STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

Inquiry into departmental and agency performance and operations

Melbourne — 6 April 2010

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Ms C. Broad Mr G. Rich-Phillips
Mr M. Guy Mr M. Viney
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Witness
Mr S. Marks, director, probity services, RSM Bird Cameron (sworn).
Mr Marks, I now invite you to make an opening statement if you wish. The committee will then proceed to questions.

Mr MARKS — I have prepared an opening statement, which I think has been circulated to you. I will read it for the purposes of the record.

I am Stephen Marks, director of probity services for RSM Bird Cameron. I am a fellow of the Institute of Chartered Accountants in Australia. I have acted as a probity practitioner throughout Australia for some 15 years.

In my capacity as a member of the Victorian government’s probity panel I, together with a colleague, attended a meeting with representatives of the Department of Planning and Community Development on 3 March 2010 to discuss the possibility of providing probity services to the department in regard to the Windsor Hotel redevelopment application.

Following that meeting, we were requested by letter on 3 March 2010 to provide a quotation for probity services to the department for:

- advice on the decision-making process for the planning application and any relevant options open to the minister; and
- ongoing advice on the application process from this point forward.

We responded with our proposal on 10 March 2010.

Our proposal was accepted by the department on the following day.

We were not requested to, and nor were we in a position to, undertake a probity audit of the events which occurred prior to the date of our appointment, nor was it part of the scope of our engagement.

In accordance with our brief we provided probity advice to the department on the decision-making process. We reviewed the advice to the minister from the department to ensure that it was acceptable from a probity perspective and consistent with supporting information.

We submitted our report to the secretary of the department on 17 March 2010, which we understand was released by the minister.

The CHAIR — The committee appreciates your attendance this morning. Can I start by asking you to draw a distinction between a probity audit and the work you undertook as a probity adviser, given your professional background? Could you just explain the difference, please?

Mr MARKS — The terms are slightly interchangeable in a sense, in that a probity adviser and a probity auditor will both provide a probity report at the end of the process. But a probity adviser is normally brought in to provide advice to a government department on a particular process, whether it be a tender, an asset sale or something of this nature. The probity audit is regarded, I
suppose, as a more structured process where you would check the process in its entirety and provide a report at the end of that process.

Today probity is regarded as being undertaken by probity practitioners who are able to undertake both roles.

The CHAIR — But as you indicated in your statement, your role was not to undertake that probity audit.

Mr MARKS — Correct.

The CHAIR — Not to look back at what had occurred through this process.

Mr MARKS — Correct.

The CHAIR — It was merely to advise the government going forward from 11 March.

Mr MARKS — Correct.

The CHAIR — You indicated in your statement:

We were not requested to, and nor were we in a position to, undertake a probity audit …

Why were you not in a position to undertake a probity audit? Why do you say that?

Mr MARKS — I think the reality of it is that to go back and review what has occurred in the past in those circumstances of something which has been widely publicised was very difficult to do, because we would have literally been relying on what people were saying. We would not have observed the process. We would not have been a party to discussions. We would not have seen what had gone on. To go back from that point would have been an extremely difficult task to undertake.

The CHAIR — So from a practical point of view, as a probity professional, for you to undertake a probity audit you basically need to be appointed at the time the process commences.

Mr MARKS — Correct.

The CHAIR — And not come in halfway through and then seek to look back.

Mr MARKS — Correct.

The CHAIR — Is there a precedent for probity audits being undertaken retrospectively?

Mr MARKS — I am sure there is. I would say to you that we tend not to undertake them retrospectively unless we are specifically instructed to do so, primarily because I think it is very hard to come into a process at the end or after an event and then to examine the probity of that process.

The CHAIR — As part of your engagement with the department was the prospect of a retrospective probity audit discussed?

Mr MARKS — No. In fact we were quite specific in our own view that we felt that if we were to be engaged, we would be engaged going forward and not going backwards.

The CHAIR — Are you aware of any probity audit being undertaken by any other party into this application?

Mr MARKS — No.
The CHAIR — In relation to the nature of the material on the issue you provided probity advice on, is it usual for your firm to provide probity advice around the handling of planning applications?

Mr MARKS — We have provided advice previously to the department. I am not specifically aware of anything in regard to a planning application per se, but because our probity work relates to process it is not unusual to look at any form of government process that has occurred or does occur.

The CHAIR — Can you give the committee, please, an understanding of the scope of the advice you gave as a probity adviser?

Mr MARKS — In this particular instance?

The CHAIR — In this particular instance.

Mr MARKS — In this particular instance our brief, as I have said in my opening statement, was quite specific, and that was to provide advice on the decision-making process for the planning application and any relevant options open to the minister, and ongoing advice on the application process from this point forward. So effectively what we undertook was a review of the brief that went to the minister, and we ensured that from a probity perspective that met all the requirements that it should have met. By that I mean it was defensible in that the minister was provided with all the documentation and information that should have placed him in a position where he could make a decision.

The CHAIR — By ‘brief’, you are referring to the report?

Mr MARKS — To the letter with our instructions from the department.

The CHAIR — Sorry, but that particular brief you are referring to is the planning panel’s document that goes to the minister?

Mr MARKS — No. What we reviewed was the brief from the department to the minister.

Mr VINEY — In terms of the brief that goes to the minister, that is presumably the brief in which the department would highlight any issues and summarise the opinion of Heritage Victoria and the processes of the panel, and presumably that brief then makes a recommendation to the minister as to his decision — or a series of recommendations.

Mr MARKS — Mr Viney, I do not think I am in a position to comment on the brief per se.

Mr VINEY — No, I am asking what would normally be covered in a brief, because I am following from Mr Rich-Phillips.

Mr MARKS — Again — and I do not wish to be evasive on this — I have only seen the specific brief to which we are referring, and I think you need to ask the department what would normally go into a brief of that nature.
Mr VINEY — But it was your conclusion about the brief that what was required to be advised to the minister had probity; I guess that was the conclusion you drew?

Mr MARKS — Yes. One of the main tenets of probity is to ensure that a process or document is defensible and transparent, and I reviewed the document that went to the minister to ensure that in my view that document as a document was defensible and transparent and that the information contained in that document was sufficient to enable the minister to make his decision.

Mr VINEY — And that was your conclusion?

Mr MARKS — Correct.

Mr BARBER — Whether you are giving advice or doing an audit, that has to be against a standard? You have to audit against a standard? Yes?

Mr MARKS — Yes, but it is a standard that has been established by practice rather than by any statute or anything of that nature.

Mr BARBER — Whose practice?

Mr MARKS — I suppose what you would say was best probity practice.

Mr BARBER — The practice of practitioners like yourself?

Mr MARKS — Correct.

Mr BARBER — Is there somewhere I can go to read it? Is there a textbook I can pull off the shelf?

Mr MARKS — I do not believe there are any textbooks per se, but there are a number of articles which have been written and a number of booklets prepared. In fact Treasury has a number of documents on the VGPB website which would give you access to that information.

Mr BARBER — VGPB would have documents?

Mr MARKS — The Victorian Government Purchasing Board.

Mr BARBER — Would they have relevant material to the progress of a planning permit?

Mr MARKS — No, their documentation would be more related to discussions around probity and the panel, on the workings of the panel and the workings of the practitioners.

Mr BARBER — Under the Local Government Act, for example, it is prohibited for a local councillor to seek to improperly direct an officer of that council who is dealing with a planning permit, for example. That councillor legally cannot ring up and say, ‘Mate, I think you should recommend this because that’s the way we’re going to vote’. But there is no such standard, certainly not a statute, that exists for the way the bureaucracy makes its decisions — all sorts of decisions?

Mr MARKS — There are a number of documents which refer to issues such as conflict of interest and things of that nature, which I think you will find on that website.

Mr BARBER — A code of conduct for public servants?

Mr MARKS — The code of conduct for public servants is a different document again.

Mr BARBER — Does it contain material relevant to an officer’s work on a planning permit, though?
Mr MARKS — I would have to take that one on notice.

Mr BARBER — I am just interested in finding out what body of work is the standard against which you decide that something is good probity or you are not so sure about it. What is an example of non-compliance?

Mr MARKS — The most common example of probity issues that we come across are conflict-of-interest-type situations, where one would have to look at the particular situation to establish whether or not a conflict of interest existed, whether it was an actual conflict or a perceived conflict, and then make a judgement against that. So a lot of what we have to do is make a judgement call against the facts.

Mr BARBER — So you say one of the things you have to ensure is that the advice going to the minister is defensible and transparent. What is the sort of standard for ‘transparent’?

Mr MARKS — ‘Transparent’, I think, is what a common person would regard as transparent and something that is, I suppose, by definition, not deceptive or hiding something.

Mr BARBER — But in this case, because it is not a local council dealing with it, the actual file is not a public file. The application is required to be public, but any correspondence going back and forth from anybody, including the applicant, to these officers that might have formed part of the decision is not transparent except to the department and the minister; yes?

Mr MARKS — As I understand the situation, what occurs between the department and the minister at that level is covered by executive privilege.

Mr BARBER — So what is the transparent bit?

Mr MARKS — The transparency from my point of view, and I can only relate it to the probity point of view, was to ensure that the minister was in possession of the full facts to enable him to make a decision, so that he had presented to him a brief which had all the facts contained in it and the relevant documentation which enabled him to then form a view.

Mr BARBER — The Attorney-General wrote you a letter before your hearing here today and said that you should not — if I am understanding it correctly — discuss with us the nature of the advice that you sighted or the advice you gave to the minister.

Mr MARKS — I think the letter, which I have a copy of obviously, says that — —

Mr TEE — I think we have a copy as well.

Mr MARKS — I think they were circulated. The letter, I think, states that if a question is raised in regard to the content of the advice, then that should be taken upon notice, but then it goes on to say that no claim for executive privilege would be made in relation to my opinion or the probity of the advice of the minister or the probity of any of the other documentation or processes that I have reviewed.

Mr BARBER — Your report has been released, but your advice on probity is advice to the department or to the minister?

Mr MARKS — To the department.

Mr BARBER — So you did not actually advise the minister separately or in parallel?

Mr MARKS — I had no involvement with the minister whatsoever.

Mr BARBER — I asked the secretary of the department the same question, but is the role of ministerial advisers in appearing to speak for the minister? Sometimes maybe the question is
Mr MARKS — I do not believe I can comment on that. I do not think that is a probity issue that I can comment on.

Mr BARBER — It is not a probity issue?

Mr MARKS — What transpires between the minister and his advisers is not something that I have been party to as part of this process.

Mr BARBER — No, between the advisers and public servants who are dealing with a matter?

Mr MARKS — All I can relate to is what occurred in this particular instance, and my involvement was purely related to the brief which went to the minister. I have no knowledge of any involvement between the department and any advisers other than the minister.

Mr BARBER — I am asking you a two-part question: one is if there was such contact going back and forth, would you consider that to be a potential probity issue; and, two, did it happen?

Mr MARKS — I cannot tell you whether it happened.

Mr BARBER — Why not?

Mr MARKS — Because my involvement, as I have said, was with the department, and what the department did with the minister was between the department and the minister, not between me and the minister. I did not have any involvement in that, so I have no knowledge of what happened once I had reviewed my document, whether that went to the minister or — —

Mr BARBER — No, I am talking about prior.

Mr MARKS — Again, I have no comment on what happened prior, because that was not part of my brief.

Mr BARBER — But are there any guidelines for public servants in the way they would deal with the minister’s office ad hoc?

Mr MARKS — I am not familiar with any, but that does not mean they do not exist.

Mr BARBER — If you are not familiar with them, then that means they do not form part of the body of what you call probity of practitioners?

Mr MARKS — They are not something that I would have dealings with as part of my probity processes.

Mr BARBER — There have been three or four major parliamentary inquiries at a state and federal level that have looked at the issue of when public servants give advice to ministerial advisers and the other way around. I agree with you it is an open question. I am just asking you whether it is something that forms your body of practice when it comes to the issue of probity.

Mr MARKS — Again, it is something that I do not get involved in, because my involvement is with the department, and that is where my involvement ceases.

Mr HALL — Thanks, Mr Marks, for your time this morning. In your opening statement you suggested that on 3 March this year you, together with a colleague, attended a meeting with the department. First of all, obviously it was at the invitation of the department for you and your colleague to attend.
Mr MARKS — Correct.

Mr HALL — Your colleague being a colleague from RSM Bird Cameron?

Mr MARKS — Correct.

Mr HALL — Were any other members of the government’s probity panel — any other companies, to your knowledge — invited to submit a tender for this work?

Mr MARKS — I am not aware of whether they were or they were not.

Mr HALL — Okay. So it was just you and a colleague from your company. You made it very clear today that your role was to undertake a review of the brief compiled by the department that went to the minister in respect of this planning application. Does your work start once you have access to that brief?

Mr MARKS — In this instance it did.

Mr HALL — How long after 11 March, the acceptance date of your offer to undertake this work, was that brief made available to you?

Mr MARKS — That brief would have been made available to me in the two or three days prior to 17 March.

Mr HALL — And in that two or three-day period then, typically what sort of processes would you have employed to undertake the probity advice on that brief?

Mr MARKS — The first thing I did was review the brief, and then I examined the supporting documentation to which my report refers, which went with the brief. I reviewed the brief to see the way in which it was worded and to ensure that all the facts were presented in that brief in an open and, as I said, transparent manner so that the minister was in a position to make a decision. We reviewed both that brief and the supporting documentation that was provided with it.

Mr HALL — And in that work, how many employees of your company were involved in that?

Mr MARKS — I did it personally.

Mr HALL — You were the only person who undertook that?

Mr MARKS — Correct.

Mr HALL — How many people within the department would you have needed to — or in fact did — discuss this brief with to ascertain the information that you needed?

Mr MARKS — Over the period of that time I would have discussed it with five or six.

Mr HALL — And you had full access to the necessary documentation that you felt was needed to substantiate your brief?

Mr MARKS — I did.

Mr HALL — I just wanted to ask you a question about evidence the committee heard this morning, and obviously you are unaware of comments that were made by the people providing internal audit services to the department. I just want to quote for you from their opening statement. They said in terms of their internal audit work:

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.

Your brief was therefore pitched or assessed against those principles of fairness, transparency and accountability?

Mr MARKS — Yes.

Mr HALL — All three?

Mr MARKS — Yes.

Mr HALL — And in respect of each of those criteria — fairness, transparency and accountability — they contributed towards the final report that you made to the department?

Mr MARKS — Correct.

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

Mr TEE — I just want to understand a bit more the role that you play in terms of making sure that the brief is defensible and transparent. I think they were the words that you used. I take it that means that you review the brief and make sure that the material that is provided to the minister is relevant to his decision making in that it does not, for example, then contain a matter that is irrelevant. Is that the nature of the sort of exercise that you do?

Mr MARKS — Basically. I ensured that he was provided with all the various reports and submissions and everything else that was relevant to the decision-making process so that he had a full brief of everything so he could form a view.

Mr TEE — Part of your role is to make sure that material is not included which is, I suppose, unfounded or prejudicial and which does not have a basis.

Mr MARKS — Correct.

Mr TEE — Part of your role would then be to make sure that, if there are irrelevant views — views that should not be put in your brief — they are not included.

Mr MARKS — Correct.

Mr TEE — Thank you.

Mr KAVANAGH — Thank you, Mr Marks, for your time today. You reported on 17 March, and the date of your appointment was 11 March. Is that right?

Mr MARKS — Correct.

Mr KAVANAGH — You have said that you did not undertake a probity audit of the events which occurred prior to the date 11 March, so you were restricted to looking at events only between 11 March and 17 March; is that right?

Mr MARKS — I am not sure of the word ‘restricted’, but the fact is that was our brief, and our remit was to undertake work during that time.

Mr KAVANAGH — You did the work during that time but you only looked at events in that period; is that right?

Mr MARKS — As part of the review of the brief to the minister we also had access to the documents which I have referred to in the report, such as the report by Heritage Victoria, the panel
report and everything else, which all occurred prior to that time, but we only undertook work during that time frame.

Mr KAVANAGH — Why do you say that you only looked at events in that period?

Mr MARKS — We did not go back and look at anything that had occurred prior to that.

Mr KAVANAGH — But you looked at the documents relating to a period prior to that.

Mr MARKS — We looked at the documents that supported the brief to the minister, that formed part of the brief, which of course included the documents I have mentioned in my report.

Mr KAVANAGH — Thank you.

Mr GUY — Thank you for coming in. I know you are probably busy, so I appreciate your time. It is being stated that your appointment and your report clears every aspect of probity in relation to the Windsor Hotel redevelopment. Would you say that is an accurate statement?

Mr MARKS — I cannot comment on a statement of that nature other than to say our report, I think, was very specific in what it said. How somebody interprets it one way or the other is not for me to comment on.

Mr GUY — If I could just again clarify, what is the material you actually saw that was dated prior to 11 March 2010?

Mr MARKS — What I have referred to in my report specifically: the planning scheme permit application, the Heritage Victoria report, the PricewaterhouseCoopers report and the report by the review panel. But just to explain, I wanted to make sure as part of the transparency that the minister was provided, as part of the brief, with all the documentation that was part of it.

Mr GUY — So anything dated prior to 11 March — for example, any letters or emails between staff — you were never presented with any of that.

Mr MARKS — I did not see anything, no.

Mr GUY — Departmental file notes?

Mr MARKS — Only if the departmental file note related to the brief per se.

Mr GUY — Any media plans?

Mr MARKS — No.

Mr GUY — Nothing. So in your probity work you were never given the scope to examine any government media plans that related to the Windsor Hotel redevelopment.

Mr MARKS — That is correct.

Mr GUY — Can I ask, did you actually speak to many departmental officers themselves?

Mr MARKS — As I said earlier, I would have probably spoken to six different departmental officers at different times.

Mr GUY — Were any government ministerial advisers?

Mr MARKS — No.

Mr GUY — In your report which was given back to the department you say:

… from a probity perspective in that, it is consistent with the supporting information.
Again I just want to confirm this. What you are saying is, and I am not trying to put words in your mouth so I will ask you just to clarify it, that the material you were the presented with — the material that has gone to the minister that you have sighted — in effect one matches the other. So the material that has gone to the minister that has been provided by the department, what they have said has gone to the minister, has gone to the minister and he has based his evidence off the material provided, as stated.

Mr MARKS — Sorry, I am not quite sure of the question.

Mr GUY — In the last paragraph of your report where you are saying:

… we are satisfied the advice to the minister is acceptable from a probity perspective —

you did not look into the background of the formation of that advice. You looked into whether the advice as stood and the advice as presented to the minister were —

Mr MARKS — Consistent.

Mr GUY — Were consistent.

Mr MARKS — Correct.

Mr GUY — That is right. That is what I wanted to ascertain. Who was your contact point in the department? Did you have a specific contact point?

Mr MARKS — My specific contact point was David Hodge, the executive director.

Mr GUY — I have no further questions. Thank you.

Mr KAVANAGH — You have said you did not look at any media plans relating to the development so if there was one that said there was an intention to create a sham process or to pull a trick on the people of Victoria, to engage in duplicitous behaviour, you would not have even looked at that and that is not included in your report; is that right?

Mr MARKS — As I have previously said —

Mr VINEY — You would not get away with that in a court of law.

Mr MARKS — I reviewed the brief.

Mr KAVANAGH — It is not a court of law.

The CHAIR — Sorry, Mr Marks, please continue.

Mr MARKS — I reviewed the brief, and unless it formed part of the brief, then I would never have seen it.

Mr TEE — I am just picking up the point Mr Guy made. Part of your role in terms of speaking to those five or six departmental officers was to make an assessment as to what was relevant and what was irrelevant in terms of what had been forwarded to the minister; is that right?

Mr MARKS — Primarily because I wanted to make sure that the minister was in full possession of the facts to enable him to make a decision.

Mr TEE — That is right. So in speaking to them you got an assessment as to the process, you got an assessment as to what was available, and that helped you make an assessment as to what was relevant in terms of what should go to the minister.

Mr MARKS — Correct.
Mr TEE — What you have signed off on then is that you had discussions with department, you then formed an independent view based on those discussions that the material that went to the minister was the material that should go to the minister — it was relevant to the minister’s decision making.

Mr MARKS — Correct.

Mr BARBER — What we know is that this media adviser wrote a memo saying, ‘We are going to rig this process to make it look like we are listening to people’. The minister has not been able to tell us or has not stated publicly that she was on her own or she was not on her own. He has not said whether other ministerial advisers were involved.

Mr VINEY — He was here, ready to answer your questions.

Mr BARBER — And he has not said whether any of his advisers spoke to anybody in the department. She might have just been making this up or she might have been talking to other advisers who could have been talking to people in the bureaucracy saying, ‘This is the way we want to go’.

Mr VINEY — Is this a question or is this just a summation of your report?

Mr BARBER — But what you are telling us is that you have not inquired into whether those advisers contacted departmental staff as part of this proposed conspiracy or whatever it was she called it, because if that had happened, that would have been against the principles of fairness and transparency and quite possibly accountability. You have not looked behind the advice to see whether any of that contact was going on between the minister’s office and the six or seven people who were involved in preparing the advice. Is that correct?

Mr MARKS — So — —

Mr BARBER — You have not looked behind the documentation that you have detailed in your report that you looked at, that formed part of the advice. You have not looked behind that to see whether there was any side channel going on that might have been influencing the material the minister was going to see.

Mr MARKS — As I said in my opening statement, my brief from the department was to provide advice on the decision-making process and ongoing advice on the application process from that point forward.

Mr BARBER — But you knew how this whole thing had come to be on your desk, right? There was a cloud put over the decision making by an adviser who suggested that the minister’s office was going to run a fake consultation and you never straight up asked any of those six or seven people, ‘Have you had Peta Duke on the phone or have you had a ministerial adviser on the phone suggesting that we want this to go a certain way?’. You never asked that question of those people?

Mr MARKS — It was not part of my brief.

Mr BARBER — Fair enough.

Mr KAVANAGH — In terms of this memo, it did not just propose a process, it said that something had already been decided — that is, to pull this sham. Given that, would you not look into that as part of the process to see whether that decision had already been made or not?

Mr VINEY — It did not say that at all, Mr Kavanagh. That is not correct. That is not a correct portrayal of the email.

Mr KAVANAGH — It said the current strategy is — —
The CHAIR — I have the document here.

Mr BARBER — They were going to put the independent panel report out for further public consultation, which would have required the department to be involved, and after they did that they were going to say, ‘Hang on. We have had another look at this and now we are going to oppose the development’.

The CHAIR — There is the relevant reference, Mr Kavanagh.

Mr KAVANAGH — It says, ‘Strategy at this stage is to release it’. Obviously that email suggests that a strategy had already been decided upon and the process that you were looking at was not really relevant if some other things had been preceding it that you did not know about. Was it not worth your while to go and look at those things that had happened before and whether decisions had already been made?

Mr MARKS — As I have said a number of times, my brief was as per what I have said in the opening statement.

Mr KAVANAGH — So your brief did not allow you to look at that document.

Mr MARKS — I was never engaged to do that.

Mr KAVANAGH — Thank you.

Mr VINEY — Can I just ask, in following up Mr Kavanagh’s question, if such a process occurred where the independent panel’s report was put out for further consultation, presumably that would have been obvious to you in your review of the documentation. If that had occurred. I think it would be obvious to everyone, but I am asking whether if it had occurred, it would be.

Mr GUY — It is hypothetical; you cannot ask a hypothetical.

Mr MARKS — In this particular instance it did not occur.

Mr VINEY — Correct. That was the essence of my question. That proposal, as presented by Mr Kavanagh, did not occur, and there was no evidence that it occurred in your review of the documentation. The proposal to put out — —

Mr GUY — They did not look at it.

Mr MARKS — I am sorry, I am not clear on the question.

Mr VINEY — The proposal Mr Kavanagh just put to you that there was planned to be a further consultation on the independent panel process — that did not happen.

Mr MARKS — I do not know any more — —

Mr VINEY — There is no evidence to you that it happened.

Mr GUY — He was not asked to look at it.

Mr MARKS — I have not looked at anything prior to the date of my appointment, so whatever occurred prior to that date I cannot comment on.

Mr VINEY — But if part of your process — —

Mr GUY — It is like saying, ‘Have you looked at the Bolivian budget?’.
Mr VINEY — If part of your process was to review the brief to the minister and it included a review of the independent panel report, which I think you have included in your report as one of the documentations that you reviewed — —

Mr MARKS — Correct.

Mr VINEY — If there had been a process post that that was a public consultation process about that report, that would have become apparent to you in your review of the probity, would it not?

Mr GUY — This is hypothetical, Chair.

Mr MARKS — I am not sure if you are asking me something hypothetical or — —

Mr VINEY — I will ask you in a more straightforward way. In your review of the documentation, did you find any evidence that the report of the advisory committee was put out for further public comment? Was there any evidence that that took place?

Mr MARKS — Again that gets back to that question that I have been instructed by the Attorney-General to take on notice in regard to anything included in the report itself.

Mr VINEY — Okay.

Mr BARBER — The advice to the minister, you mean?

Mr VINEY — I am not asking for the advice to the minister, I am asking about whether Mr Marks found any evidence that a sham consultation took place.

Mr GUY — He was not asked to look at it.

Mr BARBER — He just said the report but what he meant was the advice to the minister.

Mr GUY — He said that; it was very clear.

Mr BARBER — He is not allowed to talk about what was in the advice.

Mr GUY — It was very clear.

The CHAIR — Do you have a further question, Mr Viney?

Mr VINEY — No.

The CHAIR — If there are no further questions, Mr Marks, thank you for your evidence this morning on your probity report. The committee appreciates your attendance here. I think there may have been one matter taken on notice that the secretary will follow up in writing. We will have a draft version of the transcript to you in the next couple of days for any corrections.

Committee adjourned.