the department’s point of view there was nothing from the department. But as you know,
Mr Viney — I will answer this by way of a question — the minister has stated that he has appointed you as a probity auditor to examine the probity of the process. What I am trying to establish this morning, and what I am seeing clearly, is that you were not a probity auditor, you were an auditor simply to look at the processes of the department and whether they were followed. They are two very different things.

Mr PEAKE — That is correct. In our opening remarks we clarified that we were appointed as internal auditor to conduct an internal audit review, and our understanding at the time we were appointed was that a separate probity adviser would be appointed by the department.

Mr GUY — Do you get that, Mr Viney?

Mr VINEY — You are not to lecture me. You ask questions of the witness.

Mr GUY — You have not had a good morning, so I will continue.

Mr VINEY — I have had a perfectly good morning, thanks.

Mr GUY — As I said, I just wanted to establish what it is you actually looked at. I think you have done that very clearly and very succinctly, so I do not have any more questions, thank you.

Mr BARBER — Your draft and final reports were obviously sent to the department, not to the minister’s office.

Mr PEAKE — Correct.

Mr AGNOLETTO — Correct.

Mr BARBER — You forwarded them only to the department.

Mr PEAKE — That is right.

Mr BARBER — And did you say there was no draft or proposed notice of decision on the file at the point when you were looking at it?

Mr AGNOLETTO — I cannot recall without the work papers in front of me; However, we performed our field work up to 15 March, and anything after that date we obviously have not seen or been involved with from an internal audit perspective.

Mr PEAKE — I do not believe it was on the file, but we cannot be sure of that.

Mr AGNOLETTO — Yes.

Mr BARBER — But the NOD is the final step in the process really, isn’t it? It has either been handled under delegation, in which case it is a notice of decision by the more junior person, or it is a proposed NOD to the minister.

Mr PEAKE — That is correct. I guess the distinction I would make, which I think you referred to earlier, is that we looked at the receipt and processing of that application but not the decision regarding the application, so that was not within the scope of the work we undertook.

Mr BARBER — Non-compliance in your world is that they never put up a yellow notice or they failed to, somehow, file all relevant objections?

Mr PEAKE — I am just not sure — is that a question?

Mr BARBER — Yes, pretty much.

Mr PEAKE — Can you restate the question, sorry?
Mr BARBER — Non-compliance: what forms non-compliance? The section of the act not adhered to?

Mr PEAKE — If there was no evidence of the compliance having occurred, either in documentary form or in oral assertions.

Mr BARBER — So there is documentary form that they published a notice advertising the development — the proposal — which they are required to?

Mr PEAKE — Yes.

Mr BARBER — They are also required to consider all relevant submissions in making their decision. Now as far as you are aware all relevant submissions are on file, but you do not know what happened when they made the actual decision.

Mr PEAKE — That is certainly correct. We received representations from management that all the documentation was within the file that we looked at.

Mr BARBER — The application is required to be made public, but that is not to say that the file is public. If the department, for example, makes a request for further information from the applicant, the public does not know that the request for further information was sent. It would be on the file though.

Mr AGNOLETTO — Correct.

Mr BARBER — You said there was a pre-application meeting. Prior to the application the public is not actually involved because that is a pre-application process. I am just asking whether compliance with the act means that the application is available to the public but not all the departmental correspondence and to-and-fro that is going back and forth?

Mr PEAKE — I think that is correct. In conducting our review we saw the whole file.

Mr AGNOLETTO — As provided to us.

Mr GUY — I just wanted to ask: the letter of engagement was sent by Yehudi Blacher to you on this internal audit?

Mr PEAKE — No, it was actually sent on our letterhead addressed to Mr David Hodge.

Mr GUY — No, the letter of engagement from the department for this specific review — your audit.

Mr PEAKE — It was actually on our letterhead. We discussed it with them, documented the scope and we wrote to the department and then they signed it as evidence that they agreed with the scope.

Mr GUY — And that was David Hodge?

Mr PEAKE — Yes.

Mr VINEY — I just want to clarify some of the things you said about how there was no evidence of undue interference. I was not sure whether I heard you say that you asked your staff.

Mr PEAKE — That is correct.

Mr VINEY — So you had staff who were interviewing people in the department, looking at documentation, which you as senior partners were overseeing; I guess that is the way the system works.
Mr PEAKE — That is correct.

Mr VINEY — Mr Guy asked you questions in relation to the difference between auditing the process and a probity auditor. What I am interested in seeking from you is that obviously you decided somewhere along the line to ask your staff who were doing all of the detailed investigation whether they were aware of any undue interference. I guess that might normally fall into a probity auditor’s role but it seems to me that you regard it as a part of your activity if you were to ask your staff that question.

Mr PEAKE — I think strictly speaking it went beyond the scope of the engagement letter, but we thought it was prudent to do so — just to enquire of them whether they had heard anything from anyone they had spoken to or seen anything that led them to have any concerns of influence coming from outside the department. They had none.

Mr VINEY — If something improper had occurred, would it be usual in your experience for your staff to have the ability to pick it up, either through a nuance or just looking at something, being uncomfortable with it and deciding to have a bit of a closer look? Is that what you would expect to happen in normal circumstances?

Mr BARBER — Is ESP part of your skill set?

Mr VINEY — I am not talking about ESP; I am talking about whether if you are doing an audit, you would expect — —

I will ask it in a more straightforward question for Mr Barber’s benefit. In your experience, if something improper had occurred, would you expect the skill of your staff to be good enough to identify that there was potentially something worth further investigation?

Mr PEAKE — Only if it presented itself in a documentary form or was raised in discussion with one of the departmental representatives.

Mr VINEY — Correct, if it was raised in discussion.

Mr BARBER — A cheque stapled to the back of the file.

Mr GUY — Here is the brown paper bag.

Mr VINEY — Apart from the smart alec asides, what I am trying to get at is are your staff skilful enough to ask the questions that are going to provide someone with an opportunity to raise a concern?

Mr PEAKE — That is a hard question to answer. I guess the scope of the work we undertook was not a forensic review or anything of that nature, but had they become aware of anything I would expect that they would have brought it to our attention. But we actually asked them the question just to be doubly sure.

Mr VINEY — You decided to directly make sure. Roughly how many staff in the department would they have interviewed, do you know? Is it three or a dozen or — —

Mr AGNOLETTO — I think I might have made reference to a number of approximately 5 to 7 earlier, but once again we would need to refer back to our files on that.

Mr VINEY — Presumably they go through various levels within the department that have handled things.

Mr AGNOLETTO — Correct.
The CHAIR — If there are no further questions, gentlemen, thank you for your evidence here this morning. The committee appreciates it and your opening statement. There are a couple of matters that you took on notice that the committee secretary will follow up on the response to in due course. You will also receive a draft version of the transcript in the next couple of days for any corrections you wish to make. Thank you for your time this morning; the committee appreciates it greatly.

Witnesses withdrew.