



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES  
COMMITTEE

**Reference: Australian Law Reform Commission**

FRIDAY, 11 FEBRUARY 2011

CANBERRA

BY AUTHORITY OF THE SENATE



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## **SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**

### **REFERENCES COMMITTEE**

**Friday, 11 February 2011**

**Members:** Senator Barnett (Chair), Senator Crossin (Deputy Chair) and Senators Furner, Ludlam, Parry and Trood

**Participating members:** Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Eggleston, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Barnett, Crossin and Trood

#### **Terms of reference for the inquiry:**

To inquire into and report on:

The Australian Law Reform Commission (ALRC), with particular reference to:

- (a) its role, governance arrangements and statutory responsibilities;
- (b) the adequacy of its staffing and resources to meet its objectives;
- (c) best practice examples of like organisations interstate and overseas;
- (d) the appropriate allocation of functions between the ALRC and other statutory agencies; and
- (e) other related matters.

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**Committee met at 8.49 am**

**CHAIR (Senator Barnett)**—This is the public hearing for the Senate Legal and Constitutional Affairs References Committee's inquiry into the Australian Law Reform Commission. This is a public hearing and a *Hansard* transcript of the proceedings will be made. The matter was referred to the committee by the Senate on 23 November 2010 for inquiry and the committee is to report by 31 March 2011. Terms of reference for the inquiry are on the committee's website.

The committee has received 22 submissions for this inquiry. All submissions have been authorised for publication and are available on the committee's website.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important witnesses give the committee notice if they intend to ask to give evidence in camera.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera. Such a request may also be made at any other time.

I ask all witnesses to remain behind for a few minutes at the conclusion of their evidence in case the Hansard staff need to clarify any terms or references.

I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits any questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for the claim.

[8.52 am]

**SODEN, Mr Warwick Graeme, Registrar and Chief Executive, Federal Court of Australia**

**CHAIR**—Mr Soden, we thank you for your submission today. You have lodged submission No. 22. Do you wish to make any amendments or alterations to that submission?

**Mr Soden**—No thank you, Senator.

**CHAIR**—We invite you to make a short opening statement after which senators will be invited to ask questions.

**Mr Soden**—I did indicate when talking to the secretary about the limits on time that I would not make an opening statement but I do want to make a few short comments. As we say in our submission, the ALRC is a first-class reform commission. From our perspective, it has a world-class reputation. The benefit of its work is critically important to the judges of our court. I think our submission is a little bit light on the value that we glean from the report.

There is a case mentioned in our submission and I happened to read it last night. I do not read all of the judgments of our court, obviously, but I did read this one. It is referred to in footnote 5. The name of the case is Norman, in the matter of Forest Enterprises. It is a 2010 decision. That case is about an issue as to conflict between investors and the manager of investments. Justice Finkelstein, who delivered the judgment, gives a very good and clear explanation of the process of law reform undertaken by the ALRC in relation to managing investments. Starting back in 1991, he refers to the issues in the discussion paper then refers to the issues in the report, refers to the draft bill, shows how the draft bill became legislation and shows how it became amended. It is a good example of how, through the ALRC, the parliament passed legislation to better protect investors where they were part of a managed investment scheme. It is a very good example.

The point I wanted to make in relation to that, which is the point we make in our submission, is that the law reform process to us is a science, although we do not use that word in our submission. You need to be a specialist in law reform to be able to produce the first-class work that the ALRC produces. The process—involving the discussion papers, the consultation and the focus groups managed and steered by a specialist expert law reformer, most often in the past a full-time commissioner—from our perspective produces the excellent first-class results that have happened in the past. Particularly with the discussion paper process, that is often the way in which some of the most contentious issues, some of what I might describe as elephants in the room, the things that often are not talked about, and also urban myths, can often be tested and either confirmed or abolished. The ultimate report produced takes advantage of the discussion paper process, which is from our perspective a very resource intensive process, but it does produce the goods.

One other thing: there are four part-time commissioners—they are all Federal Court judges. Two of those part-time commissioners have three-year terms; the others have short six-month terms for a specific reference. The two with three-year terms, Justice Kenny in Melbourne and



Justice Collier in Brisbane, are very busy Federal Court judges. I know that it is often difficult for them to make the time to get to meetings and to do the work that could otherwise be done. In their own right they are very busy people. Similarly, Justice Emmett and Justice Lander are presently involved as part-time commissioners in the reference on discovery, and, whilst they are both experts in that area, I do not think they would mind me saying they would not consider themselves to be experts in law reform processes. They being such very busy people, I think I can confidently say that, whilst they would make a very valuable contribution, what they do is not the same as what someone else working full time might be able to do. That is all I really want to emphasise from our submission and from our perspective.

**CHAIR**—Thank you very much, Mr Soden, for your opening remarks and also for your submission. We very much appreciate it as a committee. The high regard you have for the role of the ALRC over a long period of time is well noted in your submission. I want to address some issues or concerns you have raised on the last page of your submission, particularly those in the last two paragraphs, regarding the fact that there are four part-time commissioners—the four Federal Court judges, who are of high quality and who are very busy. Would you flesh that out for us in terms of the role of those Federal Court judges. Are they continuing in their role as Federal Court judges and, when you say they are busy, could you outline hours per week—are we talking a full-time effort? How do they fit in this important role as part-time commissioners on the ALRC together with their role as Federal Court judges? I want you to flesh that out for us so that we can have a better understanding of the demands on their time and their ability to perform competently and comprehensively for the Federal Court and, likewise, for the commission?

**Mr Soden**—As I said, the judges are very, very busy people. They work full time as Federal Court judges, and that is really 24 hours a day, seven days a week.

**CHAIR**—So they are still full time?

**Mr Soden**—They are full time. They do not get time off, so to speak, to do the work of the part-time commissioners. It is probably described as extracurricular activities, if and when time permits. I do not know the details. The ALRC can probably give you the details of the actual time that they participate in the ALRC. I do know that it is often the case that they have no time available to participate in meetings and no time available to actually get to the ALRC when their assistance is sought. In relation to being involved in written work, either contributing or commenting, I do not know how they find the time. They would have to find the time in their very, very busy schedules. We do not, in other words, give them time off for that purpose. It would be a tiny percentage of their time in the whole that they could make available to the ALRC. I think the big difficulty is that when they are needed they are often not available.

**CHAIR**—You did indicate in that comment that from time to time they have to miss ALRC meetings, hearings and deliberations. Do you know that to be a fact?

**Mr Soden**—I know that, yes. That is a concern for them, but it is often as a result of the pressures of their primary role.

**CHAIR**—Does it happen from time to time, or more often than not? Do you have a feel for the extent of that? These are matters we can ask the commission, but are you able to reflect on that?

**Mr Soden**—It might reflect a consistent problem for the ALRC that they cannot get the part-time commissioners because of their other commitments.

**CHAIR**—Can you just clarify the appointment times for those four part-time commissioners? How long are they being appointed for?

**Mr Soden**—I do not have the precise dates, but from memory Justice Collier and Justice Kenny have three-year-term appointments, and Justice Emmett and Justice Lander have six-month appointments. That was specifically because of the discovery reference that is presently with the ALRC.

**CHAIR**—You specifically say in the last sentence of your second-last paragraph:

Whether the ALRC can continue to maintain its high standards of research and scholarship without the assistance of further full-time Commissioners besides the President must be doubtful.

I would like you to share your thoughts—flesh that out—as to why you say that. I presume it is partly because we have had full-time commissioners in the past and at the moment have just the one president. Can you explain to us your reasons for that statement?

**Mr Soden**—That is the essence of the concern. Our experience has been that when a full-time commissioner has been responsible for a reference it is that commissioner that is out managing the discussion paper and the consultation process, managing the focus groups and dealing with the people and the organisations that make submissions to the discussion paper process or the processes leading up to the reports. I personally have had the experience of working with full-time commissioners on references in the past. There is no doubt in my mind, from my experience, that the full-time commissioner—often an expert in law reform procedure as well as an expert in the subject under reference—brings a rigour of process and a rigour of thinking to the whole exercise that is, from my perspective, exponentially greater than you see where very good work is done by others but just not at the level that a full-time expert commissioner can bring to the process. It has been my experience that the full-time commissioner often attacks some of the hardest issues and the most difficult issues in a way which reflects their law reform experience—that is, the logic of law reform, or what I call the science of law reform—together with their often expertise in the field of law or the area under inquiry.

**CHAIR**—That view is similar to the submission by Professor Weisbrot where he has expressed the strong view that there needs to be a full cohort of full-time commissioners—the need to have that ongoing body of knowledge and understanding.

**Mr Soden**—I must admit I have not read that submission. I know Professor Weisbrot. I worked with him closely in a number of references and with full-time commissioners at the time. I am not sure what he means by his description of ‘cohort’. All I would say, and I am sure the judges would agree, is that our experience has been that a full-time commissioner brings to bear

an expertise in the law reform process and the subject matter under review that has led to the excellent first-class reports are which have been produced.

**CHAIR**—You say in your last paragraph:

Without sufficient and adequately resourced full-time Commissioners, it would be difficult, if not impossible, to maintain the kind of consultation on which the high quality of the published work of the ALRC depends.

Can you express a view as to how many? It is obviously more than one. Secondly, what is the impact of continuing to have one? You are saying that, if we continue on the current process, it would be difficult if not impossible to maintain the level of standard which the commission has attained in past years. Is that a fair assessment? Can you expand on that?

**Mr Soden**—I will qualify that a little bit. Of course the resources required would depend on the references with the commission at any one time. That is clearly a mechanism under the government's control.

**CHAIR**—I should interpose that Professor Weisbrot does refer to the need for full-time commissioners with respect to corporate governance and the governance of the ALRC, not just the law reform roles.

**Mr Soden**—He is probably in the best position to make a comment about that. I could not disagree—I am not in a position to speak about that. I think the important word in the last sentence of our submission is 'consultation'. Our experience is that when a full-time commissioner is the person who undertakes the consultation, is the person who writes the result of that consultation—a full-time commissioner is usually a very experienced law reformer, as well as an expert in the area under inquiry. It is our experience that that person usually brings a rigour, a method which produces the excellent results. As I said, that commissioner often deals with some of the most difficult issues, in a way which leads to an adoption, following the report, by parties, organisations and people who might have opposed that conclusion had there not been that special, expert, learned consultative process.

**CHAIR**—Do you have any views—and you may not have—with respect to the post July 2011 board and governance arrangements for the commission?

**Mr Soden**—No, I am sorry, I am not alive to those issues.

**CHAIR**—That is not a problem.

**Senator CROSSIN**—Mr Soden, can you take me through the processes of the commission when they start to look at a new area? Let us take, for example, the work they did into family violence. How does that emanate? Does it start with the discussion paper?

**Mr Soden**—I am sorry, Senator, I am not that close to their usual procedures to feel competent to comment on what they would normally do. I did say earlier that I had been closely involved as a person consulted in some of their references: the present discovery reference, managing justice reference and other references. I have seen the benefit of what they do but I could not describe in detail to you what all those processes are. They are the experts that could

tell you what their processes are. I see a reference going, I see a consultation process, I see workshopping, focus groups, discussion paper, comments made, further consultation, further submissions, further consultation and a report which is always excellent.

**Senator CROSSIN**—Okay. Knowing that there are at least 20 people that are employed at the Australian Law Reform Commission, of whom one is the full-time president commissioner, but they are not all commissioners, there are other eminent legal people working at the commission, how were you then in a position to make a comment about whether or not the commission needs further commissioners? What makes you say that, if you do not understand the day-to-day process of how they go from A to Z and produce a highly competent, well-respected report? I put it to you that the commission relies on its expert staff of 20 as well, not just full-time commissioners, to produce that report.

**Mr Soden**—I accept that and I deal with many of those staff members. They are skilled, qualified people. Our submission relies on our experience that we have had when we have worked closely with full-time commissioners, who are usually working with some of those people as well. That is our experience.

**Senator CROSSIN**—The practice in the last couple of years has been to appoint commissioners in that area of expertise, which gives the commission more flexibility. Do you see that that has been a disadvantage to the outcomes of the commission, or an advantage?

**Mr Soden**—I do not really feel in a position to comment as to whether advantage or disadvantage. I can see how that is another option. Personally I just wonder whether those shorter-term appointments bring with the appointment the benefit of the experience and the rigour of being a law reform expert which some of those people may not have before appointment. I must qualify that and say I do not have in my mind the details of who those people are and I would not want it thought that they are not law reformers, but I do not think it always follows that they are before they are appointed.

**Senator CROSSIN**—Isn't that perhaps why this degree of flexibility has been brought into the Law Reform Commission, so that you can have eminent people, experts in their field who may work with a body of people already at the Law Reform Commission who are law reformers, so when you put the expertise and the law reform sides together you end up with a quality product? The expertise will vary from person to person, from subject matter to subject matter.

**Mr Soden**—That is true in relation to the expertise. I would not want this inquiry to assume, however, that the part-time commissioners, the judges, would consider themselves a suitable replacement for a full-time commissioner. They certainly would say they might add some value to the process, but I do not think any of them would say that their contribution, their availability, would be the same that could be achieved by a full-time commissioner.

**Senator CROSSIN**—Would you say that the quality of work in the last two years is diminished and is not as good as the quality of work 10 years ago?

**Mr Soden**—I would not say that. The reason I would not say that is that I have not looked at the work for comparative purposes and I just do not have a view on that, I am sorry.

**Senator CROSSIN**—I am trying to come to a point in the assessment as to why people are so fixated on having full-time commissioners; that somehow then leads to the quality outcomes and whether or not people can be satisfied in their evaluation of the commission's work and that the same sort of rigour, depth of analysis and outcomes can be applied with the current arrangement—that is, a full-time commissioner and others brought in on expertise with this eminent body of staff who are working there.

**Mr Soden**—I think that the people who have received the benefit of the commission's work over a number of years look at the structure and the way in which that work has been done and they see the structure changing. In that context they are worried about how the ALRC will perform in the future, and they are expressing their concerns that it may not be as good as it has been in the past.

**Senator CROSSIN**—With all true respect, you say that having told me 10 minutes ago that you are not entirely familiar with their day-to-day operations—their general running and how they conduct their inquiries. And you cannot actually point to any diminished, or lack of, quality in the last couple of years compared to some years back. So I cannot see any evidence, really, that the changes that have been made have led to any diminished confidence or quality in the outcomes.

**Mr Soden**—The work of the ALRC is always very good. It has been world-class, first-class work over many decades. Changes are occurring—budget pressures and availability of our people to help—which all lead us to say that we just have a concern that there will be a slippage of the quality of the work. We are not in a position, and I am not in a position, to say that has occurred, because we have not undertaken that comparative work.

**Senator CROSSIN**—Okay. Would there be a benefit in actually changing the way in which the work programs of the ALRC are designed?

**Mr Soden**—I do not know.

**Senator CROSSIN**—I do not know if the Federal Court has any input into that, but is it also time to move to a stage like the ANAO has where they ask people what work they think needs to be done, they end up with a list of 100, they shortlist it and they do that in consultation with the AG rather than the AG continually referring matters. Would that assist, if their work program development was changed as well?

**Mr Soden**—That is probably a matter that the people in the ALRC should be asked to express a view about.

**Senator CROSSIN**—Is it a view that the Federal Court has though? Do you think that you should be able to say to the ALRC, 'In your next year's work program we'd like you to have a look at this area.'?

**Mr Soden**—We have said that over the years. We have often said to the ALRC—not in a formal sense, but in informal discussions—that we suggest it may be a good idea if they have a look at a particular issue.

**Senator CROSSIN**—Is that picked up, sometimes? Or does it have to go through the Attorney-General?

**Mr Soden**—Maybe not specifically, but as part of another reference, yes, I think so.

**Senator CROSSIN**—Has that diminished? Is there a capacity to respond in that way? Has that diminished in the last three or four years compared to 10 years ago?

**Mr Soden**—There would be a degree of hesitation and reluctance on our part to make suggestions to the ALRC about what they might recommend to government by way of references, because of our view that they are very stretched at the moment. I would say—

**Senator CROSSIN**—So your view is that they are very stretched at the moment. You do not have evidence of—

**Mr Soden**—No.

**Senator CROSSIN**—You are feeling that they are stretched; you just think they are stretched. But you cannot point me to, for example, a lack of quality or rigour, a small number of reports produced?

**Mr Soden**—They appear to us to be very stretched.

**Senator CROSSIN**—What do you see that gives you that feeling?

**Mr Soden**—The discussions that take place, I suspect, as a result of the part-time commissioners' work with the ALRC—the general discussion about tight time frames et cetera, limits on time for discussion, limits on time for consultation. There is a perception that they are stretched.

**Senator CROSSIN**—All right. Thank you.

**CHAIR**—Senator Trood.

**Senator TROOD**—Mr Soden, have you had an opportunity to look at the submission to the inquiry from the New South Wales Law Reform Commission at all?

**Mr Soden**—No, I did not.

**Senator TROOD**—I wonder if you have a view on this statement, which is contained in that submission:

In order to maintain its capacity to produce high quality work, and to do so within tight time frames, ALRC funding should be increased from its present level. In particular there is a need for funding for more full-time Commissioners to provide leadership and to add weight to the input from the President and part-time Commissioners.

What is your view of that statement?

**Mr Soden**—It seems to accord with our view.

**Senator TROOD**—It seems to me to accord with the evidence that you have given us in your written submission and indeed your oral evidence. It is the last paragraph in their submission, on page 4. It seems to very much reflect the view of the Federal Court.

**Mr Soden**—The words that they use, ‘full-time commissioners to provide leadership and to add weight to the input from the president and part-time commissioners’, are a good summary of our general sense of the value of a full-time commissioner. There is a president of the ALRC, and the president would have a very, very broad role. A full-time commissioner can bring—and, in our experience, does bring—leadership and, as the New South Wales Law Reform Commission say, ‘add weight to the input’.

**Senator TROOD**—Good. I was interested in your remarks about the challenges that justices of the Federal Court face when they are part-time commissioners and, in particular, the practice of not giving them time off. Is that a reflection of the contractual arrangements? I know that they do not have formal contracts, but when they are appointed they are expected to be full-time members of the court. Is it because there has never been any such arrangement? Is it because the Chief Justice, for example, has never adopted the practice of allowing time off? Or is it that they are all so diligent—as I know Federal Court justices are—in the pursuit of their other duties that they do not think it is proper to take time off? I am just interested in the origins of the idea that they ought not be given some time to undertake their duties, particularly in relation to the ALRC.

**Mr Soden**—I think I can describe our policy in relation to their taking time off along these lines: each of the judges is responsible for managing and disposing of all the cases allocated to them in the most efficient way that they can do that. It is up to each judge to work out how to do that, what time it takes in court, what time it takes out of court, what proportion of time needs to be taken on judgments. We leave it to the judge to work out how that judge can make time available for work related to the ALRC, and we support in principle the time they take off, if I could describe that way, from all that other work, to do the work for the ALRC. But it is a matter for the judge to work out how to do that. We support it. Interestingly, we do not charge the ALRC for our judges’ time as part-time commissioners. I understand the ALRC picks up the cost of bringing those people to meetings when they are available to go to meetings, but there is no cost to the ALRC for the time of the judges who work for the ALRC when they have the time.

**Senator TROOD**—It is a free good from their perspective.

**Mr Soden**—For us it is so valuable; the judges find the work and the discussion paper so valuable. It is important for us to give the time that we can afford to help the process.

**Senator TROOD**—Are there any precedents for a judge of the court going to the Chief Justice and saying, ‘I’ve got a part-time appointment. Can you ease my case load so that I can do a little more work in relation to the inquiry that I have been asked to sit on?’

**Mr Soden**—I can think of one or two occasions when that has happened, and the time sought was a very short period. There was an approval given as a matter of principle, because it was a little bit longer than usual. I think the time involved was a few days away from normal duties.

**Senator TROOD**—In the time that you have been registrar, do you know whether or not there have been occasions where a request for the use of the services of a judge of the court for a part-time commissioner's position has been denied?

**Mr Soden**—No, I cannot recall an occasion when the request has been denied. But I can say that on some occasions there has been a reluctance to find a judge willing or able to afford the time.

**CHAIR**—Thank you very much, Mr Soden. We very much appreciate your evidence today.



[9.27 am]

**PHILLIS, Mr Michael James, Member, Civil Liberties Australia Inc.**

**ROWLINGS, Mr William (Bill) Murray, CEO/Secretary, Civil Liberties Australia Inc.**

**CHAIR**—I now welcome Civil Liberties Australia. Thank you, Mr Rowlings and Mr Phillis, for being here. Civil Liberties Australia has lodged submission No. 10 with the committee. Do you wish to make any amendments or alterations to that?

**Mr Rowlings**—No, thank you. It stands as it is.

**CHAIR**—I now invite you to make an opening statement, after which we will have questions from the senators.

**Mr Rowlings**—Thank you for the opportunity to be here. We would like to make a short opening statement. We think that the simple questions raised about the ALRC have resonance across a wide range of civil liberties and human rights areas; we will come to that at the end. Firstly, addressing just the core ALRC aspects, our submission points out that we strongly believe there is a need for a body doing almost exactly what the ALRC has been doing—in a similar way and in general utilising similar experience and expertise. Australia needs a quality generalist body able to research and analyse changing and newly arising legal and legislative problems and able to provide expert commentary as well as sound recommendations to guide the legislators. CLA believes the parliament, and perhaps the government as well, also very much needs the ALRC. It is an excellent parking station for tough issues when the government of the day has not got its legislative thinking straight. The sedition-treason clauses were a prime example of that in recent years.

We point out in our submission that statutory law reform can be mostly antagonistic to civil liberties. The past decade since 11 September 2001—or 9-11, as the shorthand goes—indicates how rapidly and rabidly laws can move to the right, with civil liberties and human rights getting short shrift. Personal freedoms and individual liberties have not been flavour of the month for more than a hundred months—and counting.

There are wider issues raised by the ALRC question. The fact that civil liberties are not the flavour of the month and the situation with the ALRC we believe are wholly symptomatic of a steepening decline in the funds, resources and people allocated to those aspects of society which protect and nurture the liberties and rights of the nation. If you like, Australia's fair-go levers have not had a fair go for nearly 10 years. For a decade, since 9-11, billions upon billions of dollars has been spent on extra funding, resources and staffing for police, security, surveillance, intelligence and military activity. We guess that it has been more than \$50 billion over that period, but who knows? It depends how you dice and slice it. But military, police and spy equipment is very expensive. That is not to mention the ongoing, draining cost of more than doubling staffing numbers for the Australian Federal Police and the main security agencies.

So what has happened out of the limelight is that money has been effectively sucked out of bodies like the ALRC, the Australian Human Rights Commission and others and from research with a freedom flavour. The name of the game was security. Everyone with an eye for a quid jumped on the money wagon with 'terror' painted on the side. The ALRC's own first submission shows in detail how this has occurred to the ALRC. It shows a dramatic decline in people resources, for example. But the same is true generally across many entities and structures for which the Australian parliament is directly responsible. We would ask that this inquiry recommend an injection of funds, resources and people to a beefed up ALRC. But we would suggest that what is also required is a subsequent Senate inquiry into how the legitimate needs of other civil liberties and human rights oriented agencies have been allowed to wither over the past decade.

Finally, CLA observes in passing that many of the laws passed in understandable fear in late 2001 and 2002 will shortly be coming up for sunset period re-evaluation. We trust the ALRC will be asked to review the ongoing need for them. CLA expects that many of the laws can be wound back because the parliament can now take a more measured view. But the real difficulty is that, once overbearing, repressive laws are on the books, it takes MPs of enormous courage to wind back the excesses. That is why bodies like the ALRC are so vital to Australian society. They are, as CLA says, pillars of the protection of people's freedoms and liberties.

**CHAIR**—Thanks very much. Mr Phillis, do you have anything further to add?

**Mr Phillis**—No, thank you.

**CHAIR**—Then we will move to questions. I will kick off. Thanks again for your submission and for being here today. That is appreciated by this committee. Your opening remarks and your submission are pretty clear on your respect for the commission and, indeed, your views on the need to boost funding and staff and to ensure independence. Just in terms of funding, do you have a view as to the extent of the need for a boost in light of the fact that there was a \$0.242 million cut in the 2010-11 financial year and there will be a \$0.5 million cut in the two years following? The way I read that, there has been about a 20 per cent reduction since 2009-10. We will be asking the commission further about the impact of this on staff. But in terms of a boost to staff and funding, do you have views to flesh out the recommendations you have put to the committee?

**Mr Rowlings**—We have a general comment. Management is not our expertise; civil liberties and human rights are. The point is that those cuts since the 2009 period are on top of earlier cuts. It is a bit like the climate debate: what do you make your starting point? If you go to a body that has already been slashed and then make extra cuts on top of that then it will fail to function and it will fail to achieve its aims and what we want from it.

The point about the ALRC that I think is forgotten is that we do not have a human rights act in Australia. We lost the opportunity, despite widespread consultation coming down very heavily in favour of it. We need bodies like the ALRC to carry out that function. The ALRC and this committee would be two of the greatest pillars of protecting our rights that we have. If we had a human rights act, maybe we would not need such effort from the ALRC. But, certainly, we do not think that the starting point for debate of their financial structure should be 2009. It should go back a decade and have a look at what it was then.

**CHAIR**—On that point, if I can interpose, I go to Professor Weisbrot's submission and the Rule of Law Institute of Australia and, I think, a general understanding—and we will clarify this with the department this afternoon—that the Attorney-General's Department's staff has pretty well doubled over the decade, from 750 to 1,500. In terms of the cuts, Professor Weisbrot says that it is a 30 per cent cut and the Rule of Law Institute of Australia talk about very significant cuts to staff and they have issues around staff turnover in terms of corporate knowledge and background. I just wondered whether you wanted to reflect on those views.

**Mr Rowlings**—Yes, and I would like to address some of the questions that Senator Crossin raised. If the questions to us are going to be similar, we may as well take them up now. The question was whether it has declined in two years. Two years is a pipeline period for an agency like the ALRC. We will not know whether it has declined for another year or two or three years out. This is an agency with long time frames. Therefore, that question cannot be answered at this stage. Probably the work is equally as good now, but what happens when you strip away gradually from an organisation—and I have experienced this in the public service—is the decline is not noticeable in the first two years. It takes some time before it becomes very noticeable.

In terms of the question as to why you should have part-time people working there, I am reminded of the work that Les McCrimmon in his last major reference and how he was able to hold hearings all around Australia. I forget what the issue was but I know I attended one hearing here at the ANU on whatever the reference was that he was dealing with at the time. He did that all around Australia. That is a process that even this committee is finding difficult in getting out and talking to people. But that is what is needed to engage civil society in law reform. After all, it is for civil society that we need law reform; it is not for the academics, the lawyers and all the other people who have made valuable contributions for this. They have a heavy stake in it, but it is the people we are talking about here, and they need to be engaged.

**CHAIR**—In the last paragraph of your submission you talk about the fact that 'less funding, fewer staff, disregarding core civil liberties documents are generating a sea change in relation to the ALRC.' You are saying that this sea change commenced some time ago, but, according to Professor Weisbrot, he first learnt that these cuts were about to be implemented at the end of 2009. You refer to a sea change. That is a very strong statement. You are talking about a major shift in the way things are operating. Can you flesh that out for us?

**Mr Rowlings**—Without full-time senior staff there, we are not going to get the wide input from civil society that I am talking about. I take Les McCrimmon as a very good example. In one respect, he was able, because he was there as a full-time commissioner, to do this work and to take input from society. That aspect of it will be lost—it has been lost because he is no longer there. The benefit of him in a position like that is not solely that job. Les McCrimmon is now a professor of law at Charles Darwin University. So what the ALRC is acting as is a churning mechanism for putting quality legal expertise out into the community. The benefit from his time at the ALRC is now being realised in Charles Darwin University. So that process should also not be forgotten. That is a very valuable part of what the ALRC does.

A question was asked about part-time commissioners. Part-time commissioners have a full-time job into which they have to try to finagle some time. Put yourself in this position. Let us say they ask you to be a commissioner for six months. How would you fit it in? Federal Court judges are no different in their workload from members of parliament who work diligently. You cannot

fit it in—and you can only do it for six months; whereas these commissioners have three years of expertise and experience which they then take back out into the community as McCrimmon has done. That is where the loss is, and these losses are not felt in hard dollars. You cannot measure that sort of loss in that way.

**CHAIR**—I notice that the New Zealand Law Reform Commission has gone to the trouble of putting in a submission, which I have read. They say that Australia was one of the leaders in the law reform movement in the British Commonwealth. Likewise, the New South Wales Law Reform Commission have put in a submission, which is very useful. They say that the ALRC's practice to be embodied in its structure after July 2011 does place the president in a very difficult and exposed position because there are no other full-time commissioners. We have had some debate about the post-July 2011 arrangements. Firstly, do you agree with the comments of New Zealand and New South Wales, and what are your views of the post-July 2011 arrangements, if you have any?

**Mr Rowlings**—We certainly agree with the comments of New Zealand—I do not know the chap's name; it was not on the submissions—and with New South Wales. We have not turned our mind to the post-July 2011, except that an independent body, which the ALRC should be and must be, given directions as to how it goes about its duty does not sit at all comfortably with us. That is in effect what has happened. It is told to restrain itself in certain directions, as I understand it.

The last point of our four dot points in our submission is that its continued freedom and independence of operation should be publicly acknowledged by the federal government. We do not want bodies that are meant to be independent restricted by executive government. That is our main concern about the post-July 2011 period.

**CHAIR**—Are you aware of the requirement to move from the Sydney CBD offices, which were designed specifically for the Law Reform Commission? When that happens, Professor Weisbrot says that it:

... likely means that the ALRC's Michael Kirby Library, the major dedicated law reform library in Australia, of 35 years standing, will be eliminated—

And I think other meeting rooms and things. We will hear from the Law Reform Commission, but are you aware of those concerns and what is your view?

**Mr Rowlings**—We were not aware of that. We were not aware of the move. That is more of a mechanical issue that I would not be particularly concerned about. But it adds. What we are saying is that on one side of Australian society we are spending billions of dollars to do things and on the other side of Australian society we are ripping the money out to save half a million or a million dollars. Over here we are spending and wasting billions of dollars in certain areas. It just does not seem like the balance is correct.

**Mr Phillis**—On that note, I did read Professor Weisbrot's submission. My understanding was that they are going to lose all their meeting rooms. Perhaps I misread that. Obviously that is going to reasonably deleterious effect. Of course, without dedicated meeting rooms that will put further strain on their budget, having to organise further venues for consultation.

**CHAIR**—So you concur with his concerns?

**Mr Phillis**—Yes.

**CHAIR**—On your organisation, my position on the bill of rights is different to yours—and, indeed many other members of parliament in this place—but we respect your views. I think you indicated earlier that there had been cuts to the Australian Human Rights Commission. I do not believe that to be the case; I think that has continued to increase, whereas the Law Reform Commission funding has been cut. That is on the public record. I just thought I would clarify that, because you did mention that in your opening remarks.

**Mr Rowlings**—I am not sure of the Australian Human Rights Commission, but I am absolutely certain that staff has not doubled, as has happened with the Australian Federal Police or with ASIO. What I am saying is that it is relative. All these agencies, relatively, are faring very badly.

**CHAIR**—All right. I guess my point is that we have seen cuts to the Australian Law Reform Commission but at the same time there have been increases, particularly in recent years, to the Australian Human Rights Commission.

I have a question about the process for the government in responding the reports of the Law Reform Commission. There have been some views put in submissions to this committee that the government should be required to respond to them within a certain time frame. Do you have a view on that and can you tell the committee what it is?

**Mr Rowlings**—We have a view on that more widely, and what we say about the ALRC is true of all Senate committees which produce reports that sit there without a response from government. I think you are well aware of that. It does not matter which government is in power; it is not a party political thing. The situation that stands out with the ALRC is the sedition and treason report, which was an absolute disgrace by any measure. It was hurried through by your side of politics; it was given three months to report on such a major issue at a time, I think, of tension. It eventually reported in five months, which we considered to be a miracle, and the report then sat, I think, for five years before the legislation was passed. That is an absolute disgrace. In my opinion that is not the parliament or the executive doing its duty. A timely response has to be within a year of something happening, and preferably within six months. We would be delighted if you could find a system that would force the executive to respond within a period not only for ALRC reports but for Senate Legal and Constitutional Committee reports and for the reports of all other committees as well.

**CHAIR**—My understanding is that the government is required to respond to the Senate committee report within a certain time but that it is different for the Australian Law Reform Commission reports. My understanding is that is not a legislative requirement and I am asking you whether you would support it to be a requirement in law that the government or executive should respond within a certain time and make the report document available to the public.

**Mr Rowlings**—Certainly I think that is a good thing. The other point you raise about the transparent nature of making submissions open if possible is a good thing. For obvious reasons,

some would need to remain private, but certainly we would support legislation that enforced a response within a set, reasonable period, and six months would seem to be a reasonable period.

**Senator CROSSIN**—I am not entirely sure that there has been an increase in funds to the Australian Human Rights Commission, for the record. We have had them before us a number of times with a number of bills and, usually, their very first opening statement is, ‘If this bill is put into law and we’ve got more work to do, we can’t do it without more resources.’ So I think that, like the ALRC, they have been subject to the two per cent dividend that applied across all agencies at one point in time, and that is why we have seen the reduction in staff and budgets, as with every other agency, in the last couple of years. Do you believe that in the last three years, compared with the time under the previous full-time commissioner, whose submission we have with us, there has been a diminished number of reports or a diminished quality in the outcome of the reports?

**Mr Rowlings**—We are not aware of that; we do not follow it that closely. I am sorry, but we were not aware that you might ask that question. There seems to be the same amount of effort going in. But what is probably happening—if I can go back to my experience in management in the public sector—is that it is being churned out by wearing down the people within the organisation. That is normally what happens. If you have a president who has to do the work of one, two or three commissioners in terms of the actual reform process as well as manage the place, then, over time, obviously the standards will drop. You just cannot work at that pace; it is just not possible.

**Senator CROSSIN**—We have seen, though, in the last two years—and an article in today’s *Financial Review* points to this—two inquiries, one into civil litigation and another into family violence, where the lack of full-time commissioners has been supplemented by bringing in part-time commissioners and, because of the flexibility now, they have come to those two inquiries with knowledge and expertise in those areas of law. We do not have four full-time commissioners but it seems as though when there is an inquiry being conducted, the full-time president is assisted by part-time commissioners who have greater flexibility because they have expertise in a particular area of law. I want to put to you, Mr Rowlings, that this is just another way of doing business that people are not used to or just do not have confidence in yet.

**Mr Rowlings**—I would say it is another way of doing business and I welcome it. I think it is a good way of doing business because you are using the best expertise for the particular task. There is nothing wrong with that as a model on top of the other model in expanding the work of the commission or making it better. But you do not take away everything and then try to replace it with part-time people. That is the problem. You need the expertise build up. You need to be able to go out and consult with the community and those things will fade away because there is no time to do it with part-time people. Mr Soden mentioned how judges do not have time to actually do the hard, nitty-gritty, core work. We are concerned not only about the core work, which is probably being done as well as possible, but about the other stuff that needs to be done. It is getting around, holding consultations and interacting with the community and groups like ours that we think is very important. The same is true for Senate committees.

**Mr Phillis**—We tried to bring this out in the submission. We think there is a problem with having only specialists and specialist part-time commissioners running the law reform process mainly because, unless you are looking at laws which specifically restrain powers, they are not

going to operate in a bubble. They are generally going to cut across to other fields of law, even if they are unintended consequences. I think that is the strength of having generalists as well as specialists within the organisation, especially when the generalists have a more directorial role.

**Senator CROSSIN**—Have you had any involvement in the commission's inquiry into civil litigation?

**Mr Rowlings**—No.

**Senator CROSSIN**—When was the last time you would have been consulted by the Law Reform Commission or participated in their consultations?

**Mr Rowlings**—Probably in the last McCrimmon exercise, which was about 2½ years ago. We make submissions occasionally. I cannot remember the last one. We do not do a lot with them. In fact, we are among their sternest critics. It is ironic that we are here supporting them because we have been very critical of them. We were critical over the fact that they even took the brief on treason and sedition and allowed themselves a supposed three months to do it. They should have thrown it back in the face of the executive because that is no way to do proper inquiries. We are also critical of the family violence inquiry.

**Senator CROSSIN**—But your direct involvement with the Law Reform Commission goes back two years?

**Mr Rowlings**—We use the papers. We use the outcome of the family violence stuff, but we have not made a direct submission in the past year.

**Senator CROSSIN**—I see.

**Mr Rowlings**—But we use their work and their output all the time.

**Senator CROSSIN**—I understand that, but I am talking about going to their consultations, meeting with them or you consulting with them. That has not happened for more two years.

**Mr Rowlings**—No.

**Senator CROSSIN**—Would it be fair to say it has not happened since some of the changes have been made?

**Mr Rowlings**—Yes, that is right. We may well have put in a submission, but I cannot remember. The last consultation was when Les McCrimmon came to the ANU and we thought that was a terrific initiative. That is the type of process that should be gone through.

**Senator CROSSIN**—Should the commission have the power to self-initiate inquiries?

**Mr Rowlings**—We would very much like it to have that power.

**Senator CROSSIN**—How would they determine which inquiries should be prioritised or what subject areas they would be?

**Mr Rowlings**—They are big boys and girls and they know their business. I think you could leave it to them.

**Senator CROSSIN**—But that might not necessarily be your business or your priority.

**Mr Rowlings**—I know, but people would make submissions. We would suggest that they do that. I have got a list here that I could give them right now. We should have national bail laws instead of different bail laws in each state. Federal sentencing in state courts is all over the place.

**Senator CROSSIN**—So you think there is a need to reform the way in which they set their work program or it is set for them?

**Mr Rowlings**—Yes, I think it would be useful to look at the way they set their work program and to give them some control over setting would be good. We would like to see them involve civil society more. Even the idea of having civil society sit as reviewers or councillors or whatever on the laws. We are a civil liberties group but we are keen to make sure we are not dominated by lawyers. So we keep our lawyer members under 25 per cent because that is not what the law should be about. The law is for civil society; it is not for lawyers. So we would like to see more civil society input into the ALRC's work.

**Senator CROSSIN**—Thank you.

**CHAIR**—I have a quick final question. Do you have a view as to how many full-time commissioners there should be? You obviously think it should be more than one, but do you have a view on that?

**Mr Rowlings**—At least two. I think at one stage there were three, but at least two would be the answer to that. If you are taking flexibility into account, there is no reason why it could not be two full time and another one part time—some sort of academic on sabbatical for a year or two years or something like that.

**CHAIR**—I think it was in 2009 that the government axed two full-time commissioners, but you are saying at least two—for the record.

**Mr Rowlings**—Yes, absolutely.

**CHAIR**—Thank you.

**Mr Rowlings**—I would just like to read this document into the record, if I may.

**CHAIR**—Sure.

**Mr Rowlings**—This is a joint media release from the Attorney-General for Australia, the Hon. Robert McClelland, and the Minister for Home Affairs, Brendan O'Connor, from 21 December 2010, in which they ask the ALRC to conduct a review of the National Classification Scheme in Australia—which is interesting in that it is now the second review of classification, as you are probably aware. The second paragraph starts by quoting Mr McClelland as saying:



As Australia's foremost law reform institution, the ALRC—

So he obviously thinks very highly of it as well.

**CHAIR**—Yes, indeed. You referred to the New Zealand Law Commission. I can advise you that we received that under a cover letter. His name is the Hon. Justice Grant Hammond. He is the President of the New Zealand Law Commission.

**Mr Rowlings**—Thank you.

**CHAIR**—Thanks again.

[9.56 am]

**SANTOW, Mr Edward, Chief Executive Officer, Public Interest Advocacy Centre**

**CHAIR**—Welcome. We have your submission. It is numbered 21. Do you wish to make any amendments or alterations to it?

**Mr Santow**—No.

**CHAIR**—We invite you to make an opening statement, after which we will have questions.

**Mr Santow**—I should first reiterate the declaration on my submission, namely that I am a former employee of the ALRC and that one of the members of our board is Professor Weisbrot, who is, as you would be aware, a former president. Professor Weisbrot was not involved in the formulation of our submission.

**CHAIR**—He is a current board member?

**Mr Santow**—He is a current board member but was not involved in the formulation of the submission.

**Senator CROSSIN**—He is a current board member of PIAC?

**Mr Santow**—That is correct. PIAC believes that the ALRC has a very important role in a sophisticated democracy that values evidence based law and policy formation, especially in providing expert advice that has been the subject of public and stakeholder consultation. That advice ultimately comes to the government. It will usually concern complex and difficult areas of law and policy—for example, gene technology, privacy, civil justice and so on. In our view, the preconditions to the ALRC fulfilling its role are as follows. Firstly, it needs clear independence from government and interest groups. Secondly, it has to have the capacity to consult widely. Thirdly, it has to have the capacity to frame the discussion on an issue by, for example, setting out useful background information, busting myths, floating ideas for comment and so on. Fourthly, it has to have sufficient intellectual resources within the organisation itself so that it can analyse and assess the material and views that the commission receives and then produce a workable and compelling final report that it provides to government.

The problem now faced by the ALRC is largely one of resources, and that is caused by the major budget cuts. I fear that this jeopardises the ALRC's ability to retain what might be described as critical mass. More specifically, it detracts from the ALRC's ability to fulfil each of the four preconditions I just mentioned. Very briefly, in relation to independence, the ALRC will inevitably be more reliant on analyses from stakeholders and especially, perhaps, well-funded stakeholders, because it lacks the resources to do them internally. In relation to consultation, we are well aware that it now lacks sufficient funds to go outside of Sydney, Melbourne and Canberra as frequently as it used to and as we believe it needs to do to gain a proper view and understanding of the views of especially rural, regional and remote Australia.

Thirdly, in relation to framing the debate, the ALRC no longer follows as frequently its process of doing an issues paper that provides the background information and asks a series of questions, followed by a discussion paper which further refines the background information and also provides draft recommendations for comment, and then a final report. We are especially concerned that the issues paper and discussion paper stages now seem to be regularly conflated into a single document.

Fourthly, in relation to intellectual resources, the absence of full-time commissioners to assist the president and also simply fewer senior staff make it very difficult for the ALRC to maintain the high quality it is renowned for both in Australia and overseas.

Finally, I would say that we do not always agree with the ALRC. PIAC is a human rights oriented organisation. We do not feel that we get an easy ride with the ALRC. Indeed, while we agree with many of its recommendations, there are some that we very strongly disagree with. Nevertheless, we have long respected the integrity and processes that the ALRC carries out and we are very concerned that the budget cuts will jeopardise that.

**CHAIR**—Thank you very much, Mr Santow, for your opening remarks. Can you just clarify something for the record. You said you were an employee of the ALRC—

**Mr Santow**—Former employee.

**CHAIR**—Yes, indeed—can you advise when that was?

**Mr Santow**—That was between mid-2005 and late 2007.

**CHAIR**—What was your role there?

**Mr Santow**—I was a legal officer.

**CHAIR**—Can you expand on that role?

**Mr Santow**—Certainly. As a legal officer I was responsible for assisting with some of the writing of the reports and assisting the commissioners in the consultative process. The inquiries that I worked on were: the very end of the evidence inquiry, the sedition inquiry, and finally the privacy inquiry, although I did not see out the end of that inquiry.

**CHAIR**—And from there you went to PIAC or somewhere else?

**Mr Santow**—I was then an academic at the University of New South Wales and in the Gilbert and Tobin Centre of Public Law, and more recently I have become the CEO of PIAC.

**CHAIR**—Thanks very much for that background. So you would have a good understanding of how the ALRC works and the internal operations of the commission based on that.

**Mr Santow**—I believe so.

**CHAIR**—Let's start on that. You talked about the work program and I think you used the word 'conflagration' in terms of the issues paper and the final report, pushing it into one document. Are you saying that is now occurring because of the budget cuts? And could you just flesh out the consequences of the reduction of the resourcing and that particular process and how that will impact on the quality coming out of the commission?

**Mr Santow**—Just for the record, I am concerned about the conflation of the issues paper phase and the discussion paper phase. There is always a separate final report. The problem is that an issues paper is a very useful document, in a very neutral way setting out the parameters of the particular reference or inquiry. It almost always focuses especially on asking questions, and those questions are then the subject of very detailed consultation across the community and focused on particular stakeholders. The next stage of the inquiry, the discussion paper phase, takes in the views of the stakeholders and community members that have been consulted and then puts what might be described as a sketch of a reform template that might be followed. That is then the subject of further consultation and allows some further refinement, because what might appear to be a good idea initially might need to be either completely rethought or just refined or changed in some way. If you conflate those two stages then you miss out on a number of opportunities for reflection and consultation with stakeholders.

**CHAIR**—So you are saying that the budget cuts have had a negative impact. Likewise, you referred to the impact on consultation in rural and regional parts of Australia. Certainly as a Liberal senator in Tasmania I can understand the importance of that. Can you flesh out for us the extent of that lack of consultation and the impact that has had on the quality of the work of the commission?

**Mr Santow**—The ALRC will be able to comment more authoritatively than I can on this question but, certainly from my observation, the ALRC has not travelled widely out of its Sydney-Melbourne-Canberra axis. That is something it used to do prior to the budget cuts. It consulted frequently in areas, like the Northern Territory, that are not always the subject of those kinds of consultation. It devoted significant resources, both time and energy, in doing that. When you do not do that, the problem you often encounter is that well resourced stakeholders continue to be able to fly to Sydney, where the ALRC is based, and make their views heard and less well resourced organisations or individuals find it much harder to do that or even to become aware in the first place that the ALRC is holding an inquiry.

**CHAIR**—You worked there under the presidency of Professor Weisbrot obviously.

**Mr Santow**—That is correct.

**CHAIR**—In his submission he described these cuts as devastating. He also stated:

... that it would radically alter the composition, nature, role and resourcing of the highly successful Australian Law Reform Commission, none of these matters were ever discussed with me.

That was when the cuts came in 2009. Do you concur with those remarks? Does it surprise you that there was no discussion prior to those cuts and the effects of those cuts at the time?

**Mr Santow**—I was not an employee at the ALRC in 2009, so it would be inappropriate for me to comment.

**CHAIR**—Sure, but does it surprise you that there was no consultation prior to that?

**Mr Santow**—Whenever a reform process is being carried out in relation to a government agency, including an independent government agency, I think there should be a proper consultative process. I confine my remarks to that general observation.

**CHAIR**—That is something we can talk to the commission further about. You have made a recommendation that there be a least one extra full-time commissioner. Can you flesh out the reasons for that? We have had some views similar to your own on that matter. Can you express your thoughts in support of that recommendation?

**Mr Santow**—Certainly. In the past the ALRC, not always but generally, has run three inquiries at any particular moment in time. To have two commissioners is probably the minimum I think to have three inquiries running at any particular moment in time. Now it tends to run two inquiries at any particular moment in time. If the view of government is to reduce the number of inquiries to two then I think you can just about do it with one full-time commissioner.

If I can anticipate perhaps the next question—can't you do it with the part-time commissioners?—I think the answer is: 'Not adequately.' There have always been part-time commissioners who assist the ALRC in its work. Often they are very eminent. I note two recent part-time commissioners have gone on to become High Court judges, including Chief Justice French and Justice Kiefel. The assistance they give on particular issues is unquestionably invaluable; however, the need for a full-time commissioner goes beyond providing assistance on particular issues. It is in carrying out the consultative process more generally, in workshopping ideas and in working through submissions. I fear that a part-time commissioner, or even several part-time commissioners, would be unable to devote the time necessary to make up for the absence of a full-time commissioner.

**CHAIR**—Right. That answers that second question; thanks for that. Professor Weisbrot referred in his submission to the cuts to the numbers of staff. You are a former employee there. He says that 'there has been a savage blow to morale and an extraordinary run of resignations'. I know that the Rule of Law Institute of Australia have made a reference in their submission. You have been an employee. What are your views? Do you concur with those views? What are the implications for staff at the ALRC, based on your experience as an employee for some two years?

**Mr Santow**—It would be tempting to take up that invitation to comment. I finished my time at the ALRC in 2007, which was before the large number of resignations, so I cannot comment on that.

**CHAIR**—Can you comment on morale at the time you were there?

**Senator CROSSIN**—They might have left for the same reason you did, Mr Santow.

**Mr Santow**—That is possible. It seems an unusual inference to draw, though, in light of the budget cuts.

**CHAIR**—What was staff morale like when you were there?

**Mr Santow**—Very high.

**CHAIR**—Positive?

**Mr Santow**—Yes.

**CHAIR**—Do you have a view on the issue of the tabling of reports within a certain period of time and a government response within a certain period of time?

**Mr Santow**—Yes. Our submission recommends that there should be a tabling of government response within a reasonable period of time. We have not specified what that period should be. We acknowledge that there may need to be some flexibility. By way of example, the privacy report ran to three volumes, over 2,000 pages. There would need to be some flexibility so that the government would not be required to give a definitive response in relation to all aspects of that report in a very short period of time. But six to 12 months, as a general proposition, seems to me to be reasonable.

**CHAIR**—Are you familiar with the actual offices of the Law Reform Commission, which are designed for the commission, and the need to go offsite? Can you expand on any concern that you may have regarding the move?

**Mr Santow**—Yes, I am familiar with the current offices. All I would say is that it would concern me if, in relocating, the ALRC was unable to maintain an adequate law reform library, as it currently has. It would also concern me if there was inadequate meeting space, because of the great importance of consultation in its processes.

**CHAIR**—Are you familiar with the arrangements post-July for the commission? If you are, can you comment on them and the impact they may or may not have on its independence?

**Mr Santow**—I am concerned that such significant cuts in the budget, on top of previous cuts, make it very difficult for it to fulfil its statutory duties to a level that it has previously attained. The ALRC quite rightly has an enviable reputation. There are other law reform commissions, both in Australia and elsewhere, that follow the ALRC's processes. They come to the ALRC to learn from it. I think that is a very important thing that the Australian government can do to assist other jurisdictions within Australia and overseas, and I fear that that may be lost.

**CHAIR**—All right. But in terms of board governance, I know the Rule of Law Institute of Australia have expressed a very strong concern about the change in board governance roles and the fact that this all happened pursuant to the Financial Management and Accountability Act 2010 rather than some dedicated amendment to the Australian Law Reform Commission legislation.

**Mr Santow**—All I would say is that any significant changes to an organisation should be properly ventilated and the subject of proper public consultation and discussion.

**Senator CROSSIN**—Mr Santow, can I just take you to your submission. Under 3.1 you make an inference about the inquiry into the protection of human genetic information—I am not sure what year that was.

**Mr Santow**—I do not recall off the top of my head. I think it was early to mid-2000s.

**Senator CROSSIN**—You make the inference that that inquiry into human genetic information received 316 submissions and held 73 stakeholder meetings. In contrast, though, the secrecy laws and open government inquiry only held 35 stakeholder meetings. I put it to you, though: don't you think more people would have been interested in human genetic information than in open government in Australia? Is this perhaps not a reflection of the interest in the subject matter more than anything else?

**Mr Santow**—That is one possible inference; it is not one that I share. I think both of those issues are crucially important. Previously, the ALRC had been able to fulfil what I think is perhaps the best possible role in carrying out consultations—that is, to raise awareness of the issues as well as to invite comment. Raising awareness of an issue means to explain to the public and to relevant stakeholders how a particular area of law—be it secrecy, genetic information, sedition or whatever it happens to be—is of relevance and importance to them. I fear that with its reduced budget it is no longer able to do that.

**Senator CROSSIN**—I find it quite curious that you would suggest that the reduction in the stakeholder meetings is a result of a reduced budget. You do not provide us with any travel figures or costs for these stakeholder meetings. I find that this example is quite spurious, really. As a Senate committee, we might get 30 submissions and we will hold two days of inquiries. We might get 100 submissions and hold a one-day inquiry. We make an assessment about whether or not the submissions are valuable, whether they provide us with further information and whether we going to get quality evidence out them. We then set the agenda. I am assuming that the Law Reform Commission does the same.

I also put it to you that if I decided to have a public meeting in my home town on secrecy laws and open government versus human genetics I can guarantee to you that I know how many I will get at one versus the other. I think that what you have highlighted here is just the fact that there is more interest in human genetics rather than a diminished workload from the ALRC, quite frankly.

**Mr Santow**—I cannot definitively disprove the inference that you have taken. However, I would say that the extreme difference in the number of stakeholder meetings makes the inference that you draw, to me, less likely than the one that we at PIAC have drawn. I would also note that the ALRC has some control over the process of stakeholder meetings. It often invites people to attend these meetings and it is true that people could simply say, 'No, we are not interested.' But if there are not so many stakeholder meetings, I think the most likely inference to be drawn is that the ALRC is simply not in a position to be able to call those meetings in the first place.

**Senator CROSSIN**—I also want to put to you just a change in the format in the way inquiries are conducted. There is the three-stage process: an issues paper, then a discussion paper and then the final report. In organisations I am involved with and even with government consultations, both under the previous government and this government, it is not unusual to actually set the scene and streamline, I suppose, people's thought processes when they are coming across new material. And quite a lot of times, the issues and discussions are rolled into one. Take, for example, the question: do you support Australia becoming a republic? You would have a bit of an outline of what that means and then a few pages in you might put: 'If you do, here are four options that you could choose from.' Again, I find it hard to understand your logic, in that people are presenting information in a different way—for example, background, issue, possible options, all in one, versus two separate documents. I do not believe it is a result of budget cuts or of diminished quality; in fact, it probably enhances the quality. So, again, I am finding it difficult to draw the same conclusion as you, that that streamlined process is happening because there has been a lack of dollars as opposed to a change of direction.

**Mr Santow**—You would have to present that question to the ALRC to get a definitive answer, but—

**Senator CROSSIN**—You make that inference in your submission, though.

**CHAIR**—Senator Crossin, just let the witness respond.

**Mr Santow**—Certainly in my observation the ALRC is traditionally given complex areas of law and policy to report on, and that is not the case for all inquiries. Genetic information and privacy are incredibly difficult, complicated areas. To present an issues paper to start with, that essentially set the parameters and asks the questions, avoids the problem—which may sometimes be one of perception but may be a reality as well—of there being a kind of fait accompli in terms of what the outcome is designed to be. In addition, if you present the proposed solution to a problem at the same time as you present the problem itself, you almost inevitably cut down on the possible solutions that Australian stakeholders might creatively come up with. So, by untangling those two stages in the reform process, it is a very important means of getting the best quality information to the ALRC and I would be very surprised if there was a principled decision to conflate those two stages of review because it was one that the ALRC has so successfully followed over such a long period in its lifetime.

**Senator CROSSIN**—I think what you are really alluding to, though, is that you just have a difference of opinion about how they are now conducting their consultations. You cannot categorically draw the conclusion that it is due to budget constraints. What you are simply saying is the ALRC in some instances are now combining two processes into one, you do not agree with it and you do not think it is effective.

**Mr Santow**—That is correct. But I have drawn the inference, which I think is a reasonable one, that at the same time as these very significant budget cuts have occurred they have changed their process in some of their inquiries. I have not seen any kind of principled explanation for that change in process, so I have drawn what I believe to be a reasonable inference. But I reiterate that you are right, I cannot say definitively what the reason for that change in process is. Again, I would urge that you ask the ALRC that question.



**Senator CROSSIN**—Surely it is much more cost effective. When FaHCSIA undertook the consultations in 2009 in relation to some changes to what we, in a derogatory term, call ‘the intervention’ in the Northern Territory, they did not visit communities twice, saying, ‘Here’s the situation and we’re going to come back in six weeks and talk about the possible solutions.’ While they were there they said, ‘Here’s the situation and we’ve got some ideas about the solutions.’ They did it all at once and it was a more cost-effective way. It did not necessarily mean they were trying to save money or they were doing it because of budget constraints. They did it because of efficiency. That may well be the ALRC’s excuse or reasons as well, would you not say?

**Mr Santow**—I will confine my comments to the ALRC and not speak about any other body. I agree that *prima facie* it is more cost-effective to conflate those two stages, but in the long run I think it is clearly a false economy. If you go back and look at previous discussion papers—which effectively would have become reports—there are a number of times when the ALRC has floated what at the time it believed to be a good recommendation for reform but on further analysis from stakeholders, and reflection from the ALRC itself, has realised was not the best solution to the problem it was trying to solve. So ultimately if a government wants to be genuinely evidence based—as this government has said it wants to be—then it needs to invest the time and resources on complex difficult areas of law and policy to do the job properly the first time. And I think that is what the issues paper/discussion paper/final report process allows it to do.

**Senator CROSSIN**—How many times a year does PIAC attend consultations or hold meetings with the ALRC in the course of the ALRC’s work?

**Mr Santow**—I have only been CEO for the last four months, so I cannot comment off the top of my head on how many previous occasions PIAC has consulted with the ALRC, but I know it is frequently. Since I joined PIAC we have had a formal consultation with the ALRC in relation to its inquiry on discovery.

**Senator CROSSIN**—Would you say that, in the last two years, the quality of their reports has been the same as when you were at the ALRC? Has the quality diminished?

**Mr Santow**—All I can say is that the process that the ALRC is now using is an inferior one. I think it is too early to objectively say already whether the quality has diminished.

**Senator CROSSIN**—I have a teaching background, so I guess a part of my ethos is to look at critical evaluation and, at the end of the day, not only evaluate how you get to an endpoint but whether or not that endpoint is still the same. You have given me a comment about the process, but if you picked up a report that the ALRC produced last year would you say it is as rigorous and of as good quality as one that was released five years ago?

**Mr Santow**—I would have less confidence in its recommendations because I know that the process that the ALRC was previously able to engage in was a very, very effective one. I will give an analogy. If I were being directed to a particular place in Canberra, I would have more confidence if the person were reading a map than if they were not reading a map. I had very great confidence in the ALRC’s processes before. In the same way, I cannot say that, if they do not follow that process, we can have the same level of confidence in the outcome.

**Senator CROSSIN**—Or if they do not follow a process that PIAC or you personally agree with. They might be following a process that they believe is just as rigorous, but we have gone through our questioning and you believe that combining two thoughts into one discussion paper is not as effective.

**Mr Santow**—That is fair enough, but it is not just PIAC. The ALRC has been widely praised for its process and for the outcomes that that process leads to.

**CHAIR**—Mr Santow, you indicated that you have co-authored the submission. Was it reviewed by the board?

**Mr Santow**—No, it was not. It is not our normal practice for submissions from PIAC to be reviewed by the board. I have ultimate responsibility for the submissions.

**CHAIR**—Do we know that the board supports your submission? Can we say that? Secondly, how often does the board meet?

**Mr Santow**—The next board meeting is in February, this month. I understand the board meets four times a year. The board has not seen the submission and so, in a very specific sense, it has not endorsed the submission. But, like any board, it is aware of the process that we carry out in formulating any particular submission and it has endorsed the process.

**CHAIR**—All right. You are going through a normal process here?

**Mr Santow**—That is correct.

**CHAIR**—Thank you very much for submission. It is most enlightening, and we appreciate that.

**Proceedings suspended from 10.31 am to 10.50 am**

**GILBERT, Mr Richard, Chief Executive Officer, Rule of Law Institute of Australia**

**GILES, Mr Benjamin, Secretary and Treasurer, Rule of Law Institute of Australia**

**CHAIR**—We will recommence and I welcome Richard Gilbert and Ben Giles from the Rule of Law Institute of Australia. We have the institute's submission, which is No. 14, with the committee. Do you wish to make any amendments or alterations?

**Mr Gilbert**—No, Mr Chairman.

**CHAIR**—Thank you. I invite you to make an opening statement after which we will have questions from the committee.

**Mr Gilbert**—Thank you, Mr Chairman, and thank you members of the committee for inviting us here to give evidence today. The institute has a natural interest in the need for Australia to have an independent, strong and well-resourced law reform agency. We have a concern that, with very little debate and publicity, the ALRC is moving into a phase which will result in the absence of quality law reform processes at the national level. It is also, in our opinion, likely to lose its independence from the executive. It will do this by being more reliant on the department for day-to-day administration and it will also be weakened by virtue of the fact that it has a leadership team which is simply a single full-time commissioner. This concerns us because, under the rule of law, the law must maintain its relevance, simplicity and certainty for it to be respected and upheld. The ALRC, over the years it has been in existence, has done a considerable amount to ensure that the law is relevant, simple and certain in Australia.

Three things particularly concern the institute. The first one is that over time—and it is not just, we believe, the time of this government but previous governments as well—funding has been cut savagely well in excess of the department's funding which has escalated during the same period. Staff numbers have been cut by at least 25 per cent whilst in the past decade the department's staffing has increased by 100 per cent. At the same time the flood of legislation into parliament during the past 10 years has doubled in terms of the number of pages and bills which are considered in the parliament. What we have here are escalating laws before the Australian people and savage downturn in the resources for the agency which should be designed to ensure that our laws are good and effective laws.

We are also concerned about the downsizing of the full-time commissioners over time from four to three to two and now one. We believe that the ALRC needs more than one person to be a critical leader in strategy for law reform. It might be worth saying that the department has increased SES numbers, I think during the 10 years, by 60 per cent.

Our final point is that the changes have been ushered through parliament without debate, without consultation and with the absence of the committee review under a bill, which is not named the ALRC amendment bill, but named the financial management and accountability bill. This is disappointing to us and my colleague, Mr Giles, will cover this issue in his opening statement.

To encapsulate the main points of our submission, we believe: the ALRC needs at least one additional full-time commissioner; that it needs some restitution in funding so it can consult stakeholders and also discharge its legal and community education functions; that the committee should re-review the recent corporate governance changes to the ALRC in that financial accountability amendment bill and determine whether it impacts on the long-term viability and independence of the ALRC under its original charter.

The final point we make is that the committee needs to exercise its judgment on the level of staff turnover at the ALRC and whether this threatens its ability to perform its functions. Mr Chair, that concludes my remarks. If Mr Giles could make some opening remarks, too, I would be grateful.

**CHAIR**—No problem at all. Mr Giles.

**Mr Giles**—Like Richard I would like to thank the committee for inviting the Rule of Law Institute to appear today to address the committee. I have been involved in the law for close to a decade and, since 2004, I have practised as a commercial litigation solicitor. I think all lawyers and judges would agree that the work done by the Australian Law Reform Commission is an important part of our legal system and an essential part of the law reform process.

Inquiries carried out by the Law Reform Commission have covered very important areas of the law and have included significant reforms in areas such as privacy legislation, insurance contracts, evidence in court proceedings, shipping, superannuation supervision, aged care and, in more recent times, the use of human genetic information. As Richard just said, the Rule of Law Institute is very concerned about the cuts to the commission's funding over recent years and about the effects of these cuts on staffing, staff turnover and, generally, on the commission's capacity to maintain its historically excellent record of work.

Of particular concern to our institute is the reduction in the number of commissioners as a result of the Financial Framework Legislation Amendment Act 2010, which was passed in November last year. I would like to briefly explain why this is a matter which should be of great concern to the committee. In 1994, the House of Representatives Standing Committee on Legal and Constitutional Affairs carried out a comprehensive review of the ALRC. The committee's bipartisan report was over 130 pages long. It overwhelmingly endorsed the work of the commission and specifically recognised the important role played by full-time commissioners. The importance of full-time commissioners of the ALRC has also been recognised by submissions made to this inquiry and by the ALRC itself, the New South Wales Law Reform Commission, the Law Council of Australia, Macquarie Law School, Professor Weisbrot, Professor McCrimmon, the Public Interest Advocacy Centre and the Federal Court.

At all times in the commission's history, since 1973, the parliament has enshrined a minimum number of commissioners, full-time and part-time—initially five and in 1996 that was increased to six. The legislation passed in November last year reduced the minimum to one—that being the president of the commission. The legislation removes entirely the position of deputy president, removes the minimum other full-time or part-time commissioners and, for the first time, sets a maximum number of commissioners. One would have expected these changes to have occasioned heated debate in parliament, but that was not the case. Neither a single member of the House of Representatives nor any senator commented on the changes to the ALRC in the

second reading debate. There was no opposition to the amendments. Maybe that was because the name of the bill, the Financial Framework Legislation Amendment Bill 2010, gave no indication of the dramatic changes proposed to the commission structure or because the proposed changes were buried in the text of the bill and within an explanatory memorandum over 40 pages long. Maybe it was because the explanatory memorandum glossed over the changes by saying they were necessary to achieve greater flexibility. No doubt parliamentarians are very busy during sittings of parliament and the changes to the commission's structure may have been overlooked. That is unfortunate but unavoidable when so many thousands of pages of legislation are proposed and passed every year.

The Rule of Law Institute commends the committee for holding this inquiry. It is an opportunity to revisit the recent changes to the ALRC. The Rule of Law Institute recommends that those changes be repealed. Thank you for having us here. We welcome any questions.

**CHAIR**—Thank you very much for that. It is very much appreciated. Senator Crossin needs to depart for a short time, so I go to Senator Crossin to kick off the questions in this section.

**Senator CROSSIN**—Thank you for your submission and your contribution. Can you provide us with a little bit about what your institute actually does?

**Mr Gilbert**—The aims of our institute are to ensure that the rule of law is upheld in Australia. The institute also endeavours to ensure that the laws that are passed in this parliament do not undermine fundamental rights and liberties and, finally, the institute believes very strongly in transparent and open government.

**Senator CROSSIN**—How long has your institute been—

**Mr Gilbert**—Just over 18 months.

**Senator CROSSIN**—As chair of the legislation committee, I do not think we have had much interaction with you, Mr Gilbert and Mr Giles.

**Mr Gilbert**—Not between us personally, but we did make a submission on their anti people smuggling bill. We have made submissions to the other Senate inquiries.

**Senator CROSSIN**—I see. Can you describe to me what your interaction with the ALRC in the last 18 months has been?

**Mr Gilbert**—Not a lot. That is because the inquiries have not given rise to us taking a particular interest in them. Let me say, the governing council of the ALRC and I as the CEO have had interaction with the ALRC over the years in a direct sense but also in an indirect sense, in the sense that reports of the ALRC have had a very profound impact on the legislation. I do not know whether you want me to go into it, but I had two particular involvements and engagements in the ALRC. Would you like me to adumbrate those?

**Senator CROSSIN**—In the last 18 months?

**Mr Gilbert**—No—before that.

**Senator CROSSIN**—Briefly, then.

**Mr Gilbert**—I will be brief.

**Senator CROSSIN**—If that is going to assist me to come to the conclusion that perhaps the outcome and the quality now is no different to your experience three or four years ago, that might assist.

**Mr Gilbert**—Well, it was under the old regime—I mean the old procedures and the old governance arrangements. There is a difference now: there is the old and the new. The first interaction was when it was chaired by Justice Elizabeth Evatt, and I was sitting as a secretary to a Senate committee. The Law Reform Commission very effectively helped us work through an act called the Managed Investments Act. One might say that is not very important, but it actually is. The Managed Investments Act framework, and the superannuation provisions coming out of that, actually helped this country get through the GFC. And the Law Reform Commission was at the vanguard of those law reforms, and it did it under the sorts of procedures that Mr Santow referred to.

The second instance was when I was running what is now called the Financial Services Council—previously IFSA. We were one of the major players in the gene privacy inquiry, because it was about whether, inter alia, life insurance companies could collect genetic material from Australians. Let me say, in relation to the privacy inquiry, that, although they went into it with trepidation and great fear about over- or under-regulation, depending on which side they were on, almost every stakeholder involved came out of that inquiry thinking it was a landmark in terms of good consultation and good recommendations and process. So I can speak from my two engagements very positively about the ALRC.

**Senator CROSSIN**—The reason I want to ask you about whether you believe there are diminished outcomes now in what the ALRC are dealing with is that, right across the public sector and agencies, there has been a two per cent dividend. NGO organisations that make representations to me, for example, have not had any CPI increase in their money for probably five or more years now, going back even to previous federal governments. So we are in a climate where a whole range of organisations and agencies are actually trying to do more with less. We constantly hear that. In fact, our Senate colleagues would probably say they would love another staff member at some stage in the future. So for me that is a given now: we have had a two per cent dividend cut.

You would perhaps have seen me have a debate with PIAC about whether you have an issues paper and a separate discussion paper or whether you combine those into one. For me that is just a different way of doing business. What I am really trying to get an assessment of is whether people believe, at the end of the day, that in this current climate the ALRC are not as efficient, or are not producing such rigorous, high-quality work that we have all come to know and respect and rely upon. If we can suggest that in some way the quality is no longer there, I think we probably need to have further discussion about that. But no-one can actually say to me this morning the outcomes are not as good as they used to be. People say to me, 'I've got a gut feeling it's not going to be as good', or 'My perception is that it is not as good.'

**Mr Giles**—I think I can make a few points in response. The first one is that the cuts that were legislated in November last year have not yet come into effect. They do not come into effect until July this year, so we will not see the effects of those cuts until that time.

The second thing is that, in relation to the consultation process, there is a very good story in the Law Council of Australia's submission which talks about the historical two-step process of producing issues papers and then discussions papers. They said that, because of the recent cuts, that was not done in one of the recent inquiries in which they participated, and they felt that the consultation process was much less satisfactory than previously. That is dealt with in a bit more detail in their submission.

In relation to bare outcomes, if I can call it that, in terms of reports, I suppose it is very hard to objectively assess the quality of one report versus another. It may be that it is the quality of the consultation that is worse. In terms of quantity, at least from my review of the whole history of the ALRC, you do see an increase in the number of reports over time and a recent diminishment in the number of reports. So there has been a decrease, from what I can see, in bare outcomes.

**Senator CROSSIN**—Is the decrease, though, because of the complex subject matter—like human genetic laws, and sedition. They were very complex areas.

**Mr Giles**—Yes, certainly.

**Senator CROSSIN**—I think that is also a factor you need to consider. Even on this committee, when we had to deal with personal property security, we didn't turn that report around in a month, I have to tell you!

**Mr Gilbert**—Senator, I can see you are trying to come at this from an objective point of view, and I commend you. However, the commission seems to be starved of good references—that is an observation I would make. Let me give you an example from the commercial area, which is where my background is. There is an inquiry going on into the Storm Financial debacle; I think it is being funded to a private lawyer. That could have gone to the Law Reform Commission. Financial compensation would have been a good topic for the Law Reform Commission to look at. Coming out of some of the recent problems we have in some of the appeal court judgments in Australia, perhaps the Law Reform Commission should be reviewing the model litigant rules. Three major appeal court judgments in the last six months have criticised federal government litigation. There is some good value to be added here, but I suspect that the current governance and the current funding preclude the opportunity to look at these types of topics.

**Senator CROSSIN**—All right, but I put it to you that perhaps it is time to change the way in which the Law Reform Commission sets about its annual work plan. The ANAO writes to every parliamentary committee and asks them if there is an area that they think ought to be looked at. I am sure it gets 500 suggestions—it might even get suggestions from different ministers as well—and then, out of that, it sets its own priorities. Is there, perhaps, a need now to look at the way in which the ALRC could self-refer, get referrals from the minister or ask parliamentary committees what they think and reset its program in a different way?

**Mr Giles**—I think referrals from the Attorney-General have some merit, in that the Attorney-General is representative, responsible and elected. It may be that parliament could refer matters to the commission—I am not sure whether that is something that is worthwhile.

**Senator CROSSIN**—We have often put that in our recommendations. I am curious to know whether the ALRC picks that up or whether the Attorney picks it up and flips it to the ALRC, but that is a matter of process, really.

**Mr Giles**—I do not think we criticise the referral process in our submission.

**Mr Gilbert**—No.

**Senator CROSSIN**—Sorry, Mr Gilbert, I am going to have to interrupt you. I have a radio interview, and they are ringing me now. But I will come back if that is okay.

**Mr Gilbert**—That is appreciated.

**Senator TROOD**—Thank you for a very substantial submission; it is of great assistance to the inquiry. There are a couple of matters I wanted to take up. The general conclusion I reach from your submission is that the changes that have now been legislated—I think, Mr Giles, that we as senators have been appropriately chastised; thank you very much for your observations—

**Mr Giles**—I tried to be polite about it.

**Senator TROOD**—The changes obviously substantially affect the governance of the ALRC and its capacity to perform its traditional role—that is the conclusion I reach from that. I am interested in whether or not you have a view as to the reasons this has become necessary. My understanding is that a review of the commission was undertaken but that review has not been made public. Is that right?

**Mr Gilbert**—Yes. The first that I knew of the review was when I read about it in Professor Weisbrot's submission. It would have been good, in writing this submission, to have access to that review. I can understand the need for stringency in government, and I think Senator Crossin's point is a very valid one, but I think the cuts here have got to a point where they are affecting the critical mass of the organisation. I cannot see how a body like the Law Reform Commission—which is somewhat analogous to an appeal court, in a way, because it is looking at the law and how it should move forward; appeal courts tend to do that, having reviewed what the lower court has looked at—can do it with a single person and some staff who are experiencing almost 100 per cent turnover if I am correct; that figure might be something you need to question. I do not think it can do its job.

It is like having a board of directors in a public company with just the chairman. I think you need some more expertise there, because the Law Reform Commission is going to be very bottom heavy. Once it eventually gets stability in its staff, it is going to have these people at an EL2 level, which is senior middle management in the Public Service, and then a president. The only way that president can get a steer on how to go is basically to talk to the department, and that is when you get independence issues. That is where the corporate governance and the independence of the organisation are brought under the spotlight.



**Mr Giles**—The other matter that is raised by Professor Weisbrot’s submission is why this has happened. The ALRC, in terms of overall government, is a relatively small organisation. The drastic cuts seem to be quite serious and he says that, at the same time, the department’s own staffing numbers have increased from 750 staff to 1,500 staff. If that is correct—and maybe that is something the committee needs to look into more closely—it is very surprising.

**Senator TROOD**—We have a situation where the Attorney-General’s Department has grown exponentially, or at least doubled on your figures—and I do not doubt them, Mr Giles—but the ALRC has been constrained, to say the least, over the last two years. You can accept significant changes in the role and mandate of institutions and agencies if there is a rationale for them, if there is logic to them. Your submission and your observations now make the point that there are very significant and even radical changes in the role, mandate and, indeed, funding of the commission. What I am interested in is whether or not you have a view as to why that may have occurred and why it might be necessary, if indeed it is.

**Mr Gilbert**—One of the things that come to my mind is that this happened before the advent of the Rudd government. Even under the coalition government there was a tendency for the departments themselves to conduct their own law reform inquiries. In particular, I point to Treasury, because the business law part of Treasury used to be in Attorney-General’s and that used to generate a number of reviews for the ALRC. So the departments have become more reliant on themselves for their law reform—I suspect—and their procedures. Consequently, the ALRC has become very narrow in its focus and has become very legalistic in the types of references it has been given.

**Senator TROOD**—Is that in your view, Mr Gilbert, desirable?

**Mr Gilbert**—No. It is most undesirable, because all the agencies of the government except Attorney-General’s affect people’s fundamental rights and liberties. That is what laws do. Therefore, you need a strong and viable law reform commission.

**Mr Giles**—One thing that is also remarkable about the Australian Law Reform Commission is its success. Since 1973 it has been a world recognised reform body. Its implementation rates in the recommendations it makes being drafted into legislation are very high. If you look at it from a mathematical point of view, it is a very successful body, so the cuts do come as quite a surprise.

**Senator TROOD**—Which suggests to me, Mr Giles, that it has responsibly identified areas of need in law across Australia. Rather than engaging in flights of fantasy as to where reform ought to take place, it has been quite focused and almost functional in the sense that it has identified needs and focused on them very directly.

**Mr Giles**—That is the beauty of the consultation process as it currently works, or as it did work. An issues paper is designed to invite the community to consider the issues that are put forward for consideration and to make a response. The discussion paper then tells the community what the preliminary views of the commission are and gives them an opportunity to respond in more detail precisely to those possibilities. So it is not a hasty approach to legislative reform, which is appropriate.

**Senator TROOD**—Do you have concerns or are you reasonably relaxed about the capacity of the new commission to undertake that process of consultation with the kinds of arrangements which will now apply?

**Mr Giles**—I think we are very concerned. As Richard said, the sheer volume of legislation that is now passing through this parliament is enormous. It is a volume of legislation that has never been seen in the history of this country. It seems to be a never-ending increase in the amount of pages of legislation and additional rules and regulations that govern the people of this country. When you have legislation increasing so exponentially, you would expect to see the law reform body increasing at the same rate, but it has actually gone backwards.

**Senator TROOD**—I want to take up this matter of governance. I am looking at page 11 and the top of page 12 of your submission, under Board of Management. I am just not clear whether or not the reforms that went through the parliament last year affect the structure of the board of management.

**Mr Giles**—Yes, they do.

**Senator TROOD**—So the point of this bizarre arrangement that you allude to—the board of management, of one—is no longer going to exist, or have those provisions remained in the act?

**Mr Giles**—The provisions come into effect in July, so they have not actually gone into the act yet and they could possibly be repealed before July.

**Senator TROOD**—We might hope for that!

**Mr Giles**—There is a proposed change to move the commission from one form of financial governance to another. I understand there are two different acts that you can slot a government body into, moving it from one to the other, so it effectively ceases to be a separate entity. It now, effectively, becomes an arm of the Attorney-General's Department. The president of the commission, who is the only necessary commissioner, takes on a joint responsibility as CEO of the commission and has responsibility for financial matters as part of the board of management.

**Senator TROOD**—What we are doing here is combining the intellectual leadership of the commission with the administrative responsibility for leading it as well, is that right?

**Mr Giles**—Yes and I understand that, historically, the way it has worked is that full-time commissioners, including the president, have taken on an administrative role for the commission, generally, and for each particular inquiry. Now that we only have one commissioner, there is no doubt a significant burden on her to carry out her tasks while, at the same time—

**Senator TROOD**—So there is essentially one person having to assume all of these administrative responsibilities in relation to every inquiry, unless you have sufficiently senior staff below the commissioner level who can assume that responsibility.

**Mr Giles**—Yes, that is right. Also, in the 1994 House of Representatives inquiry, I think one point was made very well; that, in any given inquiry that the ALRC undertakes, it is really the

full-time commissioners that drive it forward. Part-time commissioners are obviously essential and integral to the process because they bring along specific legal or technical expertise to that inquiry but it is the full-time commissioners who keep it going and give it the momentum, so to speak. With only one full-time commissioner, I query how that momentum can be maintained.

**Mr Gilbert**—For example, the decision to down-size the process of consultation would have been decided by one person, ultimately. That is the commission as it was, if that was the time-frame. I would prefer something as important as that to be decided by a meeting of two people because then there is at least more than one view. You could say that there are staff underneath but the staff underneath are, let us face it, junior and, particularly now, they are junior because of the turnover at the legal officer level.

**Senator TROOD**—Are you aware, Mr Gilbert, of the length of time that any of the junior staff have been at the commission lately?

**Mr Gilbert**—From the annual reports, all I can say is it looks like it has a very high turnover. The department, I think, has a turnover in the mid teens or 10 per cent and the private sector is about the same. The ALRC has a turnover near 100 per cent, but you need to establish that through the process of the inquiry.

**Senator TROOD**—We can ask that of the commission, obviously, but do you have any knowledge of why that turnover has been so large?

**Mr Gilbert**—No, I do not. I have never spoken to anyone working there. It just concerns me. If you had a law firm, for example, that had one hundred per cent turnover of its lawyers, it would not have many customers or clients.

**Mr Giles**—It would not do a very good job.

**CHAIR**—Senator Crossin, did you want to add anything further?

**Senator CROSSIN**—I do not think so. And I am sorry I had to cut this short, Mr Gilbert.

**CHAIR**—No problem at all. I have some questions. Again, thank you for your submission. It is very comprehensive indeed and most useful to the committee. Mr Giles, you talked about the role of full-time and part-time commissioners. You gave us a little bit of background in terms of the history. I think at one stage there were five full-time commissioners and then—

**Mr Giles**—Six.

**CHAIR**—What year was that?

**Mr Giles**—It started in 1973 with a minimum of five commissioners. In 1996, when the new act was introduced, following the House of Representatives inquiry, it was increased to six, with a minimum of at least two full-time commissioners. That has now been decreased to one. One thing that the Rule of Law Institute is very concerned about is that these days it seems to be the preference of parliaments to leave everything in the hands of the executive rather than deciding for themselves a minimum, as has been the case throughout the history of this country. So now it

is up to the government of the day to decide precisely how many commissioners—anywhere between one and seven—there will be.

**CHAIR**—Sure. In 2009, I think there were three, were there not, and two were axed?

**Mr Giles**—I could be wrong about this, but I thought there was a stage where there were only two or maybe three commissioners. Certainly, the number of full-time commissioners has gradually decreased over time and now we are at only one.

**CHAIR**—I want to move from that understanding and that background to the implications for the commission with reducing it to one. I want you to flesh that out in terms of the appointment of part-time commissioners. We heard this morning that they were all Federal Court judges and very important and competent capable people.

**Mr Giles**—Yes.

**CHAIR**—We were advised this morning by the Federal Court that those part-time commissioners are full-time Federal Court judges—very busy people.

**Mr Giles**—Yes.

**CHAIR**—We were also advised that not uncommonly they are from time to time missing meetings and briefings or whatever in their role and capacity as part-time commissioners. Frankly, this concerns me and I am sure others. They have busy full-time roles as well as being part-time commissioners. We will find out more shortly from the commission about the extent of their involvement as part-time commissioners, which is no doubt extremely valuable. Can you talk a little about that and the implications for the commission and for the quality of products coming through?

**Mr Giles**—If you look at the 1994 report from the House of Representatives committee, it does recognise that the part-time commissioners necessarily have time limitations because they are part-time and because they have full-time positions elsewhere as judges, academics or, in some cases, scientists or other technical experts. Their role is, as I understand it, meant to provide assistance to a particular inquiry, with matters such as consultation and finalising reports as needed. It is really the full-time commissioners who are necessary for each inquiry to run the inquiry. When you have only one full-time commissioner it must make it hard to carry out inquiries properly.

**Mr Gilbert**—The commission needs a strong, vibrant and intellectually capable staff. I am not reflecting on the staff now or in the past. All I am saying is that you need leadership there to work out what sort of staff you want. That should not be happening at the Attorney-General's advisory committee; that should be happening at the commission, because ultimately the commission will fail if it does not have quality staff.

**CHAIR**—Are you saying it is not happening at the commission?

**Mr Gilbert**—I am not going that far but I am saying there must be morale problems because the turnover appears to be high. And I say that going forward it would be good if there were two

commissioners in order to help with No. 1 identification of staff needs, No. 2 appointment of staff and No. 3 nurturing and growing them intellectually so that the drafts that are written for the commission are quality reports. To have a span of control of 23 people and you are the CEO is, I think, not good governance. There needs to be some dissection of those responsibilities so that there can be some genuine leadership. As I said in the submission, the commission looks very bottom heavy.

**Mr Giles**—I think a couple of the submissions also touched on which areas of staff have been affected. Professor Weisbrot's submission and the submission from the ALRC identify particular staffing positions which had to be cut because of the budget changes.

**CHAIR**—You mentioned morale. Professor Weisbrot says in his submission:

... apart from the sheer loss of numbers, there has been a savage blow to morale.

I refer you to that, Mr Gilbert.

**Mr Gilbert**—Thank you, but I really cannot comment.

**CHAIR**—That is fine. Do you have a view as to how many full-time commissioners are required to meet the needs of the commission? In that regard, I highlight the fact that on their websites and publicly it is known that there are three inquiries—the family violence inquiry, the national classification inquiry announced in December last year, which I think goes for about 12 months, and also the discovery procedures inquiry. What are your views on that?

**Mr Giles**—Since 1996, the parliament has enshrined a minimum of two. It is always up to the government of the day to appoint more if there is a particularly heavy workload. We have said in our submission that there should be at least two.

**CHAIR**—When did that change? At the moment we have one full-time.

**Mr Giles**—At the moment the law says that there should be two, but for a long time there has been only one. In July the law will be changed so that it only needs to be one.

**CHAIR**—Let us clarify this. You can take it on notice if you need to. You are saying that the Law Reform Commission legislation has not been abided by?

**Mr Giles**—That is correct.

**Mr Gilbert**—There is something we have in our submission. One of our advisory committee, Russell Stewart, formerly a partner in one of the large law firms, raised an opinion on that and it is in our submission. He basically says that technically it is not in breach because vacancies can exist and you can still have one person, but we believe the spirit of the act and the intention of the act probably are undermined.

**CHAIR**—But the act does say that there should be a minimum of two, is that correct?

**Mr Giles**—The act says that there must be a president and there must be a deputy president. For a long time there has not been a deputy president. The act is quite clear that that does not mean that the commission ceases to be a valid commission and that is what Mr Stewart deals with in his opinion. There is no question that the Law Reform Commission has not been operating legally and effectively for the past while. Certainly the government was obliged by the act to appoint a deputy president and has not.

**CHAIR**—I raised this at the last Senate estimates and possibly the time before—concerns about whether it is abiding by the actual legislation. I think the view was that perhaps they are not breaching it but clearly there were concerns expressed, certainly on my side, about that.

**Mr Giles**—I think it is very concerning that the parliament has specified that there should be a president and a deputy president and the executive has failed to carry out the wishes of parliament.

**CHAIR**—Yes. I also notice concerning the Remuneration Tribunal—it is on the public record—that there is a provision obviously funding for the president and also for the deputy president, that there is provision for a member full time and for a member of part time. Obviously they are acting in accordance with the act. Is that the way you would understand it?

**Mr Giles**—I am not familiar with the remuneration provisions, I am sorry.

**CHAIR**—That is what is on the website.

**Senator CROSSIN**—So the ALRC Act specifies that there must be a deputy president?

**Mr Giles**—Yes. Those are the words it uses—'must be'.

**Mr Gilbert**—But that was amended in the act of last year such that there is not.

**Mr Giles**—It will come into effect in July this year, coming up.

**Senator CROSSIN**—I just wanted to clarify that.

**Mr Giles**—Since 1996, there has been a requirement to have a deputy but for a very long time now there has not been a deputy.

**Senator CROSSIN**—I was going to ask you about that, when you said you did not think it had not been operating according to the act for a while now. What is 'a while now'?

**Mr Giles**—The ALRC submission sets out the time period. It certainly goes back to the last government. I think there was a brief time, maybe of around 12 months, when a deputy president was appointed—I am not sure whether that was the coalition government or the Labor government.

**CHAIR**—When did it reduce to one full-time commissioner?

**Mr Giles**—It has been running without a deputy president for a long time, apart from the 12-month period I referred to, but the law will change.

**CHAIR**—We are aware of that, but when did it reduce to one full-time commissioner?

**Mr Giles**—It is in the ALRC submission. I can find it now, if you like.

**CHAIR**—It was last year, was it not? Let us just clarify this, Mr Giles.

**Mr Giles**—I think we are at cross purposes. I was talking specifically about a deputy president.

**Senator CROSSIN**—Yes, that is what I wanted to finish my questioning about.

**Mr Giles**—There have been other full-time commissioners up until, as you say, last year or the year before.

**CHAIR**—We will clarify that point very shortly with the commission.

**Senator CROSSIN**—What I wanted to ascertain from you, Mr Giles, is that ALRC has not had a deputy president since prior to 2007 as well.

**Mr Giles**—The dates are actually in the ALRC submission. I have not memorised them, but there has not been one for a long time.

**Senator CROSSIN**—I am trying to be objective about this. You cannot necessarily correlate a budget cut in the last two years to the lack of deputy president because there was not a deputy president there prior to 2008. It would be hard to say—in fact, you cannot say—that the lack of deputy president in the last two years is due to a budget constraint, or the two per cent efficiency dividend, because there has not been a deputy president for some time.

**Mr Giles**—I think that is right. The budget cuts began quite some time ago and it has been getting worse and worse.

**CHAIR**—Lets us get some clarity around this. I am not referring specifically to the deputy president, I am referring to the reduction from three full-time commissioners. Two of those were axed in 2009 and that reduced it to one full-time commissioner who actually is the president. Is that your understanding of the history of the last couple of years?

**Mr Giles**—Yes. The reality is that the deputy commissioner does not have a specific role other than acting as deputy when the president is unavailable. Really it is the numbers of full-time commissioners that are important.

**CHAIR**—That is what I am trying to clarify. The numbers and the role of a full-time commissioner is what we have been discussing for much of the morning, the important role of having full-time commissioners together with a president.

**Mr Giles**—It is helpful for the second full-time commissioner to be a deputy when the president is not available in, but when the president is available most of the time it is not essential.

**CHAIR**—All right. Going back to my question earlier, we have got three inquiries currently. How many full-time commissioners in the ideal world would you recommend? Are you able to give us a number? If not, more than one, I am assuming.

**Mr Gilbert**—At the end of the day we believe that to be effective in a minimal sense you need two commissioners and you need a very viable, able and supportive executive team working for you.

**CHAIR**—Let us go to the issue of staff turnover. You have indicated that it is up to 100 per cent, and we can clarify that with the commission. What do you think of the impact and consequences of that on, first, staff morale but also the workings of the commission?

**Mr Gilbert**—My experience of being an employer and working for an advocacy grouping working on submissions and what have you is that people do not learn the job until they have been in it for six months at a minimum. So if you do not keep people for at least six months or 12 months and they are turning over like that, it seriously dysfunctions you and you have got problems. These people working in the executive or the legal term should be in those positions for three or four years to be effective.

**Mr Giles**—And to have everyone leaving in a short space of time does diminish the corporate knowledge that the body would have. That would all be lost, obviously.

**Mr Gilbert**—The alternative to that is to outsource it, and that is very costly. So insourcing for the Law Reform Commission of high-quality people is critical.

**CHAIR**—I think you have made your point. It is in the submission and those points add to that. Thanks again for that. I want to go to the post-July arrangements. You have made your points clear in your opening remarks and your submission about your concerns. Can you flesh that out for us in terms of how concerned we should be about these arrangements? Clearly Senator Trood has indicated they did not perhaps get adequate scrutiny through the parliament. Senator Trood said we have been chastised for that. So tell us about that.

**Mr Gilbert**—Can we issue an apology for not coming to you. We should have picked that up and we did not. We are a pro bono organisation and we do not have many resources, but going forward we are going to be very closely watching these sorts of acts to make sure they have not got hidden goodies, or baddies, depending on how you look at it. But we should have picked that up and we did not.

**CHAIR**—But you make the point that it was in a financial management legislation amendment rather than an Australian Law Reform Commission amendment bill.

**Senator TROOD**—Which strikes me, Mr Gilbert, as a deception, frankly.



**Mr Gilbert**—If somebody in the commercial world did that, ASIC or the ACCC would be after them—

**Senator TROOD**—As they should be.

**Mr Gilbert**—for misbranding.

**CHAIR**—Misleading, misbranding?

**Mr Gilbert**—False or misleading conduct—that is the provision: section 52.

**CHAIR**—So you are quite antagonised by that amendment and the fact that it was not fully disclosed to members of parliament and the public?

**Mr Gilbert**—At the end of the day—and you have to read the EM properly—this is something that probably should have come before this committee.

**Mr Giles**—Before the event, not after the event.

**CHAIR**—And you are saying that because they are substantial changes.

**Mr Gilbert**—Absolutely. It changes a bill which was passed in 1973—a bipartisan, landmark change.

**CHAIR**—Tell us about these changes and your concerns about them; the setting up of a board which has a member of one, which is overlooking the commission—is that right? And tell us about the consequences of that.

**Mr Giles**—I think there are two components to the changes. One component is the changes to the minimum numbers of commissioners that the parliament has enshrined, which is obviously important for the basic role of the commission. The other aspect is the financial management, the board of management changes.

**Mr Gilbert**—The administrative board is appointed fully by the department and the minister. In terms of the equality of the meetings, you have the CEO there with people, none of whom she has appointed, deciding the administrative affairs of the organisation. In terms of procedural fairness and equity, you would expect to have at least one person in that room who was actually working with you and who knows what is going on so that you do not have to prosecute the case and only prosecute the case. I think that will lead to difficulties. The case in point is the methodology in the procedures the commission uses to conduct its inquiries. Would that be discussed by the advisory council, or would the commission discuss it? That is a key issue.

**Mr Giles**—And it does go to independence. Historically this has been a body that has been independent of government, and rightly so. In our submission, one thing we applaud is its ability to maintain a non-party political approach to these inquiries, some of which are quite contentious. That should be recognised and continued. We now see changes that mean that the independence is potentially compromised because the Attorney-General has greater control over the internal operations, particularly the financial operations, of the commission.

The other aspect that I referred to is the changes to the minimum numbers of members of the commission. As I said, historically it has always been at five or six, and now it has dropped down to one. That is a surprising change, to say the least. If you look at the Commonwealth nations around the world, our law reform commission is now one of the smaller ones. Our Law Reform Commission has fewer commissioners than in New Zealand, fewer commissioners than in Hong Kong and fewer commissioners than in South Africa. In fact, it is smaller now than the New South Wales Law Reform Commission and the Victorian Law Reform Commission.

**CHAIR**—When you say ‘smaller’, do you mean in terms of staff numbers?

**Mr Gilbert**—Full-time commissioners.

**Mr Giles**—Full-time and part-time—the overall numbers of commissioners. For instance, New Zealand has five full-time commissioners, Hong Kong has 12 part-time commissioners and New South Wales has two full-time and seven part-time commissioners. It is just surprising that the federal body would be smaller than the state bodies.

**CHAIR**—Indeed. I have the details from the Australian Law Reform Commission’s submission. They say that the office of Deputy President has been vacant for much of the past 10 years and was last occupied from December 2005 to September 2006. They also say, on page 35:

Since December 2009, Professor Rosalind Croucher has been the President with no other full-time Commissioners.

**Mr Giles**—Yes.

**CHAIR**—I just want to ask you about Professor Weisbrot’s concerns. He has talked about the devastating effects of the budget cuts and the radical changes to arrangements post-July this year which are, I think, similar in many respects to your concerns. He has also talked about the fact that there has been a review undertaken by the department, which he was not aware of or consulted about. Firstly, does that surprise you and concern you and, secondly, do you know anything about this review?

**Mr Gilbert**—No, the first we knew about it was when we read it in Professor Weisbrot’s submission. We would opine that given the criticality of the review and what it has actually driven, that review should be a public document.

**Mr Giles**—I think that is right. I think it is also surprising that Professor Weisbrot was not consulted. At the time he was the head of the Law Reform Commission and he has had an extensive and deep involvement in law reform in this country. As I understand it, he holds a number of positions on international law reform organisations so no-one else can be better placed to consult with about law reform issues.

**CHAIR**—The government of course is going to say that it is a budget matter and therefore they should not discuss budget matters with anybody. What do you say to that?

**Mr Gilbert**—It is also a governance matter and governance matters should be discussed with the agencies impacted. Ultimately, they have first-hand information.

**Mr Giles**—One point that the Law Reform Commission makes in its submission is that the cuts have now reached the stage where you have shaved off all the fat that you can and you are now really cutting into the organisation itself. You are left in the position where almost the entire budget of the commission is staffing and rent. There is literally nothing else to cut without cutting the premises or the people.

**CHAIR**—You know that they are moving premises in Sydney because of the budget cuts—at least in part.

**Mr Giles**—That is right. That is what is now happening.

**CHAIR**—Professor Weisbrot's views are set out in his submission. He talks about the radical altering of the 'composition, nature, role and resourcing of the highly successful Australian Law Reform Commission' and that 'none of these matters were ever discussed with me'. He is absolutely upset by that—is your understanding and your response to that similar?

**Mr Gilbert**—Again, we are a fledgling organisation. However, having reviewed what has happened, we are very concerned for the organisation.

**CHAIR**—I just want to ask you about the recommendation that the government should respond to commission reports within a certain time.

**Mr Gilbert**—I think this goes back to one of the questions that Senator Trood asked us about what has caused the downsizing or downscaling of this commission. I think that there has been less than needed discipline around responding and I think that this committee will do a good service for the commission and also for law reform if it went along the path of making recommendations that the minister must keep an extant list of reports and responses and that there should be a minimum time frame for responses—whether 12 months or nine months—

**CHAIR**—And should they become public?

**Mr Gilbert**—Absolutely, and tabled in both Houses. I think that would help the government and also help the Law Reform Commission and the community if we had some more discipline.

**Mr Giles**—Given that parliament is expending money on this organisation to achieve law reform, I think that it is important that it sees the results of that law reform not just in the report of the commission but also in what the government proposes to do about it. Particularly given the high rate in the past of the take-up of recommendations for reform by governments of the day, one disappointing feature, which was also recognised in the 1994 inquiry, was the fact that sometimes there is a delay by the government in taking up the recommendations even though when they are taken up they are taken up in large measure.

**CHAIR**—Okay, thanks for that. Is there anything else that you wish to add about your concerns for the ongoing independence of the commission, which in past decades has been extremely important?

**Mr Gilbert**—I think that we have said it, Senator. Independence is about the standing of the commission and the ability to put together a strong position if it is attacked, and we say that you

need a corpus of at least two to maintain some semblance of independence from the executive arm of government if you are the Australian Law Reform Commission.

**CHAIR**—Going back to this point about the reports, you indicated on page 6 of your submission that the recommendations of the commission have a 90 per cent implementation rate. Is that right?

**Mr Gilbert**—Over the whole period, yes.

**CHAIR**—You have done an assessment of that?

**Mr Gilbert**—Yes, and I think the Law Reform Commission has done that as well.

**Mr Giles**—I have seen some percentages in, I think, the Law Reform Commission's report.

**CHAIR**—And you see that as an indication of their quality and success?

**Mr Giles**—It is very hard to measure success with an organisation like this. Like any commission, how do you measure success of a court, a parliament, a commission? It is very hard. But that is a measure of success, and it is a high measure of success.

**Mr Gilbert**—You might say then: why? The body is created out of bipartisan politics. It tries not to become partisan in its inquiries. It has always done that. I have not seen a single ALRC report politicised, which says a lot for it, and it says a lot for the governance of it. The next point is the consultation, the fact that it goes to the people who are disaffected. And it did that in the inquiries I was involved in and got their support.

**CHAIR**—In light of the time, I want to quickly ask: are you aware of the movements in terms of their offices and the implications that that may have on the workings of the commission?

**Mr Gilbert**—No, sorry.

**CHAIR**—That is fine, not a problem. You have been around for 18 months and you are pro bono. Could you just tell us a bit more about the institute and the credibility of the organisation?

**Mr Gilbert**—We identify issues where we believe advocacy is needed. We have recently changed our board structure to give it an even higher degree of independence. So we now have on our board Richard McHugh SC, Dr Melissa Perry SC and one of the great founders of the rule of law in Australia, Emeritus Professor Geoffrey Walker. Our advisory council also has Professor David Weisbrot, which I must disclose—and he disclosed that in his submission anyway—but also other prominent lawyers and experts from academe as well to assist us in ensuring that we take reasonable positions but positions which uphold the rule of law.

**CHAIR**—How do you operate? You say you are pro bono. Do you work part time, full time?

**Mr Gilbert**—There is no pay for the board. The labour resources that go into the organisation are not paid for by the Rule of Law Institute. Our budget is a very thin budget. Basically it pays for a little travel and some publications—that's it.

**CHAIR**—You have hosted some excellent high-credibility conferences that I am aware of. I think you advise other members of parliament as well. Is that correct?

**Mr Gilbert**—Yes, and again, the speakers we had to all of those did that for nothing. So we believe what we have done is a good thing for the rule of law in Australia. We have also tried to be absolutely nonpartisan. We have picked up issues that offend one side of politics and not the other and vice versa.

**CHAIR**—So the government cannot accuse you of having an axe to grind on this issue against them for any reason?

**Mr Gilbert**—No, absolutely not.

**CHAIR**—Thank you. We very much appreciate your evidence and your being here today.

[11.48 am]

**ALSTON, Mr Bruce, Senior Legal Officer, Australian Law Reform Commission**

**CROUCHER, Professor Rosalind Frances, President, Australian Law Reform Commission**

**WYNN, Ms Sabina, Executive Director, Australian Law Reform Commission**

**CHAIR**—Welcome to the Australian Law Reform Commission. We have your submission; it is number 2. Do you wish to make any amendments or alterations to it?

**Prof. Croucher**—Not to the submission.

**CHAIR**—I invite you to make an opening statement, after which we will have questions.

**Prof. Croucher**—Like previous people giving evidence, I thank the committee for the opportunity to speak. I would like to take it as a given in my opening remarks that the ALRC has a high reputation for producing high quality, well researched and well documented reports.

The vast majority of the submissions, including that of the Attorney-General's Department and, indeed, in comments of the Attorney-General, the Honourable Robert McClelland MP, in the *Australian Financial Review* today restate the importance of an independent law reform body with appropriate levels of funding that will continue to produce the high quality work that has characterised the ALRC for the past 35 years.

Many submissions also note the very high implementation of the ALRC's proposals and recommendations. Although implementation of itself is a difficult measure, it does testify to both the practicality and the relevance of our proposals, and the effectiveness of the processes by which we have come to the conclusions that are embodied in our recommendations.

The value of the ALRC's research has also been noted in several submissions from academics and from the judiciary, in particular from the Federal Court, which we also heard in evidence this morning. All of these speak of the high value provided by the evidence base of the ALRC's research and the enduring nature of the law reform reports that we produce. So I will take it as a given that what we have done has been done extraordinarily well.

The issue, I think, at its most basic is: can we continue to do so? Or, more particularly, what do we need to ensure our ability to do so into the future to the benefit of government, the courts, the legal profession and the broader community, both nationally and internationally.

The key point I would like to make is that the intellectual capital of a standing law reform commission requires a core complement of both commissioners and staff. The maintenance of that intellectual capital also generates an enormous efficiency, where the ALRC is expert at the process of law reform and, with its reputation and the standing of its commissioners, it is able to leverage enormous expertise and contributions—all honorary—informing the work and development of the recommendations for reform.

Here is the rub: exactly what is adequate resourcing of the Australian Law Reform Commission? In our background submission we commented that the idea of adequacy is a complex one, and that we consider that the baseline for any consideration of adequacy is the production of high quality, well researched and well documented reports and the necessary staff and time to produce them. Today let me add to that: to maintain the intellectual capital in law reform.

We have already had to prune significantly our important educational outreach programs to concentrate on our inquiry work. What really is at issue here is whether or not the ALRC's current appropriation is adequate to allow us to continue the high quality, internationally recognised best practice work that we have become known for. I would like to put on record, however, that I do appreciate the Attorney-General's personal commitment. His comment in the *Australian Financial Review* today is another testimony to that, and also his presence to launch in person the family violence report on 11 November last year. I also want to record appreciation to the department for its participation in regular information exchanges. I think we have gone a long way here to build respect and understanding.

But with respect to the question that is before the committee as to the adequacy of our appropriation—the adequacy of our resources—I have to say no. I kept thinking of an analogy to describe the impact of the budget cuts, described by some as 'savings,' and the image that kept returning to me was that of the Black Knight in the film *Monty Python and the Holy Grail*. After he lost one arm defending his turf he said, 'Tis but a scratch'. After the other one was lopped off, 'Just a flesh wound'. After both his legs departed similarly, he still managed to say, defiantly, 'The Black Knight always triumphs'. It is ridiculous, but somehow fitting. The real reduction in the budget—not just the efficiency dividend, I am talking about the significant 20 per cent reduction in recent years—makes us feel like that poor knight.

The ALRC, like the Black Knight, cannot triumph or run on reputation forever. What then are the essential aspects of resourcing? There are two aspects I would like to focus on: the need for a commission that actually includes both full-time and part-time commissioners and the core complement of staff required to preserve the intellectual capital of the ALRC and to continue to deliver high quality, well-researched and well-documented reports.

With respect to commissioners, the ALRC completely understands the current budget restraints, the government's commitment to realise a budget surplus by 2012-13 and the increased pressure on this goal caused by recent events around the country. However, the cuts to the ALRC and the way they were introduced have meant that at present the ALRC is not able to afford the appointment of a second commissioner, let alone the two commissioners, to lead the expected, efficient, two inquiries at a time and to provide the integrity of decision making by the commissioners in making the recommendations for each inquiry. Being able to afford commissioners within our reduced appropriation has been set as the condition for their appointment. Here I am not talking about part-time commissioners but full-time commissioners, preferably appointed as standing, fixed-term commissioners.

Let me explain. The background submission makes quite clear the difference between part-time commissioners and full-time commissioners. We have heard again this morning testimony of that difference. The contribution of part-time commissioners, while essential to the overall quality and reputation of the ALRC's work and its ability to leverage further community input,

does not go to the production of the reports and the consultation processes that underpin them. Part-time commissioners play an invaluable advisory role but it is only that and rarely more so. I am not suggesting for any minute that we do not need them—we do and they are invaluable. We appreciate their contribution, both now and for all of our past inquiries, enormously. But part-time commissioners are no substitute for full-time commissioners or for the legal officers who undertake the bulk of the research, writing and conduct of the consultations.

What about more limited appointments of experts, for example, who are brought in for specific inquiries? This sounds attractive and can work extremely well, but there are significant caveats that I would like to note. First, there needs to be sufficient lead-time in planning an inquiry to be able to identify the area of expertise needed, to find someone of sufficient standing who may be available for an inquiry and to have sufficient flexibility in start and end dates for them to be able to direct an inquiry from start to finish—and, if necessary, to move to Sydney. If the appointment is to be advertised, a further period of time needs to be factored in—at least three to six months.

Second, it is not just about expertise. The ALRC has an established and tried and tested way of bringing in expertise needed for every inquiry through our advisory committees and through our consultative processes, through which we leverage a considerable pro bono, honorary contribution to our work. This also acts to moderate any particular barrow a subject-specific person might bring to lead an inquiry. Subject-specific people have to be trained up in the law reform processes, which usually takes a whole reference cycle at least, by which time their expertise has runout, so to speak. What standing full-time commissioners give the ALRC is intellectual capital in law reform and clear independence in our tasks.

With respect to the second matter I identified, the core complement of staff, the ability to attract, retain and nurture a core complement of staff is critical for the maintenance of the intellectual capital of the organisation. I draw upon my own experience here as a commissioner at the ALRC for the past four years, in which capacity I have overseen, as commissioner in charge, seven inquiries: client legal privilege; FOI, until it was withdrawn; secrecy; FOI private, which was proposed but never eventuated; family violence; the current Commonwealth laws and family violence inquiry; and the current discovery of documents inquiry. Based on that experience, coupled with an analysis of our previous resourcing and staff complements, as summarised in part in our background submission, I would like to suggest what that core complement should be. On top of that, any additional work or demands for a particular inquiry which may come from time to time should be negotiated to provide the additional resourcing to achieve the particular goals of such inquiries and to deliver on the government's law reform agenda, which may have more pressing needs.

The core complement, in my view, is one commissioner per inquiry, in addition to the president, and eight to 10 legal officers at different classification levels. The number allocated to each inquiry would obviously depend on the complexity of the inquiry. In fact, the model that I am suggesting is remarkably similar to the model that was identified in the 1994 inquiry in a similar place. Obviously the president needs a certain flexibility in being able to bring on people short term on contract as needs be for inquiries, but that is on top of what I have identified as the core complement. In addition, as explained in our background submission, an inquiry team needs more than solely legal officers. We need people to facilitate the administration of the inquiry, to coordinate the publishing process and to manage the web interface—which is increasingly



important in our community engagement work—and the research needs. Therefore the commissioner also needs an inquiry support team as an integral part of the inquiry process. The combination of the two—the core staff of legal officers and the complementary inquiry team—generates enormous efficiency, through the ability to sustain the intellectual capital in law reform.

Our team right now is the barest it has been. We are now at the point of viability, like the Black Knight. Saying, ‘I’ll bite your leg off,’ which was his final retort, does not take you very far on the road to law reform. So what do we need? We need the cuts restored. I am not talking about the efficiency dividend; I am talking about the real cuts in our budget over the last years. Without that restoration going forward, we will not be able to attract and retain the complement of legal officers that are essential for our work. We need to ensure that we can offer competitive salaries. To be able to respond and deliver recommendations in the government’s contemporary law reform agenda, it is essential that we can maintain a complement of highly qualified and experienced commissioners and legal researchers who are always ready to pick up and run with any inquiry that comes. This ability comes with experience—people who know the processes of law reform, who have skills in using these processes and in analysing the laws and their effects and who can then develop law reform proposals that will deliver a principled policy outcome. Constantly engaging new people is vastly inefficient. Having to train them up in these processes takes time. That is true both of legal staff and of the commissioners. Maintaining a long-term complement of staff is a minimum resourcing requirement for best practice, responsive law reform, saving time and therefore dollars in the long term.

In the *Financial Review* today the Attorney-General commented:

Independent advice from the ALRC will remain critical in helping the government achieve its reform objectives.

I say ‘bravo’ to that, but more is needed to preserve and foster the investment of government since 1975 in the intellectual capital of the independent law reform body that is the Australian Law Reform Commission, to retain the ability to add value not only to the government’s law reform agenda but to community understanding and participation and to international goodwill. ‘‘Tis but a scratch’? I do not think so. From a relatively small base, we can achieve much, but law reform of the calibre that is expected cannot just be carried out in a phone box, as was suggested on a previous occasion, unless that phone box is, to use another acronym, a TARDIS. But that I think, with respect, is stretching the analogies too far. I thank you, Chair, for allowing us this opportunity to speak and I welcome the questions that I am sure are forthcoming.

**CHAIR**—Thank you very much, Professor Croucher. Ms Wynn or Mr Alston, do you wish to add anything at this time?

**Mr Alston**—No.

**Ms Wynn**—No.

**CHAIR**—We thank you very much your submission and your opening remarks; they were very comprehensive. In one sense, we can all have a bit of a laugh and a bit of a chuckle about your analogy of the Black Knight, but it is a very telling analogy indeed and I think the case you have put to the committee is very persuasive. We would now like to move through some of the

issues you have raised and we have some questions. In relation to the role of the full-time and part-time commissioners, you have indicated in your submission that they are distinct but complementary roles and that, at the moment, you are full time. You have been the only full-time commissioner, I understand, since December 2009. Is that correct?

**Prof. Croucher**—That is correct: since 1 December 2009.

**CHAIR**—How easy has it been for you to conduct yourself in that role and how has it been for the commission in terms of operating as a professional entity since the time you came down to one full-time commissioner?

**Prof. Croucher**—I would have to say that we have been stretched. The ability to sustain the work that we did during the last period, particularly in the completion of the family violence inquiry, called upon the resources of everybody in the commission—that is, me, the executive director and the senior legal officers in particular. All of the members of the staff went a very long way to ensure that the quality of the work would not be diminished, notwithstanding the pressure they were under.

**CHAIR**—As to that pressure, would you say that there have been extra pressures as a result of that decision and that you are doing everything in your power to maintain the quality of the work but you are under added pressure? Is that what you are saying?

**Prof. Croucher**—It is impossible to be in three places at once. If you are overseeing the inquiries as well as running the organisation, the team members are not going to get the kind of close supervision that they were able to secure and the leadership that they were able to have by having a dedicated commissioner for each inquiry.

**CHAIR**—Indeed. You have indicated that you are at a point of questioning viability of the commission. Can you expand on that and the ability to operate on a viable basis going forward?

**Prof. Croucher**—We have obviously had to adapt some of our procedures in order to respond both to the changes in timetable and to the ability of the numbers of people to do things. I think the family violence inquiry might be a useful illustration. Senator Crossin raised some questions before about the consultation paper versus an issues paper and discussion paper model. While one is always open to change in process, and we are reflective on our processes on an ongoing basis, the decision to have one consultation paper in that inquiry was driven by resources. We had only one staff member able to begin the early work on that inquiry until the other two inquiries we were completing on secrecy and royal commissions had finished. When those two inquiries had finished, which was by the end of 2009, we could commit the team to embark upon the very important and very significant family violence inquiry that we launched in November. In order to embark upon a consultation process of any kind sensibly, with the limited team we had, we were only able to commit to produce one consultation document. So the choice in that inquiry was driven by resourcing questions, and by resourcing I mean the availability of staff and the time frame in which to discharge that inquiry.

**CHAIR**—I would like to clarify a few things. How many staff do you have today?

**Prof. Croucher**—Today, in addition to me, we are down to 15 full-time equivalent staff.

**CHAIR**—You indicated that your recommendation—your model, as you referred to it—is for eight to 10 staff per inquiry, with a full-time commissioner?

**Prof. Croucher**—Yes, for each inquiry.

**CHAIR**—You indicated the need for a president plus one commissioner, or was it just a full-time commissioner?

**Prof. Croucher**—The established and well-tried practice was to have a commissioner per inquiry in addition to the president. That provided a complement of three full-time commissioners that gave the integrity to the final decisions in terms of taking recommendations forward. They were signed off by more than just one.

**CHAIR**—Right, but in terms of the model on each inquiry it is eight to 10 staff plus one full-time commissioner?

**Prof. Croucher**—The eight to 10 legal officers of different levels can be deployed over the two inquiries. Assuming that it is the two-inquiry model, the numbers depend on the complexity of each inquiry. A modest inquiry and a more complex one can be managed with a commissioner to each inquiry and eight to 10 legal officers allocated across those two, plus the complementary inquiry team supporting the whole lot.

**CHAIR**—You have indicated a model of eight to 10 staff. Is that the legal officers or staff?

**Prof. Croucher**—Legal officers.

**CHAIR**—How many staff do you need for each inquiry in your preferred model?

**Prof. Croucher**—It is simplest to work on the basis of the two inquiries because the complementary team is then servicing the whole lot.

**CHAIR**—I just want to be specific. Let's say it is two inquiries. What is the total number of staff including legal officers?

**Prof. Croucher**—There is the executive director, the information librarian manager, the project coordinator and the finance team. I can give you the specific numbers. I talked about it in terms of focusing on the main inquiry team.

**CHAIR**—I am trying to get it in terms of numbers. We have got an estimate of numbers—eight to 10 legal officers and the support staff that supports them over those two inquiries. So over those two inquiries you have got eight to 10 plus the half-a-dozen or so.

**Prof. Croucher**—That is correct, and the commissioners in addition to myself. If I may, there was one point I feel that I did not convey properly in terms of the role of the full-time commissioners in the management of staff. There is also the outward focus—that is, the ability for the full-time commissioners to lead the consultations. The doors do not close for the ALRC in consultation. The most senior people will open their doors willingly and spend hours with us talking through the issues. The leveraging of that is not just on the reputation of the ALRC, it is

on the personal engagement of the senior people, who carry their own eminence and standing, leading the inquiry that produces a respectful and very sophisticated engagement with the commission with respect to the issues and its staff.

**CHAIR**—You currently have three inquiries—family violence, national classification and discovery. In an ideal world, based on your modelling, what would be the number of resources that you would need to adequately meet the needs of a quality result on those three inquiries?

**Prof. Croucher**—The three commissioners, the 10 legal officers—

**Ms Wynn**—And the complementary inquiry staff.

**CHAIR**—Can the 10 legal officers do three inquiries rather than the two?

**Prof. Croucher**—I would say no. The classifications inquiry is proposed and we have been consulted about the terms of reference. As I mentioned, we have established a good information loop with respect to the department and discussing possible inquiries that we might get, which has helped modify some of the terms. That has been very constructive. We have not got that inquiry yet. We have discussed how long it will take when we do get that inquiry. We will not be in a position to commence that inquiry until we complete discovery. So we do not have the staff resources to deploy on that until after the end of March when the discovery report is due.

**CHAIR**—So that inquiry cannot actually commence until after the end of March when discovery is completed?

**Prof. Croucher**—As a formal matter it cannot commence until we get the terms of reference, which we do not have at this stage.

**CHAIR**—But you are saying resources-wise you could not start it anyway until after the end of March. You just cannot physically do it.

**Prof. Croucher**—No, not with our legal officers.

**CHAIR**—And you have told that to the department?

**Prof. Croucher**—Yes. They are aware that we cannot start until we finish discovery. The fact that we are discussing a follow-on inquiry is a good thing as part of the forward planning for our work. Ideally I would like to be able to know that I can plan for the next three-year horizon at least in terms of the management of the inquiries.

**CHAIR**—But if the government wanted to give you a further inquiry, for example, you would just say, ‘No, we can’t do it because we don’t have the resources to undertake that inquiry.’

**Prof. Croucher**—I would start by identifying the fact that we do not have the resources now and I would signal when we may. If the inquiry were to begin any earlier, we would need additional resources to be able to undertake that.

**CHAIR**—So at the moment you are at capacity already. But, in fact, you are over capacity, based on your evidence today.

**Prof. Croucher**—With respect to being able to lead the inquiries, yes, we are under capacity. As I mentioned, a key part of the commissioner's role is maintaining that intellectual capital and goodwill that has been generated over the history of the commission with all of the people that we consult. That goodwill, as with all goodwill, can be a very fragile thing and it is maintained by senior engagement through consultations. If we have two inquiries running at once and there is only one commissioner, as President, overseeing all, my ability to lead all of the consultations—in addition to all of the other responsibilities including the enhanced financial responsibilities under the FMA Act—stretches me a little bit, like the Black Knight.

**CHAIR**—Yes, it is a physical impossibility. I think you said earlier you cannot be in two places at once.

**Prof. Croucher**—I think I said three.

**CHAIR**—So there you are! I guess that is why the act is designed that way. I am looking at section 6 and at where it says the commission consists of a president and a deputy president and at least four other members.

**Prof. Croucher**—Yes. The concept was that the commission's work would be led by commissioners and that, in order to secure senior involvement and community respect for the process, you needed to send your senior people.

**CHAIR**—Indeed. I now want to ask you about the role of the part-time commissioners. We have heard evidence from the Federal Court this morning—you might or might not have heard it—about very high-quality, part-time commissioners who contribute. But we were advised that they are full-time Federal Court judges and they are very busy people. So we would like to know if you could share with us a little bit about the role, how they operate under those conditions and a little bit more about that process.

**Prof. Croucher**—In the submission we describe 'part-time' as a misnomer. I use that word without any disrespect, because our part-time commissioners are an integral aspect of our work. They perform an advisory function. During an inquiry, for instance, our part-time commissioners will meet with us at least two to three times. Sometimes it is very difficult to get them together because of their own commitments.

**CHAIR**—When you say 'meet with us', do you mean meet with you and officers of the commission?

**Prof. Croucher**—Yes, participating on the advisory committee, and invariably we will have one on the telephone. It is difficult. It does not mean that the quality of what they are able to give is diminished; it is not. But it is in an advisory capacity. When we have an advisory meeting we will sound out with the advisory committee, including the part-time commissioners, the general thrust of, for example, draft recommendations and their comments at that time can be invaluable but all that comes in at a fairly contained point in the inquiry. They are not there, say, one day or two days a week or one or two days a month; they are not performing that role. Even with expert

specific persons, and our Federal Court judges have a vast expanse of expertise across the whole federal legislative field, their ability to provide more than that it is limited by their responsibilities elsewhere. Having them involved with the inquiry adds gravitas, it adds an additional quality assurance check and we would not want that to change in any way. But part-time commissioners do not lead the consultations, they do not lead the development of the research brief and they do not have that kind of research writing and day-to-day management and leadership role.

**CHAIR**—So your point is they play a very important role and all this is evidence in support of the need for a further full-time commissioner or commissioners?

**Prof. Croucher**—Correct.

**CHAIR**—We were advised by the Federal Court this morning—this is based on the advice of Mr Soden—that from time to time the part-time commissioners miss meetings and commitments with the ALRC. Is that correct?

**Prof. Croucher**—Yes, it is difficult because of their timetables. Because we are scheduling an advisory committee to suit the timetable of an inquiry, we cannot necessarily run our committee meetings to suit the Federal Court's time.

**CHAIR**—So would they put in a day a month? Can you give us a quantum in terms of their commitment?

**Prof. Croucher**—It is a little bit difficult to pin it down like that. In preparation for a meeting they will be reading all the material. They will be participating in the meeting and they will provide follow-up comments—some more than others depending on the nature of the inquiry. I have heard many times the legal officers make the comment that the comments that part-time commissioner Justice X made had been fantastically helpful—but it is at that very focused time. They also get an opportunity to read the draft chapters of the consultation documents and the reports. The ability to contribute there is also fairly limited.

**CHAIR**—You have made the point very well that it is a complementary role but clearly distinct role to the full-time commissioner's. I have looked at the Remuneration Tribunal details in terms of salaries. Are they paid under the Remuneration Tribunal in addition to the Federal Court?

**Prof. Croucher**—Holders of judicial office, no. The only support we provide is by way of travel. Again, it is an additional honorary contribution, and at that level it is enormous.

**CHAIR**—That is incredible.

**Prof. Croucher**—We leverage a considerable amount of free stuff and in that basket I have to put the extraordinarily valuable role that the part-time commissioners play.

**CHAIR**—That is fantastic, frankly, and commendation goes to you and the commission and those involved. I want to ask now about the adequacy of the funds and be a little bit more specific. We have seen the cuts. They were in the budget papers—they are on the public

record—particularly since 2009 when those cuts first kicked in for the 2010-11 year and then there was a \$0.5 million decrease for 2011 through to 2013—a 20 per cent cut is the way I see it. Is that your understanding of that percentage drop since 2009-10?

**Prof. Croucher**—Yes, that is correct.

**CHAIR**—What is adequate? You say the real cuts should be restored. So what does that mean in terms of dollar figures? If they were restored today what would that increase be?

**Prof. Croucher**—In the current year it is half a million. But it is the issue going forward too, which is the ability to keep up competitively with things like the costs that we are meeting on a day-to-day basis and our ability to mentor, nurture and retain good staff, which I see as really essential in the future.

**CHAIR**—Let us move on because time is tight. Can you please advise the committee of the details of staff turnover?

**Prof. Croucher**—Certainly. It has been considerable. As of now we have remaining only one of the legal officer complement who was there at that relevant time at the end of December 2009.

**CHAIR**—Out of how many? What is that out of the total workforce?

**Prof. Croucher**—Out of 10.

**CHAIR**—That is a big turnover.

**Prof. Croucher**—Yes, it has been significant. There is the point that I made before, that the development of intellectual capital takes some time. One of the things that we invested some time in early last year was developing an induction program to try to capture some of that corporate memory so that we had an ability with the six new legal officers that started in April to provide them with a really solid grounding in the processes of law reform. But it takes time. From my own experience, it takes at least one reference cycle—even with all the expertise, standing and eminence in the world—to really get the hang of what really works in a law reform process.

**Senator TROOD**—On this point, Professor Croucher, do you conduct exit interviews with staff when they are departing?

**Prof. Croucher**—Yes, we do.

**Senator TROOD**—So you had one left from 2009. I do not know how many have left but obviously quite a few staff have left. What have they told you about their reasons for leaving?

**Prof. Croucher**—Some of the exit interviews are, I think, a matter—

**Senator TROOD**—There is obviously some sensitivity and confidentiality, and I do not wish you to disclose those. I am just trying to get a sense of the reasons that people have told you they are leaving the commission.

**Prof. Croucher**—I will put the reasons in a bunch, if I may. The cuts in the budget and the way they were introduced and the lack of appointment of additional commissioners once we completed the family violence inquiry were destabilising factors in terms of staff. A number of staff at that point had opportunities that they took. They were for them good opportunities and for many a solid promotion, based on the experience that they had acquired at the ALRC. There are a lot of factors that feed into it. I must say that the workload last year was extraordinarily heavy in order to complete the report. To complete the family violence report when we did, we had to seek—and were given—two extensions of time. So it is a combination of destabilising and looking for opportunities, perhaps as a result of that destabilising, and the additional burden certainly played very heavily at least in one case.

**Senator TROOD**—What you seem to be saying to the committee is that many of these staff got to the point where they could see better opportunities elsewhere, without necessarily having to work under the kinds of pressures that they have had to work under.

**Prof. Croucher**—As I identified, Senator, the key thing going forward is the ability to attract, retain and reward. If there is any sense that those things are not happening, opportunities may present themselves that may not have been ones that one would have sought before but one does now.

**CHAIR**—Professor Weisbrot was there for 10 years in your role.

**Prof. Croucher**—Yes, he was.

**CHAIR**—He is obviously highly respected and regarded around the country. He has put in a submission. You have no doubt read it and reviewed it. Do you support the views expressed in his submission?

**Prof. Croucher**—Professor Weisbrot draws from an extraordinary base of experience. He played a leading role not only in the Australian Law Reform Commission but also in the international community of law reformers. His opinions, I would say, carry great weight drawn from that experience.

**CHAIR**—I want to ask you about a couple of his comments, and specifically around the review that he was shocked and surprised about. Professor Weisbrot referred to this review—which he had not heard about. So it was a big surprise to him when all these cuts came into being—and you just referred to the way in which these cuts were introduced. I would like you to express your views as to your understanding of how they were introduced, the concerns you had about how they were introduced and whether you were as equally surprised as Professor Weisbrot was.

**Prof. Croucher**—The cuts or the review?



**CHAIR**—Firstly the cuts and, secondly, the review—or either/or; whichever you would like to take first.

**Prof. Croucher**—I was a commissioner at the time and therefore part of the commission—as a full-time commissioner with Professor McCrimmon and Professor Weisbrot. Professor Weisbrot’s account of the communication of the cuts is as I recall—that they were advised and entered into our budget pretty suddenly. You also asked about the review. I was not involved in that conversation with Mr Wilkins, but Professor Weisbrot mentioned the review. The account that Professor Weisbrot has provided in his submission is as I recall him advising me and my colleague Professor McCrimmon.

**CHAIR**—Have you seen that review?

**Prof. Croucher**—No.

**CHAIR**—Have you ever requested a copy of it, or would you have expected to have seen a copy of it?

**Prof. Croucher**—I think Professor Weisbrot, as president, has expressed his view quite clearly that, as president, he would have liked to have seen it perhaps as a courtesy.

**CHAIR**—Indeed. We have Professor Weisbrot’s view that the cuts came in and it was quite a shocking surprise. The government might say that these are budget matters and, ‘It’s up to us.’ Professor Weisbrot has indicated that there have been ‘radical changes to the nature and operation of the commission’. What do you say about the ‘radical changes’ brought on by the change to the operation of the commission and the budget cuts? Do you think there should have been more consultation with the commission?

**Prof. Croucher**—The consequent effect has been that we have had to rethink how we do our work. I have had to carry the load of the full-time commissioners for all of the inquiries, which is a radical shift in terms of the previous history of the commission. Some shift, I would say, is positive in terms of our ability to use a whole variety of other mediums to communicate with stakeholders, particularly as an information tool where we are trying to be as adaptive as we can to utilise different ways of doing things.

But I must stress that the truncation of our process through the family violence inquiry did attract criticism. We had criticism from stakeholders as to the lack of time they had to participate. That was a particularly illustrative one, because it is one where a staged process of consultation builds the goodwill and engagement with your stakeholders that you can carry through very difficult inquiries and to carry over into others. Two of the submissions specifically addressed concerns about the ability to engage stakeholders in that inquiry. We were stretched. The fact that the report was so big was a matter of criticism. But big reports become smaller ones through effective editing. But you need additional time to edit. In an additional three months we could have edited that one significantly, I would suggest, without any detracting from the important evidence base it conveys. Our ability to distribute reports freely has clearly been another measure.

We have had to focus radically on every element in our budget in order to endeavour to come within our appropriation. We are moving—I signed the licence with the Australian Government Solicitor on Wednesday—to reduce our floor space by half.

**CHAIR**—By half?

**Prof. Croucher**—Yes, by half, as a result of being able to secure some strategic sharing of services in the AGS complement of rooms.

**CHAIR**—Is this for 2012? When will this come about?

**Prof. Croucher**—We are moving in April.

**CHAIR**—April this year?

**Prof. Croucher**—Yes. We were advised that we were not allowed to run with an operating deficit, that we could not carry that forward, and could not deploy our reserves for that purpose. Therefore, we had to embark upon some radical moves.

**CHAIR**—That is radical. Let us go to your office changes and the impact on the library and meeting rooms. Could you outline to the committee the consequences of that move?

**Prof. Croucher**—I should flag that that move was necessary in order to avoid what to me was an unpalatable alternative, and that was to reduce staff. We had nowhere else to reduce. By a strategic move with a compatible partner, like the AGS, we can invoke the reception space that the AGS use and we are able to use their meeting rooms—that is part of our agreement. Obviously we have to book them all in advance, but we will be able to use those rooms. There is some ability to share the library service as well.

**CHAIR**—So you will be working in parallel to the Australian Government Solicitor in Sydney?

**Prof. Croucher**—Not in parallel; we are sub-letting a complement of their rooms. Their need for rooms has reduced as well and therefore they have some space. Because we have to carry our current lease through until September 2012, we will endeavour to offset that by subleasing as project space our current premises. It keeps us in the heart of the legal profession. It is in order to leverage that honorary contribution they have made. We have costed a whole range of options and being in the heart of the legal profession is actually critical.

**CHAIR**—We know that it was a shock when the decision was made in 2009. I am interested to know the consultation you have had with the department and/or the minister's office since then about the consequences of that. Have you expressed your views to the department or the minister?

**Prof. Croucher**—Yes.

**Senator CROSSIN**—Chair, can I clarify something. You have been asking questions for 35 minutes now and we are due to go to lunch in five minutes. Are we going to extend the lunch break until 1.15?

**CHAIR**—It depends on how many questions you have.

**Senator CROSSIN**—I have about half an hour of questioning as well.

**CHAIR**—Have you?

**Senator CROSSIN**—Absolutely. You have had half an hour and I have half an hour. So we can either break at 1.15 or we will have to have the Law Reform Commission come back after lunch.

**CHAIR**—We will extend and continue until your questioning of the commission is concluded.

**Prof. Croucher**—Senator, you were asking about discussion. I should put on record that we have had very constructive discussions of an ongoing kind with the department. As I said, the Attorney-General has conveyed support for us both personally and also publicly, and the article this morning is testimony to that. It is within the constraints of helping us fit within our appropriation. We have a regular information loop which is constructive and has built a respectful engagement at that level. We have had a lot of help in working out how we can bring our budget in line with our appropriation. That does not change the fact that the appropriation, I think, is not enough to sustain the ongoing intellectual capital of the organisation. That is the argument I have made in my opening remarks. However, I should note that we have built a respectful consultative relationship, with the department in particular, in order to assist us in identifying these problems as we go forward.

**CHAIR**—Professor Croucher, we have covered a lot of ground and there is still ground to cover. We may have some questions on notice that we can put to you following the committee hearing. But we will now pass to Senator Crossin.

**Senator CROSSIN**—I want to take you to page 28 of your submission. Can you take me through your financial situation from 2001 until now. If I have read it correctly, in 2009-10 you had 19 staff—or probably close to 20 staff—but you also had that in 2007-08.

**Prof. Croucher**—Yes.

**Senator CROSSIN**—You had a decrease in your appropriations in 2006, is that right?

**Prof. Croucher**—Yes, as reflected in the table on page 29.

**Senator CROSSIN**—But you also had a decrease in your amounts in 2008-09, is that correct?

**Prof. Croucher**—Yes.

**Senator CROSSIN**—But you had an increase in 2009-10.

**Prof. Croucher**—A slight increase.

**Senator CROSSIN**—But it is an increase.

**Prof. Croucher**—Slight, yes.

**Senator CROSSIN**—You could probably also say there was a slight increase in 2004-05. You could probably say there was even a very slight increase in 2002-03.

**Prof. Croucher**—Yes.

**Senator CROSSIN**—The picture I am putting to you is that, throughout the last 10 years of the Australian Law Reform Commission, there have been periods where you have had an increase in your funds but there have also periods where you have had a decrease in your funds.

**Prof. Croucher**—Yes. However, the impact in recent years is significant. The staffing levels in the far right hand column are about staff, not statutory office holders, so the hidden thing behind that is the ability to support three statutory office holders. For example, the 16 in 2010-11—which is going down—would in previous years have been 16 plus three, but it will be 15 plus one in terms of the current situation.

**Senator CROSSIN**—Your submission does not explain that to us though. Your submission only has a cursory note that the staffing levels are ‘full-time equivalents excluding statutory members’. So your verbal explanation there is not actually in your submission.

**Prof. Croucher**—With respect, this is a background submission. We signalled at the time of putting it in—and we made sure that our submission, as recorded, was No. 2—that we wanted to get that submission and its background information for both the committee and anybody who was interested in putting in a submission. If these are matters of concern, I flagged with the secretary of the committee that we would be very happy in our further submission to take on board any of the issues that you feel you would like further explanation about to assist you in your deliberations. If this is a particular area that you would like further comment on, I would be extremely happy to identify that is one that you would like us to discuss.

**Senator CROSSIN**—It is not unusual for us to ask for further matters and matters are taken on notice, but generally I would have thought that if this inquiry is about your commission you would want to provide us with as much information and comprehensive detail in your first submission as you possibly could. Can you tell me, then, in terms of staffing levels, what the actual numbers are in each of the columns for each of the years?

**Prof. Croucher**—Yes. This is the table on page 29?

**Senator CROSSIN**—Yes, pages 28 and 29.

**Prof. Croucher**—At the end you just add on: plus three, plus three, plus three—all statutory office holders—except in 2009-10 and 2010-11 where it is plus one. Does that assist?

**Senator CROSSIN**—That assists. The issue about the deputy president was raised previously. In which of these years in this table in front of us has there not been a deputy president appointed?

**Prof. Croucher**—Perhaps I can begin, if I may, by explaining the role of the deputy president. ‘Deputy president’ has largely been a floating title in the organisation.

**Senator CROSSIN**—That is not what the act says, though, is it?

**Prof. Croucher**—In addition to saying ‘president’, ‘deputy president’ and ‘commissioners’ the act does not mandate the appointment of a deputy president. In terms of making budgeting decisions, the role of deputy president was not reappointed from about the middle of 2006. Under the Remuneration Tribunal’s rulings, the deputy president carries a significant additional salary.

**Senator CROSSIN**—I think it is important to emphasise that because one would be led to believe that the act mandates a deputy president and that somehow either previous or current governments, or even the Law Reform Commission itself, have been deficient in not having a deputy president. You are saying to us that, despite the fact that it is in the act, the commission has flexibility as to whether or not that position is filled each year?

**Prof. Croucher**—The appointment is a matter for government. It is a statutory office holder.

**Senator CROSSIN**—Yes, I understand that. Could I just clarify that. The actual filling of the position is left to the commission. So someone in the commission—that is, I suppose, the CEO—would say, ‘We’re not going to fill the position this year,’ or ‘We are going to feel that position this year. Let’s go off to the government for the name of that position.’

**Prof. Croucher**—It would have been a matter of discussion between the president, the attorney’s office and the department. I was listening to most of the evidence this morning and I understand the point you are making. The point that came through strongly—and I would like to reinforce that—is that it is not really about whether the position of deputy president is or is not filled; the point is about the number of full-time commissioners, whether they are president, deputy president or a full-time commissioner. That is the key issue. Whether they have that particular label or not, it is the critical ability to be able to lead the inquiry. If the president is out of the country for any time, there needs to be an arrangement for someone to deputise in that capacity. If there is a standing appointment of a deputy president, then it is obvious that the deputy president will fill that role. In the absence of a formally appointed deputy president, another full-time commissioner can be appointed to that job.

**Senator CROSSIN**—Let’s go back to those years. So there has not been a person in the position of deputy president since 2006?

**Prof. Croucher**—That is correct, but there have been, until the beginning of December 2009, three commissioners, whether they are president, deputy president or commissioner.

**Senator CROSSIN**—Well, they are not deputy president, are they?

**Prof. Croucher**—No.

**Senator CROSSIN**—So between 2006 and 2009, you are saying there were three others?

**Prof. Croucher**—There were three statutory office holders, of which I have been one since 2007. The three statutory office holders were president, deputy president or commissioner. When there was no deputy president, there was a president plus two commissioners.

**Senator CROSSIN**—I see. That would have been the case then between 2006 and 2009—a president and two others.

**Prof. Croucher**—That is correct.

**Senator CROSSIN**—And so from 2009 there has been a president and one other; is that correct?

**Prof. Croucher**—No. Since 1 December 2009 there has been the president and no others.

**CHAIR**—Yourself.

**Prof. Croucher**—Myself, and I am on the board of management as well.

**Senator CROSSIN**—Just a moment ago you told me that I should add plus three to each of these staffing figures until 2009-10 when it was plus one.

**Prof. Croucher**—That was until the end of 2009 and not the second half of 2009-10.

**Senator CROSSIN**—Why do you think since 2006 there has been no deputy president particularly allocated? What are the reasons?

**Prof. Croucher**—Because the functions were discharged by the three commissioners as a group. There is also a budget element, as I mentioned. The deputy president carries a higher loading. If it is a choice between having two commissioners, one of whom is a deputy president, and the president and two commissioners it is a sensible management decision to suggest that actually it would be better to deploy the resources in engaging a president and two commissioners.

**Senator CROSSIN**—So this decision to use the finances more efficiently and effectively has been made since 2006, you could say?

**Prof. Croucher**—Decisions about resourcing are always made efficiently and effectively.

**Senator CROSSIN**—It seems since 2006 the decision has been made to use the finances more efficiently by not having a deputy president, saving that cost.

**Prof. Croucher**—Only in form. There had been no decision until the end of 2009 to have anything less than three statutory office holders.

**Senator CROSSIN**—I understand that, but I am wanting to understand and perhaps highlight that there has been a president but, of the other two, between 2006 and 2009 there has been a decision made to not appoint one of those specifically as deputy president because you would save that component of that person's salary?

**Prof. Croucher**—It enabled the continued complement of the three commissioners, as I understand it. I was not at the commission at the time; I am conveying what I understand to be the result.

**Senator CROSSIN**—Which inquiries are active at this point in time?

**Prof. Croucher**—The family violence and Commonwealth laws inquiry, which followed on from the first inquiry. It is one we recommended. Discovery—

**Senator CROSSIN**—Do you have a full-time commissioner helping you with this?

**Prof. Croucher**—No. I am the sole commissioner in charge of the commission and the two inquiries we have active. We have two part-time commissioners—Justice Lander and Justice Emmett—who were appointed at some point during the discovery inquiry to assist. We have four Federal Court judges, all of whom are part-time commissioners, all of considerable eminence and standing, who will provide assistance. But in terms of who is running the inquiry, it is me. We have the Commonwealth laws and family violence inquiry and we have the discovery inquiry, and it is anticipated that we will get the classifications reference very soon.

**Senator CROSSIN**—Sorry, you have family violence and—

**Prof. Croucher**—It is discovery of documents in federal courts, and it is due to report at the end of March.

**Senator CROSSIN**—And due to get classifications?

**Prof. Croucher**—Yes.

**Senator CROSSIN**—Is it anticipated that the classification inquiry will start once the discovery inquiry has finished?

**Prof. Croucher**—That is when we can start it.

**Senator CROSSIN**—I understand.

**CHAIR**—But it was announced in December.

**Prof. Croucher**—Yes. The terms of reference interestingly were put out for public comment. Comments closed at the end of January. Once the comments have been taken on board we anticipate the terms of reference will be issued. What I do hope—and I have expressed this view—is that the due date will reflect the fact that we are not able to commence the reference until April.

**Senator CROSSIN**—Were each of these inquiries given to you by the Attorney-General?

**Prof. Croucher**—Yes—under the act they must be. The Commonwealth laws and family violence required input from other ministers, but the terms of reference come from the Attorney-General.

**Senator CROSSIN**—Do you have any provision at all to say to the Attorney-General ‘we think this is an area that should be looked at, so can you give us a reference’?

**Prof. Croucher**—We do so regularly.

**Senator CROSSIN**—Did that occur with any of these three?

**Prof. Croucher**—Yes, indeed. The reference that we have at the moment—family violence and Commonwealth laws—was one that we recommended would be a good inquiry and an efficient use of the ALRC’s intellectual capital built up through the first family violence inquiry. We had enormous goodwill from a whole range of stakeholders; we had legal officers who are now primed up in the area; we had a great network of people that we could draw upon; and we recommended this inquiry, and it was forthcoming immediately on the conclusion of the first inquiry. The discovery of documents in federal courts has been an issue that has been of concern since the landmark managing justice inquiry that released its report in early 2000.

**Senator CROSSIN**—Between 2000 and 2009, were there any part-time commissioners working at the ALRC?

**Prof. Croucher**—Yes. the appointment of part-time commissioners in the way that we have described them has been a standard element of our quality assurance process and one that we are very proud of.

**Senator CROSSIN**—So, back in 2006, when there were three full-time statutory officers, how many part-time commissioners would there have been?

**Prof. Croucher**—Three, as I recall.

**Senator CROSSIN**—Three as well.

**Prof. Croucher**—At the time, it included Justice Robert French, then of the Federal Court and now Chief Justice, Justice Susan Kiefel, who is now of the High Court—we have a good track record with High Court appointments—and Justice Susan Kenny, who was then a part-time commissioner and continues to be a part-time commissioner.

**Senator CROSSIN**—Can I ask about your opportunities to engage with the Attorney-General and his office and the department. Do you meet regularly? Who do you meet with? How do they assist with addressing some of your resourcing issues?

**Prof. Croucher**—We have established a working protocol between the department and ourselves of having quarterly teleconferences where we talk through some of the operational issues that are pressing—the progress of inquiries, if there are terms of reference that are being



proposed and that sort of thing. We had opportunities, for instance, to discuss the proposed amendments to the ALRC Act, which I am sure you will have a question about as well and which I am happy to discuss. We do have regular teleconferences as the need arises, which I think is a very positive element of our relationship.

**Senator CROSSIN**—Do you have a standard regular meeting with the department?

**Prof. Croucher**—Yes—a quarterly teleconference.

**Senator CROSSIN**—Do you have interaction with either the Attorney-General or his staff?

**Prof. Croucher**—Yes, we have regular interaction with the Attorney's staff and, at times, with the Attorney personally.

**CHAIR**—How regularly?

**Prof. Croucher**—We do not have a set pattern of meeting, but there have been at least two meetings over the classifications reference where the Attorney's own staff have discussed matters with me.

**Senator CROSSIN**—Does the department assist with resources for you in any way?

**Prof. Croucher**—They assist in discussion about resources and have provided very useful input in terms of helping us put forward the documents to Finance to secure support for our move. Initially, to have an operating loss was rejected, so we have had to spend a lot of time to rejig the whole thing, including factoring in this move that we have now agreed to. I should also say that one of the senior level officers from the Attorney-General's Department has been made available to us to assist us in the discovery inquiry, because at the time the other complement of legal staff was fully engaged in finishing that massive family violence inquiry. Because the terms of reference came in before we were able to deploy resources, we were able, luckily, to secure the support of somebody from the department—firstly at our expense, and now it is being carried by the department until the end of the inquiry.

**Senator CROSSIN**—So you are also the only board member at this point in time?

**Prof. Croucher**—I am the board of management!

**Senator CROSSIN**—Yes. So how are your costs managed?

**Prof. Croucher**—We have an audit committee, and we have enlisted one of our part-time commissioners on the audit committee. It is a little unusual, because there is no specific provision for that in the act, but we have established a working relationship to provide a bit of quality assurance checking on what I do. I flippantly said that I am the board of management, but obviously in order to reach decisions you cannot just say—

**Senator CROSSIN**—Who is on the audit committee?

**Prof. Croucher**—Myself, the executive director and Justice Berna Collier, one of our part-time commissioners.

**Senator CROSSIN**—So what steps do you take to manage your funds and what have you done to manage them better in the last few years?

**Prof. Croucher**—When you say ‘manage them better’ I would not suggest for one moment that the funds were not being managed well in the past.

**Senator CROSSIN**—You obviously wanted to run on an operating deficit, which obviously you have not been encouraged to do—

**Prof. Croucher**—Senator, no one wants to run an operating deficit but, as you would be aware, the cuts that were introduced in 2009 produced an operating deficit where there was not necessarily one before. I cannot suddenly absorb a quarter-of-a-million cut and then anticipated further half-million cuts in ongoing years without it having some impact on the budget, even if you have been managing perfectly.

**Senator CROSSIN**—Sure. So what have you done to absorb that cut? I want to also make it clear that you are not the only agency or department that got that two per cent productivity—

**Prof. Croucher**—I am not talking about the two per cent efficiency dividend. I am talking about a 20 per cent real cut to our budget.

**Senator CROSSIN**—All right. What did you embark on to absorb that?

**Prof. Croucher**—A considerable amount of work. Unfortunately, we had to jettison one of our programs. Our educational outreach program was a significant element of our work. We produced a journal—*Reform*. At any request we were able to host international visitors, providing them with training on law reform. We were able to provide resources to allow our staff to travel internationally, such as when Professor Weisbrot—when he was President—and our then research manager were able to conduct training in Papua-New Guinea in law reform. Professor McCrimmon and Professor Weisbrot both went to Botswana at the invitation of the government there. We do not have the capacity to even allow the time to do those sorts of things. We have also reduced our staffing levels by leaving vacant a number of positions as they have come up. We delayed the appointment of a further full-time commissioner or two, until after the family violence report was accepted, as one way of meeting our budget deficit last year on the basis that that inquiry was a joint inquiry with the New South Wales Law Reform Commission. We were able to use their full-time commissioner—once she was appointed in March—in that inquiry but of course our inquiry had been going for a long time until then so it did not lessen the burden on the ALRC until that moment. There has been some economy in the inquiry process. We have required people to purchase the family violence report, which has produced considerable complaint, I might say. It is a big report and community agencies are saying, ‘We can’t even afford the \$80 to buy the report’—even on a cost-recovery basis. So you go through the entire panoply of expenditure to try to find what economies you can make.

**Senator CROSSIN**—Let me get this right then, Professor. Are you saying that in the past your reports were free to people?

**Prof. Croucher**—That is correct.

**Senator CROSSIN**—But if you want to buy an act of parliament you have to purchase it. It is not uncommon that documentation is—

**Prof. Croucher**—The reports were also provided free to all members of parliament. It is the same with our annual reports. There are certain statutory obligations that we cannot change. Senator, I understand your point with respect to the purchase of acts of parliament, but when you are relying on an enormous honorary contribution of stakeholders right across the country and you want to sustain their engagement and community participation in the process—I was here when I heard the evidence of the Public Interest Advocacy Centre, as an example—your ability to sustain, retain and nurture that goodwill over time is dependent on certain things.

**Senator CROSSIN**—But surely that does not fall in a crack over the cost of an \$80 report?

**Prof. Croucher**—One would hope not, but I notice in one of the submissions to the inquiry that that matter was specifically raised as a matter of concern. I am using that as an illustration. When you are trying to meet a cut of that magnitude in a small agency, you look at every skerrick that you can to head off what I find is an absolutely unpalatable alternative and that is proceeding to sack people. Natural attrition is one thing.

**Senator CROSSIN**—Sure, but getting people to pay for the purchase of your report would just be—

**Prof. Croucher**—Perhaps I can cite you for a commendation for that strategy when we advocate it in future. It is one example.

**Senator CROSSIN**—When I sit on boards of childcare centres and after-school care associations, the last thing we want to do is increase the fees and put more of a burden of cost on people but sometimes you just have to do that.

**Prof. Croucher**—I agree, and I take your point on board. We agree with you. That is why we have instituted it. You asked what we have done and I am responding by giving you some examples of the savings we have had to find within our own budget.

**Senator CROSSIN**—Sure I guess what I want you to highlight to me is that perhaps there were savings to be made anyway.

**Prof. Croucher**—Reducing the range of consultations I do not think is a good saving, and that is a matter of having the staff to do it, the timetable to do it and the budget to do it. We could not have done the family violence inquiry and ignored Western Australia and the Northern Territory, for example. Even then we did the barest of consultations in those two very important jurisdictions for an inquiry such as that.

**Senator CROSSIN**—Do you have a staff retention policy?

**Prof. Croucher**—Clearly we have policies and procedures for annual performance review and the like: is that what you are asking? Professional development—

**Senator CROSSIN**—You do not actually have a retention policy in itself but you have a professional development policy that you are hoping is attractive enough to retain staff? Would that be the conclusion?

**Prof. Croucher**—By ‘retention policy’ what did you have in mind?

**Senator CROSSIN**—Whether or not you actually do have some sort of proactive policy that either rewards or acknowledges staff. In some places if you do three years with them you can have one month of study leave, for example. Is there something like that?

**Prof. Croucher**—Oh, but we could! Our current enterprise agreement allows for rewarding staffs’ performance through incremental progression, bonuses and the like. Most of that of course will change once we are drawn under the Public Service Act orbit with the move to FMA status.

**Senator CROSSIN**—Why wouldn’t you be able to have your own discrete enterprise agreement? I would have thought you would be able to still have your own discrete enterprise agreement.

**Prof. Croucher**—Yes, but obviously when you are negotiating an enterprise agreement you have to do it in a fiscally responsible way and I do not think the Attorney would approve that as a bargaining position. You suggested having one month’s study leave, which I think is fantastic and a marvellous thing for a staff retention policy.

**Senator CROSSIN**—I was not suggesting that you pick up the month’s study leave. I was giving you that as an example of a retention policy I have seen.

**Prof. Croucher**—I think it is a wonderful example. Being able to send staff on all kinds of training programs, including our senior staff and SES staff, I think would be marvellous.

**Senator CROSSIN**—Senator Trood went through exit interviews. I was going to ask about that, so I will move on. How do you manage your legal interns and volunteers?

**Prof. Croucher**—Thank you for raising that because I think the legal intern program is another way of being able to leverage a lot of free stuff. Based on the reputation of the commission and experience the interns have had with us, we still are, thankfully, able to attract many applicants for our internship positions.

We roster them over the year. During the regular university semesters we would have one-day-a-week interns. During the summer we had a group of three. They are managed in a number of ways. They have a supervisor, or sometimes more than one supervisor during their intern period, who is one of the legal officers, which is an additional burden on the legal officers and staff.

**Senator CROSSIN**—So it does not help alleviate staff pressures by having additional interns?

**Prof. Croucher**—On the one hand it creates staff pressures and on the other it is an element of our work that does provide some assistance. It is a key element of our program and is another

illustration of the way we can leverage enormous honorary involvement from the student level right through to the most senior people in the country.

**Senator CROSSIN**—I have two other questions which will take me to my 35 minutes, I think, to be balanced. Can you talk to me about the contribution that is made by advisory committees that you establish for particular inquiries?

**Prof. Croucher**—Certainly. Like having part-time commissioners, the advisory committees are an excellent way of getting expertise. I have spoken at length about the value of the intellectual capital that a generalist standing law reform commission has but, given that, you need to draw your expertise from a whole range of sources. An established part of our process is the constitution of an advisory committee for each inquiry as is appropriate to that inquiry. For example, with the discovery of documents in federal courts, we have an advisory committee that includes a number of judges; lawyers from firms that, generally, represent defendants; lawyers from firms that generally represent plaintiffs; academics; and someone from the Attorney-General's Department. It is an advisory body.

**Senator CROSSIN**—Is that for each and every inquiry?

**Prof. Croucher**—Yes.

**Senator CROSSIN**—That has been the case for a decade?

**Prof. Croucher**—Yes. It is longstanding practice. Any of our reports, Senator, will show you all of the people who have been on the advisory boards.

**Senator CROSSIN**—I have to confess I do not read each and every one of your reports.

**Prof. Croucher**—I am taking off an academic hat. I am not proposing to set an examination on them for you.

**Senator CROSSIN**—That would be good. Do they help alleviate with the workload in research or directions for the inquiry?

**Prof. Croucher**—They do not help with research or the conduct of the work. They provide the expertise as a counterweight or a modifier, a filter. When the legal team have developed ideas for consideration we will call the advisory committee in and say, 'This is where we're thinking of going with this.' The advisory committee, with those very diverse inputs of expertise—they are where we draw in our expertise and they include the part-time commissioners as well—will say things like, 'Fantastic idea. That's definitely the way to go,' or 'Look, I would back off on that. This doesn't make any sense at all.' They will provide that quality assurance check at absolutely critical times in the inquiry. Drawing them in with an expert body of people expert in law reform processes is a marvellous marriage of the two—the generalist intellectual capital in law reform process with expertise that we need for each of the particular inquiries.

**Senator CROSSIN**—Finally, you would have seen this morning's *Financial Review* article—

**Prof. Croucher**—Yes.

**Senator CROSSIN**—and the Attorney-General’s statement in there that he will now be appointing a second full-time commissioner to help you with your up-coming inquiry on classification. You said earlier in your evidence that you believe that, at a minimum, you needed at least a full-time commissioner for each inquiry. Does this go some way, now, to satisfying your concerns about the workload for the classification inquiry and do you welcome this announcement?

**Prof. Croucher**—In my opening remarks I referred to the Attorney-General’s personal commitment to the ALRC as expressed in comments such as that. The appointment of a further commissioner would certainly provide a significant assistance to the ALRC, particularly in undertaking another inquiry such as classifications. I did mention, though, a couple of caveats in that. I suppose I will add a third which is that it does not come out of our budget. The other caveats went to a preference for a standing full-time commissioner over an expert commissioner appointed for an inquiry. This is my preference because of the learning in law reform that a standing full-time commissioner is able to carry through and also, if they are not known as an expert in the area, they actually add to the independence that the whole inquiry process embarks upon. We do not embark upon an inquiry on the basis of any prejudice as to outcome.

That is part of the ability as an independent body to secure a willing engagement from a very diverse range of stakeholders, who may have vastly different opinions from each other. And if the person comes in as an expert stakeholders may have vastly different opinions from the person whose expertise is the very thing that may lead them in.

**Senator CROSSIN**—This commitment, though, for a full-time commissioner does not necessarily state ‘with expertise in that area’ so you still may get a person appointed—

**Prof. Croucher**—Indeed. I welcome the Attorney’s announcement and his continued commitment to us. I think it is a very significant signal.

**Senator TROOD**—Just in relation to that last point about the appointment, have you had any discussions with the Attorney-General’s Department about this new commissioner?

**Prof. Croucher**—The idea of the appointment of an expert has been mooted. I have ventured the same opinions as I have ventured today. The way I put it was: ‘It’s better than nowt.’ But my preference is for a standing, fixed-term commissioner. Certainly, having someone of standing and eminence to be able to lead an inquiry, such as the classifications inquiry, would be terrific. There has been some discussion about the position being part time—but I should say, no names—and about the idea in principle, with my caveat that it cannot come out of our budget.

**Senator TROOD**—‘Better than nothing,’ you said?

**Prof. Croucher**—Better than nowt.

**Senator TROOD**—Did you discuss the funding of that position?

**Prof. Croucher**—It was suggested by the Attorney’s office that it would not come from our budget if such an appointment were to be made.

**Senator TROOD**—Do you know when this is likely to happen?

**Prof. Croucher**—Other than the signal that the Attorney has given in his comment today, no.

**Senator TROOD**—That is not very clear.

**Prof. Croucher**—It has been discussed in general terms.

**Senator TROOD**—The signal is not very clear to me when it will happen.

**Prof. Croucher**—Perhaps not. The issue for me, if we are to go ahead with this inquiry, will be how we manage it and the time frame. The mooted time frame was December. I would anticipate that if we are not able to start this inquiry until April the time frame for that inquiry would need to be moved or it will move itself because it is not the kind of inquiry that can be undertaken in a few months.

**Senator TROOD**—We have kept you here a very long time, so I will not detain you too much longer. A substantive question I want to raise with you concerns the independence of the commission. The place to begin is whether or not you have been confident about the commission's independence and the capacity to undertake its responsibilities in accordance with its charter.

**Prof. Croucher**—Yes.

**Senator TROOD**—So you have not had any doubts about that?

**Prof. Croucher**—No. I have not. When the amendments to the act were proposed we were given, as I said, an opportunity to comment, not once but twice, because there was a redraft of the amendments following our input. Through that process there were some things that we thought were important for independence, such as the fact that full-time commissioners had to be appointed by the executive, by the Governor-General, as opposed to appointments by the Attorney himself personally. We got agreement that the model for the appointment should follow that of comparable other bodies, although part-time appointments will now rest with the Attorney, which generates a bit of flexibility.

I did express some concern about one matter—when I say ‘I’, I mean I on behalf of the commission, and I did consult my senior team, and all the ones who were there at the time had long experience in the ALRC—and that was the advisory board. I heard that was raised as an issue this morning. The advisory board is different from the advisory committees, about which I had some conversation with Senator Crossin. The advisory board is in the amended act, pursuant to the FMA Act. We expressed some concern about the advisory board. Evidently, it is the governance model that reflects the FMA status and so on. We expressed some concern about that. It will be important in the future that the role of the board is quite clearly managed so that it does not in any way, shape or form jeopardise the perception of the ALRC's independence.

That independence has enabled us to leverage a great diversity of opinion, even amongst government departments because the ALRC is seen as different from government. I think the Law Council of Australia's submission made the point that if they want to know what some

departments are thinking then they read submissions to the ALRC, which I thought was a very pertinent comment. Certainly, the fact that we are not seen as government is an important thing. We did express some concern that, unless the process and role of the advisory board were not carefully managed, there may be a danger of it impinging upon that perception of the independence of the ALRC. We also have suggested that, as a minimum, we need two commissioners, not one, in the statute but that did not—

**Senator TROOD**—I agree completely with you that it is highly desirable that the commission retain its independence and that is seen to be independent. Having that independence is an important element in its credibility to provide advice to the government. I am strongly of that mind. I must say, though, that I am struggling to come to the same confident view that you have reached about the continuation of that independence, given the changes that seem to be taking place in relation to your governance arrangements. I think they are all mentioned in your submission—for example, the commissioner is a separate legal entity; changes in the board of management; the Attorney-General to establish and appoint members and dissolve the Management Advisory Committee, which is the matter you have referred to; and enabling the Attorney to give you written directions with regard to the administration of the ALRC. Indeed, there are some, I acknowledge, which relate to the financial arrangements and they are consistent with the status of other agencies in the Commonwealth. I have rather less concern about those because I realise they are common across the whole of government. But it seems to me that some of these changes change the status of the commission and, in particular, go to the question of its independence. Do I take it that you are not troubled by any of this?

**Prof. Croucher**—I am concerned that it will require confident managing to preserve the perception of the independence of the ALRC. Many of the changes have been anticipated for quite some time. The Uhrig review led to all of the changes and they have been coming since 2003. They were anticipated. The form in which they are expressed, though, gives me some concern. I am confident that, in the established processes of the ALRC, as I have experienced and observed them over many years, that there is capacity to manage that. There is a lot of goodwill there to make sure that it does happen. But it could possibly be perceived as impinging upon independence. It will need a fairly confident hand to ensure that it does not do that.

**Senator TROOD**—And a considerable armoury, I would have said, because you have had the advantage of statutory independence and you have had the capacity to be able to say, ‘Here’s my act; this is what it says about my responsibilities as president and the role and responsibilities of the commission as a whole.’ To me, it seems that much of that mandate seems to be undermined by this legislation. So it will be much more difficult for you to say: ‘My act provides me with a defence’ against the things that a government of any stripe may wish to do to you. That is the way I read this. I am glad you have confidence in your competence to be able to defend yourself against this. There is no want of confidence on my part in relation to your capacity, I must emphasise, but a determined Attorney or a determined department, which seeks to more fully capture the commission, if I can put it that way, seems to me to now have all the resources it needs to do so.

**Prof. Croucher**—So you are suggesting I need to borrow some of the armour from that black knight?

**Senator TROOD**—Maybe not, because he was not terribly successful.



**Prof. Croucher**—He needed more extensive armoury on his person.

**Senator TROOD**—Whatever he needed, he did not have enough of it. I suggest you may need to arm yourself with rather more than that.

**CHAIR**—Thank you, Senator Trood. One supplementary final question, Professor: has the commission written to the Attorney-General with regard to the concerns expressed today specifically about and including the budget cuts and the government's changes?

**Prof. Croucher**—Yes.

**CHAIR**—Could you please take on notice and provide copies of that correspondence to the committee?

**Prof. Croucher**—Certainly.

**CHAIR**—On behalf of the committee, thank you very much for your time. It has been very comprehensive and fulsome today. We appreciate that.

**Proceedings suspended from 1.20 pm to 1.56 pm**

**HART, Ms Emily, Co-Chair, Victorian Women Lawyers Law Reform Committee**

**NOYE, Ms Ursula Claire, Lawyer, Public Interest Law Clearing House Victoria Inc.**

**O'BRIEN, Ms Lucinda, Policy Officer, Federation of Community Legal Centres Victoria**

**SAUNDERS, Miss Jessica, Member, Victorian Women Lawyers Law Reform Committee**

**VINES, Ms Laura, Member, Victorian Women Lawyers Law Reform Committee**

*Evidence was taken via teleconference—*

**CHAIR**—I welcome representatives from the Federation of Community Legal Centres Victoria, the Victorian Women Lawyers Law Reform Committee and the Public Interest Law Clearing House in Victoria. We have submission No.4 from the Federation of Community Legal Centres Victoria, submission No. 11 from the Victorian Women Lawyers Law Reform Committee and submission No. 13 from the Public Interest Clearing House. Do you wish to make any amendments or alterations to those submissions?

**Ms O'Brien**—No, I do not.

**Ms Hart**—No, we do not.

**Ms Noye**—No, we do not.

**CHAIR**—We now invite you to make an opening statement, at the conclusion of which we will ask questions.

**Ms O'Brien**—Thank you for inviting us to give evidence today. I have only a few opening comments to make, which emphasise the main points in our written submission. Firstly, in our experience the ALRC has always performed its role impeccably, it has always produced extremely high-quality work that is thoroughly researched and it is always very competent in conducting widespread community consultation. We think that this is a result of the building-up of expertise and skills within the organisation and we are concerned that funding cuts might lead to the erosion of this corporate knowledge, with higher staff turnover and of course the ability to retain fewer staff. If the ALRC's funding cuts were to lead to a deterioration in the quality of its work it would be a great loss to Australian society—not just to the parliament, which benefits from the ALRC's work directly, but to organisations like the federation. We use the ALRC's resources quite often, not only when we make submissions but more generally as background resources for our law reform and policy work, and I understand that many other organisations do the same. We would consider it a great loss if we could not access those high-quality and comprehensive submissions as easily as we can at present.

The second point I would like to make is that the independence of the ALRC is crucial to the value of its work. It has to be able to give robust advice to the government. It cannot be captive

to the political interests of the government of the day. We have never found it to be so in the past and we strongly urge that the independence of the ALRC should be maintained.

**Ms Hart**—I am speaking today on behalf of Victorian Women Lawyers, which involves over 550 lawyers in Victoria. One of our objectives is to work towards reform that helps to achieve justice and equality for women, and we rely on the ALRC, as a peak reform body, to assist us with that work. Our submission focuses on the ALRC's role and responsibilities and the adequacy of its staffing and resources to meet its objectives. The four key points that we have focused on in our submission are: the legal expertise and standing of the ALRC, its role as a monitoring body independent of government, its role in educating and engaging the community and its particular powers to approach reform in areas of interest to women. I will now hand over to Jessica Saunders.

**Miss Saunders**—Firstly, our submission states the importance of the commission's input into law reform and its influence on the Australian legal landscape. A major factor contributing to the commission's influence is the calibre of the commission's membership, past and present, which includes respected members of the judiciary and legal academia. The commission's ability to thoroughly examine legal doctrine is evident in the sheer scale of the commission's reports. The Hon. Michael Kirby, the first president of the commission, has since commented on the use of commission reports in courts across Australia. The commission is also skilled in creating policy that ultimately supports the law it recommends. An example of that is found in part H of the commission's report *Family violence—a national legal response*, which advocates an integrated response to family violence through common policy, interagency collaboration and victim support. We submit that the commission's policy recommendations ultimately improve access to justice by considering how people and bodies will ultimately interact with the law.

Secondly, we wish to highlight the importance of the commission's monitoring role. As an independent body, the commission has the ability to oversee the development of nationally consistent legislation, and it also examines international legal obligations through its inquiries. In the recent uniform evidence law inquiry, the commission collaborated with the New South Wales and Victorian law reform commissions to address inconsistencies across federal and state evidence laws, especially recognising the vulnerability of sexual assault victims, children and persons with cognitive impairment. The commission's approach has resulted in a more accessible evidence code for states and territories to adapt. Additionally, the commission is in a unique position to survey and synthesise a broad range of international obligations. Again we wish to emphasise the commission maintaining its national and international monitoring roles.

**Ms Hart**—We want also to highlight the role of the ALRC in the education and engagement of the community. Traditionally, women are marginalised under and within the law and the ALRC has discretion to consult as it deems appropriate in its work, which we consider to be the key difference between the ALRC, government, the executive and the judiciary. This means that the ALRC is in a position to investigate reform issues in depth to ensure that reform is effective. Consultation also ensures that a diversity of opinions and experiences are reflected in law as it is created.

In its background submission, the ALRC identified that, due to budgetary restraints, it has removed its public information and education services, which were designed to enhance community consultation and participation in law reform. The greatest impact of such cuts is on

those who are least able to engage with law reform, such as women. The VWL therefore supports the provision of additional funding to restore the information and education program of the ALRC to its full capacity.

**Ms Vines**—We also want to highlight in a little more detail the ALRC's important role in law reform which has a particular impact on the rights and interests of women. The ALRC has traditionally conducted a number of inquiries related to much needed law reform with direct and beneficial impact on women's rights. Some examples include the domestic violence inquiry in 1986, the matrimonial property inquiry in 1987, the women's equality inquiry 1994, multiple inquiries in relation to child care and family law and, most recently, the family violence inquiry, which produced a number of recommendations of benefit in improving legal consistency and access to justice for women.

As Emily has stated, women are traditionally disadvantaged and underrepresented in the law, and many legal issues concerning women are particularly controversial—for example, family laws and sexual violence laws. The ALRC has a history of addressing such issues in an open and progressive manner, free from the political pressure of the day, which Victorian Women Lawyers find particularly important. The ALRC's experience and positioning within the legal community allows it to take an objective, nuanced and well-researched approach to these issues. In order to achieve a balanced outcome, it is crucial that there be sufficient resources, staff, lead time and funding for in-depth consultation in order for such well-balanced reports to continue.

We understand that, due to budgetary restrictions, the ability of the ALRC to continue to take such an approach and to produce high-quality work is at risk to some extent—for example, in relation to its ability to travel for consultation purposes. This means that the ALRC must rely heavily on electronic communications for its consultation process, which puts a greater onus on stakeholders and limits the range of stakeholders who can provide effective consultation. The Victorian Women Lawyers Law Reform Committee believes this is of particular importance to community legal centres and women's community organisations. This is compounded by the fact that time lines for inquiries have also recently been reduced. We also understand that staff numbers have decreased in the ALRC in recent times, and this further impacts its ability to have in-depth inquiries which take into account the interest and rights of stakeholders such as women. Victorian Women Lawyers believe that the ALRC should be given adequate funding to ensure that it is properly staffed and resourced to continue its important work in inquiries of importance for women. Thank you.

**Ms Noye**—I thank the standing committee for the opportunity to present PILCH's submission to its inquiry into the Australian Law Reform Commission. I will speak to our submission, which is No. 13. PILCH is a leading Victorian not-for-profit organisation committed to furthering public interest, improving access to justice, protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and education. Of the ALRC's publications between 2006 and 2010, approximately one-third have intersected with PILCH's law reform and campaign policy objectives—specifically, reviews of laws concerning family violence, anti-terrorism, freedom of information, privacy and rights of persons with disabilities have implications for PILCH's clients, who are largely from marginalised and disadvantaged backgrounds.

In PILCH's brief written submission we addressed the following terms of the reference: (a) the ALRC's role, governance arrangements and statutory responsibilities; (b) the adequacy of its staffing and resources to meet its objectives; and (d) the appropriate allocation of functions between the ALRC and other statutory agencies. As our recommendation regarding term of reference (b) endorses item 3 of the submission of the Federation of Community Legal Centres, I will defer to Lucinda O'Brien, policy officer of the federation, on that point. I intend to address our submission to terms of reference (a) and (d), which differ from others before the committee.

Not only must the fundamental role of the ALRC in independent review development and reform of Commonwealth laws be supported and continue; the powers must be widened to include a community reference power. The ALRC is uniquely placed to fulfil its primary role to review Commonwealth laws, having direct access to government while retaining a mandate of independence from government. The publications of the ALRC are highly regarded. Most recently, the review of family violence laws was a high-quality, thorough and apposite project and an example of ALRC work which will directly improve access to justice for vulnerable people. More than 85 per cent of the recommendations of the ALRC are implemented.

In a commitment to furthering the public interest, PILCH supports the widening of the ALRC's powers to include the power to review issues for Commonwealth law reform that are raised by the community itself. One of the state counterparts of the ALRC, the Victorian Law Reform Commission, has such a power. Section 5(1)(b) of the VLRC Act states that, 'the VLRC may review issues of general community concern'. In practice, individuals and organisations and lawyers may suggest issues to the VLRC for review. The VLRC staff and, ultimately, its commissioners consider the issues and refer them as appropriate for review by the VLRC. Since 2006, the VLRC has received 100 suggestions for law reform from the community and, of those suggestions, it has initiated four reviews. Of the reviews so far published, all have been partially or fully implemented in Victorian law and policy. For example, the residential tenancy database recommendations have recently been implemented into part 10(a) of the Residential Tenancies Amendment Act, Victoria, 2010, which amended part 7 of the Residential Tenancies Act, Victoria, 1997. The assistance animals recommendations have been partly implemented in sections 4, 7 and 52 of the Equal Opportunity Act, Victoria, 1995 and the failure to appear to in court and respond to bail report is to be formally tabled by May this year. The community reference power enables the community to identify issues for law reform and also provides a gateway for the community to access government. It truly reflects representative government creating a more participatory and just society where those who may not normally have a say in law reform can do so.

**CHAIR**—Is there anything further you wish to add? We do need some time for questions, in light of the commitments we as a committee have in other places.

**Ms Noye**—There is a very brief comment I would like to make to term of reference (d). If you will allow me to read that, it will not take long.

**CHAIR**—As briefly as possible, thank you.

**Ms Noye**—The ALRC's role and functions are distinct from other statutory agencies and it is vital that the ALRC and other agencies such as the Australian Human Rights Commission retain appropriate resources to reflect their discrete and equally important roles and functions. PILCH

considers that the ALRC must maintain its mandate of independence from government and from other statutory agencies to properly perform its primary function of Commonwealth law review, development and reform. Whilst the Human Rights Commission can examine laws and propose laws for any consistency or contrariness of human rights, its powers of law review are limited to those laws concerning human rights. The ALRC's main function is to review laws and the Australian Human Rights Commission's function is to review laws through the human rights lens.

Importantly, while the ALRC is to continue its review without trespassing unduly on the personal rights and liberties of citizens, consistent with the International Covenant on Civil and Political Rights, and with regard to the effect on the cost of getting access to and dispensing justice, the primary role of the Human Rights Commission is to properly protect and promote human rights through its policy development, education, research and inquiry functions. The Human Rights Commission must meet its domestic responsibilities under the discrimination or equal opportunity laws and its international responsibilities as a human rights organisation. Functions of the Human Rights Commission include investigating and conciliating complaints under those laws, holding public inquiries, developing education programs, providing independent legal advice to courts and making submissions to governments on law and policy development and reform concerning human rights. It is imperative that both the ALRC and the Human Rights Commission be adequately resourced and mandated to ensure their independent roles and complementary functions and, consequently, the effective fulfilment of their distinct obligations. Thank you.

**CHAIR**—Thank you for that. We have had very comprehensive introductory remarks from each of you, so we thank you for that, but we also have your written submissions before us, which are also comprehensive. I will pass to the Senator Crossin for any questions that she may have.

**Senator CROSSIN**—Good afternoon to all of you. I have two questions I would like each of you to answer. One is: what interaction do you have with the ALRC, either in one-on-one meetings, community engagement or submissions to their inquiries, and when was the last time that might have occurred? As part of that, in relation to your suggestion that there should be a community referral power, can you tell me whether there have been times when you have suggested to the ALRC that they should pick up an issue for inquiry and whether or not that has happened? Can we start with Ms Noye and go down the list.

**Ms Noye**—Between 2006 and 2010, approximately one-third of the publications of the ALRC have intersected with our law reform and campaign policy objectives. We have not submitted to those inquiries, to my knowledge, and we have not had one-on-one meetings with the ALRC. With respect to your second question on the community referral power, to my knowledge we have not approached the ALRC with a particular reference. That may not be the same for our state counterpart, though I cannot go into detail about that.

**Senator CROSSIN**—Okay. What about Victorian Women Lawyers?

**Ms Hart**—In relation to your first question about our interaction with the ALRC, I will preface our answer by explaining that the Law Reform Committee of the Victorian Women Lawyers was established in mid-2010 and therefore we have not had the opportunity at this point

to formalise our involvement with the ALRC. At this particular time we are preparing to engage with the ALRC in their ongoing family violence review. We certainly have been using the ALRC's resources as a way of educating our own members and those we come into contact with in the community. In relation to your question about the community referral power, we are not in a position to answer that question at this point.

**Senator CROSSIN**—All right. Ms O'Brien?

**Ms O'Brien**—As I have mentioned briefly in our written submission, the most recent direct engagement the federation had with the ALRC was in making an extensive submission to the family violence inquiry. We did that in collaboration with Domestic Violence Victoria, the Domestic Violence Research Centre of Victoria and the Victorian Women with Disabilities Network. Unfortunately, my colleague Chris Atmore, who led that project, could not be here today, otherwise she could have given you more information about the nuts and bolts of that process. But I understand she found it to be an incredibly positive process and she found that the ALRC was very accessible, very professional and extremely thorough in every stage of the process. She was also really impressed by the report that was the result of that inquiry.

In relation to your second question, we would support an opportunity for community references to be made to the ALRC. I think that is a really important—

**Senator CROSSIN**—But have you done that?

**Ms O'Brien**—No, we have not.

**Senator CROSSIN**—I have a follow-up question to all of you, and I am trying to be quite objective about this. The Federation of Community Legal Centres tells me you have had involvement with the ALRC through their family violence work and basically found no fault with it. The other two put to me that either you have only been established for a short while or you have been involved with about a third of the work that they have done. Also, Ms Noye, you said you have never met with the ALRC on a one-to-one basis.

Given that they are your answers, I am trying to be objective here about how you have then come to the conclusion that you have made in your submissions. We had a lot of witnesses this morning that either were surmising or had a gut feeling or had some trepidation about the efficiency and the effectiveness of the ALRC in the current regime and into the future, but I cannot point to any diminishing quantity, quality, thoroughness or professionalism that highlights that. What I can see is an organisation that has gone through change and is doing things differently, which people do not like, but I cannot see where the current financial situation they find themselves in is directly leading to a diminution of quality and outputs. So I am finding it hard to find the same correlation in the evidence you have put before us today.

**Ms O'Brien**—As I indicated in our written submission, our concerns arise largely from the ALRC's own initial submission to this inquiry, in which it seemed to state quite clearly that the very recent cuts that have been made—and the future cuts that are projected—are already having a significant impact on its staffing levels and, by extension, its capacity to carry out its function. As I understand it, those cuts have come into effect since the family violence inquiry, and so we

would not expect our own interaction with the ALRC in that inquiry to reflect the cuts that we are concerned about.

**Senator CROSSIN**—I put it to you then that you have read the submission and you have decided to back them.

**Ms O'Brien**—Of course, it is for the committee to interrogate the claims that are made in the ALRC's submission, but I suppose we would take it at face value that they would not put in a submission of that nature to this committee without being sure of their own facts and without having done the necessary research themselves.

**Senator CROSSIN**—Sure, but I also put it to you that right across the Public Service and agencies there has been a two per cent dividend cut and in some sectors there have been areas that have had further budgetary constraints. I guess that, if you look at the debate that is evolving now, over the next 12 months there will probably be even more reduction in funding, but we do not have submissions and we do not have an inquiry from each of the other numerous agencies in the Commonwealth government. If I said even to my own Working Women's Centre in the Northern Territory, 'You have only been funded \$300,000 a year for the last 10 years; would you like more money or do you think you should operate with more money?' they would naturally say, 'Yes.' They will always put in a submission to say they are struggling with funds and they are finding it hard to readjust their work program because of that. I am wondering if, on the basis of just reading their submission without constant or frequent interaction, you have been able to come to that conclusion yourself and quantify that for us.

**Ms O'Brien**—It might seem trivial, but one indication to us that the ALRC is a bit strapped for cash is that it has begun charging for its publications and even charging people who submitted extensively to the inquiries, which we found surprising. That has never been the case, as far as we know, in the past. As I say in our submission, while it may seem a small amount of money and it may seem trivial, you are dealing with organisations like ours that are very cash strapped. While we would pay to get the report of an inquiry that we submitted to, we cannot necessarily buy every single report that the ALRC puts out, but that is not to say that we would not like to read them. That is just one small example that seems to indicate to us that things are changing at the ALRC in a way that is not really to our liking. As you say, this is happening all across government and we appreciate that you need to find efficiencies wherever you can. But our position is that we do not think there should be any further cuts. That is our basic position.

**Ms Vines**—If I could also add something to the discussion, one of the examples of the impact of reduced funding is that the ALRC's journal *Reform* is no longer being published. That is something that, from our perspective, is particularly important for an organisation such as VWL that is voluntary and not particularly highly resourced. That is a journal we rely on very much for education of our members and the broader public.

**Senator CROSSIN**—Have you asked why it is not being produced?

**Ms Vines**—We have had some informal discussions with staff of the ALRC recently in preparing for today's discussion and from what I understand it is because they are trying to cut spending in order to meet budget restraints.



**Senator CROSSIN**—It is not produced online or on their website?

**Ms Vines**—I understand that it is no longer being produced.

**CHAIR**—The advice is that *Reform* is not being produced, so that is correct. The ALRC have put in a submission and you have referred to it, but they have also appeared this morning. I will paraphrase them by saying that what we are talking about are not efficiency dividends but cuts. Using the ALRC's words, it is a 20 per cent cut, which is obviously significant from their point of view and I think from anybody's point of view. They have also indicated that the funding was not adequate. They have asked for the real cuts to be restored. They indicated that the decision has been destabilising for the organisation and they also advised that the staff turnover was in the vicinity of 90 per cent. In anybody's book they are very major and significant views that they have put to our committee today. I am happy for you to respond to that. I just wanted to say that Senator Crossin has asked some questions and the views that you have put are very comprehensive. The submissions cover the ground very well, so I do not have any further questions unless you want to finish with a closing remark.

**Ms Hart**—Victorian Women Lawyers is satisfied with everything that we have spoken about today. Thank you for the opportunity.

**Ms Noye**—On behalf of the Public Interest Law Clearing House, I thank the senators for listening to our submissions today.

**Ms O'Brien**—I have no further comments. Thank you all very much.

**CHAIR**—On behalf of the committee, I thank you very much for being available and apologise for the delay in starting. We appreciate your input, your evidence and the time you have given us today.

[2.28 pm]

**FREDERICKS, Mr David, First Assistant Secretary, Strategy and Policy Advice Unit, Priorities and Coordination Division, Attorney-General's Department**

**LEON, Ms Renee, Deputy Secretary, Strategic Policy Coordination Group, Attorney-General's Department**

**WALTER, Mr Andrew, Assistant Secretary, Strategy and Policy Advice Unit, Priorities and Coordination Division, Attorney-General's Department**

**WILKINS, Mr Roger, Secretary, Attorney-General's Department**

**CHAIR**—We now welcome representatives from the Attorney-General's Department. Mr Wilkins, I understand you have made arrangements to be here at this time. We are cognisant of the demands on your time and we thank you for it. We have the department's submission. Do you wish to make any amendments or alterations?

**Mr Wilkins**—I would like to make a brief statement.

**CHAIR**—We would be delighted for you to make an opening statement if there are no amendments or alterations to the submission.

**Mr Wilkins**—No, there are no alterations or amendments.

**CHAIR**—We would be delighted if you would make some opening remarks and then we will go to questions.

**Mr Wilkins**—Can I just thank the committee for its indulgence. Obviously, as you say, I have been with the Attorney-General and other ministers for emergency services dealing with flood recovery. There is a very important meeting looking at some of the budgetary impacts in relation to flood recovery. Obviously that is a big topic, so I appreciate your indulgence.

I welcome the opportunity to address the committee. As the Attorney made clear in an op-ed in this morning's *Fin Review*, the ALRC is highly regarded. The government regards the work of the Australian Law Reform Commission as important to a vibrant and sustainable legal system. As evidence before this inquiry has indicated, the commission is highly regarded for the way it goes about its work, including the quality of its research and its emphasis on consultation. I will not add to the department submission. Anything that is in there that you want us to elaborate on we certainly can.

The inquiry comes at a significant time of change for the ALRC, and I see a type of confusion here between some of the issues that are arising in terms of the structural change, the change in legislation, and some of the issues around the budget. These things seem to have become confused. The Attorney-General has spoken publicly about the commission's history of demonstrating insights and a practical grasp of law reform, and this continues today. In 2010 the

parliament passed the amendments to the Australian Law Reform Commission Act 1996 to introduce more flexibility into the commission structure, taking into account the varied and often highly technical subject matters on which it undertakes inquiries. These changes to the ALRC's structure and to the financial management framework under which it operates have coincided with the government's need to make some tough fiscal decisions. We should not confuse these two things. This has included a reduction in the ALRC's budget, as it has in other people's budgets. I understand that some of these changes have caused some confusion and concern among contributors to this inquiry. One thing I would emphasise at the outset is that it in no way impinges on the independence of the ALRC.

The department is working with the commission as it moves towards this new way of doing business, and the department is confident that this transition will position the ALRC to maintain the high standards of research and analysis for which it is acclaimed as well as serving the government in the best way that it can. As you will appreciate, its primary function is to inquire into and report on matters referred to it by the Attorney-General. As the Attorney wrote in the *Fin Review* this morning, the government will continue to utilise specialists to contribute to particular references at the same time as ensuring appropriate resourcing for the commission for the long term and as such that commissioners provide valuable intellectual input and leadership to complement the work of the president, fellow commissioners and staff.

With respect to reductions in the ALRC's budget, I will not go into the actual reductions but it is important to put these reductions in context. The reductions in the commission's budget were made at a time, as Senator Crossin was observing in the last session, when \$3.5 billion of savings were being found from across government, occasioned by, as we all know, the global financial crisis. The savings from the 2009 Mid-Year Economic and Fiscal Outlook are a key component of the government's commitment to returning the budget to surplus at the earliest possible responsible time and, once the budget returns to surplus, maintaining spending restraint to support long-term stability. There are any number of CEOs who could come before a committee and say they could do with more money. The thing about professional public servants is that they need to manage within their budget. The government does have a continuing commitment to the independence and efficacy of the Australian Law Reform Commission. On the other hand, we do need to find ways of working within the parameters and strategies of the budget maintained by the government.

I wish to stress that none of the structural changes go to the independence of the commission. What I thought might be useful is if, as a continuation or as a part of that, I ask Renee Leon, who is the Deputy Secretary of the Attorney-General's Department, to outline to you the way in which we look at the functioning of the ALRC and how it can continue to operate successfully within its budget envelope.

**Ms Leon**—As you are aware from evidence before the inquiry, the Law Reform Commission was advised in the 2009-10 year of budget reductions that would take effect in the 2010-11 year of some \$290,000, rising to \$495,000 in the following years. At the time that they were advised of that, we particularly drew to their attention opportunities we thought there were for living within that budget. We recognised that the commission is an independent body and that the chief executive of the commission has to make her own decisions about how the resources are utilised.

At that time the Law Reform Commission was paying in the vicinity of \$600,000 a year in rent, which seemed to us to be an area where there was capacity for considerable savings to be made. I am pleased to say that the Law Reform Commission has recently negotiated arrangements to move to premises that are about half that price, which then makes it much more commensurate with the kind of size and budget of the commission as a whole. So nearly \$300,000 worth of savings are being achieved as a result of a move to premises that are somewhat more in keeping with the normal space utilisation for public service officers. As you can see, that alone goes a long way towards meeting a \$495,000 budget reduction.

In addition, if even one commissioner position continues to be left vacant, each full-time commissioner position costs \$230,000 in total costs, of which about \$180,000 is salary determined by the Remuneration Tribunal, and the balance is the normal administrative costs and overheads.

**CHAIR**—Sorry, what is that figure?

**Ms Leon**—\$230,000 is the salary, plus on-costs.

**CHAIR**—I have the salary here of \$178,000.

**Ms Leon**—Yes. Plus on-costs—which is superannuation and administrative costs and so on. Even with simply the reduction of one full-time commissioner and a move to premises that are more affordable for an organisation of the size of the commission, those already come to a saving of more than the budget cut that has been taken from the commission in the 2011-12 year. Although I appreciate that if one sets the budget reduction as an overall percentage of the budget, when you look at the components of the budget and the capacity to make savings in very large-ticket items I am confident that the commission will be able to operate within its budget once it has moved into its new premises.

**CHAIR**—In the shared premises?

**Ms Leon**—It is moving into premises of which the head lease is with another Commonwealth organisation, yes.

**CHAIR**—Which they are sharing?

**Ms Leon**—They are not sharing the exact office space; they have their own space within the office. But they are moving into a part of the office that is not occupied by the other agency. They are gaining the kind of efficiencies in shared facilities that are being encouraged across government for all agencies, particularly small agencies, so that taxpayers' money is not being wasted on a whole lot of duplication of facilities where we have the capacity to share them.

So while I appreciate that there has been some anxiety for the commission as they look at this transition, I do think that their capacity to live within their budget and to continue to have another commissioner appointment, as has been announced today by the Attorney-General, for the classification review is still completely manageable within their reduced budget.

**CHAIR**—We will move to questions. Ms Leon, we will deal with that issue about moving premises. That is with the Australian Government Solicitor?

**Ms Leon**—Yes.

**CHAIR**—Do they retain a library by themselves or is that being shared with the Australian Government Solicitor? Do they retain meeting rooms or is that being shared with the Australian Government Solicitor?

**Ms Leon**—They are all matters the president of the Law Reform Commission is negotiating completely independently with the Australian Government Solicitor.

**CHAIR**—You are not aware?

**Ms Leon**—The department has not conducted those negotiations or directed them or in any way determined the outcome of those. If there is the capacity to share library and meeting rooms I would think that is a good thing for both organisations, but it is not something where we would direct the president of the commission one way or another.

**CHAIR**—But you are not aware one way or the other what circumstance—

**Ms Leon**—I understand that they are exploring those possibilities. I do not know whether they have resolved the outcome of those negotiations as to the extent of sharing.

**CHAIR**—We were advised that they are doing that via the president in evidence given earlier today. Let us go to this announcement that was made today by the Attorney-General for a new full-time commissioner. Ms Leon, you have confirmed that and it is in writing in the *Financial Review* today. Could you tell us about that new position? According to this opinion piece—

**Mr Wilkins**—Where are you quoting from, Senator?

**CHAIR**—From the Attorney-General's opinion piece in the *Financial Review*, Mr Wilkins. It says 'The government will also appoint a full-time commissioner to lead the inquiry into classification, a particularly technical area of law' et cetera. Can you tell us more about that appointment, such as when the appointment will commence, will it be solely related to the classification inquiry, will there be extra funds provided to the commission to pay for that full-time commissioner—noting that a full-time commissioner is \$178,000 according to the remuneration tribunal plus on-costs, so a \$230,000 a year commitment—and can you give us any other details about that announcement?

**Mr Wilkins**—The exact timing of the appointment is imminent but it is really a matter for the government to determine.

**CHAIR**—Do you have a short list?

**Mr Wilkins**—I do not have a short list but I am sure that the ministers have a short list. I am sure that is being taken care of.

**CHAIR**—Mr Wilkins, please let's not beat about the bush. Are you aware of a short list for this appointment?

**Mr Wilkins**—No, I am not.

**CHAIR**—Is anybody in the department aware of a short list?

**Mr Wilkins**—Possibly.

**CHAIR**—You are all sitting here—can somebody please give us the answer?

**Mr Wilkins**—I have no doubt—as you would understand—that this is a matter for the minister and for the Attorney-General.

**CHAIR**—I am not asking you about the process. I am asking you if you or someone in the department is aware of a short list. I would like to know.

**Mr Wilkins**—I do not know. I will have to take it on notice.

**CHAIR**—We have four senior officers here; are you telling me they do not know?

**Mr Wilkins**—No.

**CHAIR**—Mr Walter, do you know?

**Mr Walter**—The department provides a list of possible appointments for these kinds of positions to the Attorney. I was not responsible for this, but a list was prepared and provided to the Attorney.

**CHAIR**—When?

**Mr Walter**—I could get you an exact date for that, but it was late last year.

**Ms Leon**—Perhaps I should refer to the fact that the officers who are present are all present because of their responsibility for the commission, whereas the officers who are involved in preparing the short list and therefore seeking people with expertise in this particular area are the officers who are responsible for classifications, and so that is why we are not closely involved in the selection of the commissioner.

**CHAIR**—All right. Mr Walter has been most forthcoming and his responses today have been most useful.

**Mr Walter**—Could I just complete my answer there? That is normal practice but, of course, then it is a matter for the Attorney and the minister to consider that list and anyone else that they might have on a list. I do not think anyone in the department has handled—

**CHAIR**—So the department has prepared a short list and it has gone to the minister. We know that was as of the end of last year.

**Mr Wilkins**—No, we do not have any knowledge of a short list. There may have been suggestions made to the Attorney-General by the particular branch concerned with classification.

**CHAIR**—Mr Wilkins, your evidence appears to be conflicting with Mr Walter's.

**Mr Walter**—No, that is consistent with what I was trying to say.

**Mr Wilkins**—I think what I said is perfectly consistent with what he was saying. I do not think he has any particular knowledge of this area, because he is not involved in classification. I have no doubt that names have been provided but a short list is something like two, three or four people who are being considered. That is done by the ministers, and they may well have names from a whole range of areas to consider. It has to do with particular expertise in classification and somebody who would fit in with the requirements of the ALRC. I am sure these are the criteria which they are taking into account.

**CHAIR**—Okay. We are not going to spend all afternoon on this matter. Please take on notice and provide further and better particulars in regard to the answer to that question.

**Mr Wilkins**—Okay. You were asking what I knew about it and you were asking me to expatiate on what the Attorney had to say in the *Financial Review*. Leaving to one side when this decision gets made by ministers—and, and as I say, it is an imminent matter—the issue around classification is one before the Standing Committee of Attorneys-General at the moment, as you would probably be aware from previous discussions we have had in estimates. Such an appointment is imminent. In terms of the funding of that position, as Ms Leon indicated, there are significant savings to be made through the rationalisation of rentals and going to more affordable—

**CHAIR**—I did not ask about that; please just answer the question.

**Mr Wilkins**—I am trying to explain the funding of this position. There are considerable savings to be made through rationalisation of premises and savings to be made in rental, but that will take several months. There will be transitional funding provided to the ALRC—

**CHAIR**—How much?

**Mr Wilkins**—Enough for a full-time commissioner. There will be sufficient funding provided to the ALRC to fund this position so that the—

**CHAIR**—Until they start in their new premises?

**Mr Wilkins**—Until they are in a position to take advantage of the savings and the various other budgetary strategies that Ms Leon described.

**CHAIR**—How much transitional funding?

**Mr Wilkins**—We will fund basically the same as what you would need for a full-time commissioner.

**CHAIR**—How much have you budgeted for?

**Mr Wilkins**—It is set by the Remuneration Tribunal.

**CHAIR**—Let's say it starts on 1 April, how much per month would you budget for?

**Mr Wilkins**—I will ask my colleagues how much over a 12-month period? A number was given to you. I am told it is \$230,000 per annum.

**Ms Leon**—But we do not anticipate that the commission will still be suffering its budget pressures for the entire year because it is shortly to move and we anticipate that it will sublet its premises that it is moving out of without too much difficulty. The sooner that happens, the sooner they will be on track to get back within their budget. We are aware of their needs and we will work with them to ensure that the commissioner is appropriately paid and that the commission is able to manage during the transition.

**CHAIR**—Are you saying that the commission will be required to pay the \$230,000 per year on top of the budget cuts that you have provided?

**Ms Leon**—No.

**Mr Wilkins**—No.

**Ms Leon**—I just said that the department will assist with the costs until, as the secretary said, the commission has realised the savings of moving into its less expensive premises, so that it will not be any further out of pocket. I think that is the evidence that both the secretary and I have just given.

**CHAIR**—Well, it depends on how you want to read your evidence, I guess.

**Mr Wilkins**—Can we make that clear, Chair. When I say it is 'transitional', it is until they are in a position to fund it from savings themselves. We understand that they are in high-cost premises and they are moving and that their rental—

**CHAIR**—These are savings they have to make in any event pursuant to your budget decisions last year.

**Ms Leon**—The savings that they are currently reaping are from having two positions vacant. The appointment of this commissioner will leave them with only one commissioner vacant. They do not need to leave two commissioners vacant in order to come within their budget; they only need to leave one. Once they have regularised their accommodation, they will be able to afford a full-time commissioner from their base budget.

**CHAIR**—We are not able to go all of that this afternoon. We have a lot to cover, so let's keep going. Do you have a plan for a third full-time commissioner or just this extra one?



**Mr Wilkins**—We have not got a plan for a third full-time commissioner, but, as the Attorney made clear in his article in this morning's *Financial Review*, the modus operandi for the Australian Law Reform Commission going forward is to look at having commissioners and terms of reference, so people would come and go in relation to different terms.

**CHAIR**—So this full-time commissioner will be operating only with respect to the classification inquiry?

**Mr Wilkins**—I would imagine so. If there are other duties—for example, if the president wants to talk to this full-time commissioner about other functions such as representing the ALRC at certain places at certain times, giving speeches in some places or doing other sorts of things I think it is a matter for them.

**CHAIR**—It is not a deputy president; it is just a full-time commissioner.

**Mr Wilkins**—Yes, but it is a matter between the president and the commissioner.

**CHAIR**—Will the full-time commissioner be a member of the board of management?

**Mr Walter**—Yes. All full-time commissioners are automatically members of the board of management.

**CHAIR**—Let us go on to some other areas, in light of the timing. We have received a submission from Professor Weisbrot. Have you perused that submission?

**Mr Wilkins**—Very quickly.

**CHAIR**—It refers to you specifically. I refer you to page 4 of his submission. He makes a number of very strenuous and strong remarks about the changes, which he refers to as 'devastating'.

**Mr Wilkins**—I am sorry, which page is this?

**CHAIR**—On page 4, fifth-last paragraph, he refers to the changes as radically altering:

the composition, nature, role and resourcing of the highly successful ALRC—

the Australian Law Reform Commission—

none of these matters were ever discussed with me.

He goes on to say—

**Mr Wilkins**—He says 'the Republic of Botswana' or something like 'I was invited by the government'?

**CHAIR**—This is the Macquarie University submission, put in by Professor Weisbrot, former President of the ALRC for some 10 years.

**Mr Wilkins**—I have that, but I have a paragraph here which refers to his invitation to Botswana.

**CHAIR**—No, we are on a different paragraph. We are on page 4.

**Mr Wilkins**—Okay, which paragraph?

**CHAIR**—Fifth-last from the bottom. It begins: ‘Despite a lifetime of service and leadership in law reform ...’ Do you have that?

**Mr Wilkins**—Yes.

**CHAIR**—That is what I have just quoted. The paragraph underneath it reads:

My views were never sought about how best to proceed, nor about the implications of the radical surgery conducted to the complement of Commissioners and staff. I was never asked to provide my views about the strengths of the ALRC, nor its weaknesses or missed opportunities, nor any changes I might suggest ...

He goes on, ‘No exit interview was conducted.’ Then further, in the second last paragraph:

Not long after taking up his position of Secretary of the Attorney-General’s Department, Mr Roger Wilkins paid me the courtesy of a brief “meet and greet”. Curiously, Mr Wilkins said that he had previously commissioned a review, which indicated to him that the ALRC was an unaffordable “Rolls Royce luxury operation” ...

**Mr Wilkins**—I have got all that. Do you want me to comment on those paragraphs?

**CHAIR**—I would like you to have the opportunity to respond, because he is referring to his interaction with you. I would like you then to provide a copy of the review.

**Mr Wilkins**—There are a couple of things tangled up and confused in what Professor Weisbrot says; it is not entirely his fault. On the point of the amendments—can we deal with that first? The amendments are a result of the Uhrig review, which predates me and goes back to the former government—

**Senator CROSSIN**—It was 2003, I think.

**Mr Wilkins**—I think that is right. The ALRC was certainly consulted during the Uhrig review and in terms of what that came up with. All that happened with the amendments that we saw in 2009—it has nothing to do with me; it comes out of Finance and is a longstanding set of tidying up of the Uhrig reforms—is that effect was given to the Uhrig reforms, which the ALRC had commented on at the time. I think Professor Weisbrot was president at the time.

The second thing that he seems to have confused, in the submission though maybe not in his own mind, is a reference to a completely different report, which was a report that I commissioned about the Attorney-General’s Department. We have discussed this before—in

estimates. It was a report by Roger Beale about what structural changes may be needed within the Attorney-General's Department. In passing it made some mention about the Australian Law Reform Commission. It was hardly a central to that report, but in the course of his remarks Roger Beale suggested that one thing we might contemplate is quite radical surgery to the ALRC in terms of maybe even winding it up and bringing it into the department. What I said to Professor Weisbrot is that we had no intention of doing that, and that is what he is referring to there.

**CHAIR**—So the review that he is talking about, and the report or the review that you are referring to that he is talking about and which he said he was never part of, is the Beale review?

**Mr Wilkins**—Yes. It is the Beale review of the department; it has nothing really to do with the ALRC. That was only mentioned in passing, as was—

**CHAIR**—Can you refer to the section in your review that said that the ALRC needed radical reform?

**Mr Wilkins**—I think most of it has been released, but I am happy to put it on the record. I will just read out the bit, because it is quite short. It is entitled 'Enlivening law reform', and it is one section of the report. It reads:

The Attorney and the Secretary have both emphasised the importance that the Rudd Government attaches to an active program of law reform. The Audit has been surprised by the number of comments that has been made to it about the slowness, complexity and cost of the ALRC processes. It has apparently been difficult to convince governments in recent years of the merit of referrals to the ALRC. When referrals are given the work done is of outstanding quality but slow to produce, reflective of an extended and extensive consultation process and often not easy to digest. The Audit was told that reports tend to be long and not particularly user friendly for a policy-making audience.

The other main formal vehicle of law reform ...

He goes on to talk about SCAG. Then he says:

If the Secretary wishes to take a strong leadership role in these areas it would be appropriate to bring them into the corporate centre ...

That is, the areas within my department that deal with these. He says:

At the very least, it has been suggested, ALRC should be given some crisper references, with tighter timelines and strong guidance on the need for producing its reports in a form that is accessible and useful for those who are vested with the responsibility for determining whether and if so how they should be actioned.

Others have suggested that a bolder solution would be to replace the ALRC as a standing independent statutory authority with permanent members and a separate staff with a principally part time statutory advisory panel—say the Australian Law Reform Council—with a charter to advise on fruitful areas for law reform, a slim secretariat and a research budget—akin perhaps to the Administrative Review Council.

This would free a considerable budget ... which could be used flexibly to advance the Government's law reform objectives. This could involve the use of techniques including:

- wholly independent inquiries with membership chosen to suit the topic
- mixed departmental and external groups
- wholly internal Task Forces—involving membership from other departments if that is thought desirable
- externally contracted research papers either for publication or use by the government in the development of law reform proposals.

Because of the constraints of time and budget, the Audit has consulted neither with the ALRC, nor with external stakeholders. Nor has it examined ALRC reports and the action taken on them. However, there is at least a prima facie case that an alternative approach is worth examining.

So when I said to Professor Weisbrot that I had a report that suggested radical surgery to the ALRC, that is what I was referring to—that passage from Beale—and I said to him, ‘We’re not going to do it.’

**CHAIR**—Of course, a lot of what you have read out it is advice for the government and the department with respect to how—

**Mr Wilkins**—No, that is a report to me.

**CHAIR**—Are you happy to table that? We have a public document—

**Mr Wilkins**—I think it has been published.

**CHAIR**—Indeed it has, but I do not have it with me to read what you have just read for some five minutes. So if you could provide that to the secretary, that would be useful to our committee, and we can get a copy for the senators.

**CHAIR**—So when you were talking with Professor Weisbrot, you did not say that this review was the Beale review?

**Mr Wilkins**—No, I only had one review in my head. I did not realise that he was thinking about something completely different, apparently—the Uhrig review or something.

**CHAIR**—So there is a disconnect. Was this a meet and greet?

**Mr Wilkins**—I had gone to see the ALRC as soon as I arrived at and he was not present—Ros Croucher was present then. I had gone around and met the staff, as you do with all of these organisations that are in the portfolio. So when you say ‘meet and greet’, I went back to see him specifically and had a bit of a chat about what he thought about some possibilities. Most of the other things he says—

**CHAIR**—Was it a Rolls-Royce luxury operation—did you say that?

**Mr Wilkins**—Possibly. I cannot recall. It was hyperbole, if I did. I was trying to get his ideas on various things. So I said that we had a good experience with the New South Wales Law Reform Commission when Keith Mason was in charge. He used to do much more black letter law reports—shorter and briefer, usually tackling technical issues that the government could move on immediately to fix up. I asked him what he thought about that. So he tossed that around and then I said that in the United States they do a restatement of the law of tort, and what did he think about that. This was an attempt to discuss what his views were on various things that the ALRC might do. He said on the restatement of the law, a la the US, that he did not think it was a good thing for the ALRC as they probably did not have the resources, and I took it no further

**CHAIR**—How long was your meeting?

**Mr Wilkins**—Probably a couple of hours or an hour and a half or something like that.

**CHAIR**—You can let us know on notice when it was.

**Mr Wilkins**—I am not sure whether I have a record of that but I will look. It was certainly earlier on.

**CHAIR**—He says in that first paragraph that I read that these reforms determined in 2009 ‘would radically alter the composition, nature, role and resourcing’ of the ALRC.

**Mr Wilkins**—That is his view.

**CHAIR**—That is his submission, and he says that he was not consulted about that.

**Mr Wilkins**—Do you want me to go back over that?

**CHAIR**—No, but the point that you are making is that you did consult him in that one-and-a-half-hour meeting—

**Mr Wilkins**—No. The point that I am making—and I will need to go back over what I said—is that he is referring there with the so-called ‘radical’ changes to things that were being done under the Uhrig review, which date back to 2003 and which have been part of bipartisan policy coming out of the Department of Finance. That is what he says and he was consulted at about those.

**Mr Walter**—Just to add to it, the department facilitated—

**Mr Wilkins**—So he was consulted about those so I do not really understand it. He has a view about them but it has nothing to do with—

**CHAIR**—So on top of that we have got the Beale review—

**Mr Wilkins**—Which is completely different.

**CHAIR**—which is a different review, we know that. Now if he was made aware of this advice that you are putting that it is the Beale review, what do you think he would say?

**Mr Wilkins**—What would he say about what?

**CHAIR**—We will ask the professor when we have him as a witness. He has expressed very strong views here. He has had an interaction with you and you are saying that there is a misunderstanding and miscommunication—

**Mr Wilkins**—No, I am just saying that there are two different things. I think that he may be clear in his head, and I think the committee here is in danger of muddling them up. There is the Uhrig review which is completely different and which we did not discuss and which had been discussed in 2003 with the ALRC. There is the Beale review which does not deal with the ALRC in any spectacular way, and I simply said to him in passing that I had a report which suggested some radical changes to the ALRC and that we were not going to act on them.

**CHAIR**—In light of the time, and we are caught out there, we will do what we can in the time available. Do you support his view that there is a critical need for what he calls a ‘cohort of commissioners’? Do you agree that you do need more than one full-time commissioner?

**Mr Wilkins**—I think you need at least as many commissioners, as the Attorney said, to support the work of the ALRC, whether you need a permanent cohort there or whether they should be actually assigned to particular references.

**CHAIR**—So you cannot guarantee a minimum of two into the future?

**Mr Wilkins**—I think there should be, yes, because there will be at least that many references coming through. There should be, yes.

**CHAIR**—Okay. Professor Weisbrot’s view about ‘the critical need for adequate staffing and budget resources’ is akin to the ALRC’s evidence to us today, which was very strong. I indicate to you that they advised our committee that the funding was inadequate, the real cuts should be restored, the changes had been destabilising and the staff turnover was in the vicinity of 90 per cent. I would like you to respond to the ALRC’s concerns there and this issue of adequate staffing and budget resources.

**Mr Wilkins**—All right. Certainly, we agree that there should be adequate staffing and resources. What there seems to be some contention about is whether what they have and what they can afford, with the savings that Ms Leon has described, are adequate staffing resources. Their staff complement or staff ratios have remained relatively constant, actually. The staffing levels since 2004-05 have fallen from, basically, a full-time equivalent of 18.05 to 16.2, which is not huge. Compared with what has happened in the Attorney-General’s Department over the last little while, or Customs or any of those sorts of agencies, this is not a massive decline in terms of the staffing complement. So I would have thought that, if a person could manage within that envelope, a professional public servant would be expected to manage their functions within that type of envelope.

**CHAIR**—What is the staff turnover in your department?

**Mr Wilkins**—I do not know off the top of my head. Do you know?

**Ms Leon**—About 16 per cent, I think.

**Mr Wilkins**—It is about 16 per cent, apparently.

**CHAIR**—That compares markedly with a 90 per cent turnover.

**Mr Wilkins**—Yes, but one does not know—I have no idea—why there is a 90 per cent turnover. It could be that it is a good place to work and they put people through. It could have a different culture. They have different references from time to time, so I assume they might need different expertise.

**CHAIR**—So that does not concern you?

**Mr Wilkins**—It does not concern me.

**CHAIR**—It does not ring any bells?

**Mr Wilkins**—It is a matter for the CEO, actually. There is nothing—

**CHAIR**—No alarm bells for you that there is a 90 per cent turnover—

**Mr Wilkins**—No, what I am saying, Senator—

**CHAIR**—in an agency which reports directly to your minister?

**Mr Wilkins**—It would concern me if it were in the Attorney-General's Department—

**CHAIR**—It would?

**Mr Wilkins**—because you need some continuity, but it is a matter of how—

**CHAIR**—You don't think you need continuity at the commission?

**Mr Wilkins**—Possibly. But this is a matter for the CEO. It is a matter for the way the CEO runs the organisation. It has nothing to do with the budget if there is a 90 per cent turnover, because they could have retained that many people, up to 16 people, on their current budget.

**CHAIR**—Surely you would want confidence—

**Mr Wilkins**—There is nothing about their budget that requires a 90 per cent turnover, so I can only assume that either that is part of their policy or the CEO—you should have asked the president whether they thought this was a good thing or a bad—

**CHAIR**—Well, I am asking you.

**Mr Wilkins**—Well, it is not my agency to manage, Senator.

**CHAIR**—But you are the secretary to the minister, and the minister is responsible, together with advice from you—

**Mr Wilkins**—Yes, but he is not responsible for managing—

**CHAIR**—in terms of providing budget cuts.

**Senator CROSSIN**—I think we are pushing a fine line here about matters of opinion and policy, really.

**Mr Wilkins**—Thank you, Senator. One of the points would be that we are concerned about the quality of the output, and the Attorney has expressed confidence in the quality of the output.

**CHAIR**—I am just staggered that you do not have a view with respect to the importance of continuity.

**Mr Wilkins**—I did not—

**CHAIR**—When I say you do not have a view, I mean you are not concerned about it.

**Senator CROSSIN**—He might have a view, but—

**CHAIR**—I am concerned—

**Senator CROSSIN**—He might have a view, but it might not be relevant—

**CHAIR**—I am concerned by it.

**Senator CROSSIN**—to provide it to the committee.

**CHAIR**—You are not concerned by it.

**Mr Wilkins**—Of course I am.

**CHAIR**—You just said you were not.

**Mr Wilkins**—In my own department.

**CHAIR**—Yes. Well, let us move on.

**Mr Wilkins**—Let me put it this way: if you suddenly move from working on classification to working on human tissue transplants, you might need completely different people.

**CHAIR**—Yes. We have had arguments about the corporate knowledge with respect to not just one inquiry but the functioning and operation of the commission. Now, I want to go to the changes to the Financial Management and Accountability Act 2010 that you referred to earlier.



What discussions did you have with the Law Reform Commission in advance of making those changes?

**Mr Wilkins**—This goes back into history. I might let Ms Leon or Mr Walter answer that question.

**Ms Leon**—I might kick off and then pass to Mr Walter for some more detail about more recent exchanges. The department facilitated discussions between the Department of Finance and Deregulation and the then president, Professor Weisbrot, in November 2008 about the application of the Uhrig review to the ALRC. So, as the secretary has outlined, that is the nature of the changes that have recently been legislated for.

**CHAIR**—How was that communicated? Was that in a meeting?

**Ms Leon**—Professor Weisbrot met with the Department of Finance and Deregulation at our arranging in order to have that conversation with the department of finance.

**CHAIR**—On notice, could you advise us of when that was. That would be good.

**Ms Leon**—If we have a record of it, we are happy to provide that.

**CHAIR**—Yes, please.

**Ms Leon**—That was then fed into the policy consideration about the progressing of the Uhrig review. The government then decided to apply those reforms to the ALRC. I am sorry; I have been provided with that date now. It was 12 November 2008.

**CHAIR**—All right. What I would like on notice—sorry, was that 12 December?

**Ms Leon**—It was on 12 November 2008 that the ALRC met with the Department of Finance and Deregulation, and that was followed up with a written submission by Professor Weisbrot explaining his views about the issue.

**CHAIR**—When was that?

**Ms Leon**—That was 18 November 2008.

**CHAIR**—When he provided the submission?

**Ms Leon**—That is correct.

**CHAIR**—Can you provide a copy of the submission on notice.

**Ms Leon**—The submission was provided to the department of finance, so we will have to ask that department if they would release it.

**CHAIR**—Please, if you could.

**Ms Leon**—I am happy to do that. There was then detailed consultation with the Law Reform Commission once the amendments were being prepared in 2009. By that time Professor Croucher was the president.

**CHAIR**—Could you—also on notice—provide a copy of any correspondence between the commission and the department and/or the minister regarding these matters.

**Ms Leon**—Yes.

**CHAIR**—Thank you. That seems to conflict with Professor Weisbrot's submission, but I will not take that up with you now in light of the time. Have you had further communications with the commission since the decision was made to amend the bill and those amendments went through last year? They are now coming into effect on 1 July.

**Ms Leon**—Yes, there have been detailed discussions with the commission throughout the amendment process, and Mr Walter can take you through the detail of that.

**CHAIR**—On notice, can you provide a copy of the correspondence between the commission and the department.

**Mr Walter**—Sure. It is probably worth adding that we have been having, I guess, informal discussions with them and putting them in touch with people to assist with the transition as well. That has been the main focus since the passage of the legislation; it has been more about the transition issues.

**Mr Wilkins**—Can I just say that one of the things that Beale suggested that we did do was to make the new strategic division within the Attorney-General's Department responsible for the ongoing relationship with the Australian Law Reform Commission. So they have conversations all the time, on a regular basis, and try and help them—

**CHAIR**—I would like a copy of the correspondence. The commission has agreed to provide it, but I would like the department to also provide it.

**Ms Leon**—Most of the correspondence on the amendments has consisted of sending copies of the drafting instructions and the draft legislation, so it is pretty routine. The policy decisions had already been made after that consultation with Professor Weisbrot, so the consultation that has been occurring in the phase while the legislation was being developed is more routine; it is just about the drafting of the legislation.

**CHAIR**—Why don't you just outline that to the committee? If that is the case, outline that for the committee.

**Senator CROSSIN**—Mr Wilkins, thanks for coming. I will just give at the outset my observation that I think your support for the Law Reform Commission is evidenced by the fact that you, as the secretary of the department, are here today, having left the important meeting that you came from. So I think that is significant for this committee to know. On the outcome of the Uhrig review in 2003, you say it was implemented in the changes to the FFLA Act last year.

Therefore, do you have a sense that the changes would have been implemented despite the change of government in 2007?

**Mr Wilkins**—I would have thought that is right. The Uhrig review seems to be something that has a measure of bipartisan support. It originated with the previous government and there was every intention, I think, in the department of finance of gradually moving in these areas. They moved faster in some than they had done under the previous government and they are now implementing some of them under the current government.

**Senator CROSSIN**—So that means that rather than being a prescribed agency under the Financial Management and Accountability Act, it transitioned to—

**Ms Leon**—It transitioned to an FMA agency instead of a CAC Act agency.

**Senator CROSSIN**—So it is going from a statutory agency to a—

**Ms Leon**—It is a statutory agency but under the Financial Management and Accountability Act, so effectively it means that it is headed by a CEO rather than being managed by a board. To summarise the overall thrust of the philosophy beneath this is that, particularly for non-commercial bodies, it is more appropriate that they simply have a CEO rather than a board. It is for government business enterprises that are really running in a pseudocommercial way that they are more appropriate to set with a board in the same way as a commercial company has a board.

**Senator CROSSIN**—Would it also mean any other changes to the way they are managed in an operational or financial way.

**Ms Leon**—Not necessarily in the sense that the budget cuts have no relationship to the change to an FMA Act agency. These were travelling along under our process of gradual implementation of the Uhrig review and are completely separate from any views that the government came to in the context of its overall fiscal constraints about the appropriate budget for the commission. There is no relationship between the budget and the structural change.

**Senator CROSSIN**—There was some criticism last year in the parliament when the changes to the Financial Management and Accountability Act came through and there was some suggestion today that the fine print was not exactly looked at and it passed us by; in fact, people would have known this was coming from 2003 if they had known that there was bipartisan support essentially for these changes.

**Ms Leon**—I think it is fairly uncontroversial in relation to bodies of the sort of the ALRC to move them into the same financial Management and Accountability Act framework as other statutory agencies and to treat the ones that are really like companies to be only the ones that are operating in that kind of company context.

**Senator CROSSIN**—I think the problem is people have seen that change colliding with a reconfiguration and a reorganisation in terms of the budget. I believe one has caused the other.

**Ms Leon**—I think it is just a coincidence.

**Senator CROSSIN**—I just want to clarify that.

**Mr Wilkins**—I think that is right, Senator.

**CHAIR**—On that point, Senator Crossin, through you, is a board of management of one not unusual?

**Ms Leon**—There will not be a board of management of the Law Reform Commission once these amendments come into effect; it will be a CEO with an advisory board.

**CHAIR**—Currently, we have a board of management of one; is that correct?

**Ms Leon**—Yes.

**CHAIR**—What is your view on that? Do you think that is appropriate?

**Ms Leon**—If you are operating a commercial company, we probably would think that that was unusual, but the Law Reform Commission is not operating a commercial company.

**CHAIR**—It does not worry you.

**Ms Leon**—No.

**Senator CROSSIN**—I want to ask about assistance that is provided by the department by way of secondees to the Law Reform Commission: how many times has this happened, and do you anticipate it happening in the future?

**Mr Wilkins**—There have been some secondments, and I think that that sort of cross-fertilisation is actually useful both for the ALRC and for the department. I have spoken to the president of the Law Reform Commission about doing that in relation to the reference on classification. I think it is also useful if a person can come back into the department having some knowledge of the report and can hit the ground running, so to speak, in developing a government position and implementing the report. After all, one of the things we are trying to do is streamline the consideration of law reform issues and to get them done on the ground. That is the big thing. Historically, it has taken too long. They have sat on people's shelves and they have not been dealt with quickly, and we would like to streamline the process. So I think secondments would be a good idea.

**Senator CROSSIN**—Have you got an idea of how often it happens or how many people—

**Ms Leon**—There is one person there at the moment who is assisting with the discovery reference. As the secretary mentioned, we are expecting that there will be another one who will assist with the classification reference.

**Senator CROSSIN**—When we look at the raw figures of staff employed by the ALRC, that is their staff on their pay role and it might not necessarily be the total number of people working there at any one time.

**Mr Wilkins**—That is true.

**Ms Leon**—That is right.

**Senator CROSSIN**—I just wanted to clarify that, thanks.

**Ms Leon**—I should say that the Law Reform Commission's budget experiences the same pressure as we all do in funding staff pay rises. The Attorney-General's Department, as the secretary mentioned, is seeing a gradual decline in staffing numbers, partly because pay rises can only be paid for by productivity achievements within the department, which largely means doing more with fewer people. So the commission will be experiencing that effect as much as anyone else. I understand that the last few years the commission has given its staff a 4.5 per cent pay rise, which inevitably will have an impact on how many staff it can afford.

**Senator CROSSIN**—What has been the general pay rise in other agencies or across the Public Service? Was it five per cent?

**Ms Leon**—It varies. It may have been 4.5 per cent at the time of their last agreement. I think we are all down to more like three per cent at the moment. But often people are labouring under the burden of enterprise agreements made in happier times. But, when we enter into an agreement, naturally part of what we think about is whether we will be able to afford to pay it. All agencies have to do that.

**CHAIR**—How many staff are there in your department currently?

**Ms Leon**—At the moment it is about 1,400 or 1,450—something like that.

**CHAIR**—And 10 years ago?

**Ms Leon**—Sorry, I have been corrected. It is 1,394 as at 30 January.

**Mr Wilkins**—Ten years ago there would have been a lot fewer, actually.

**Ms Leon**—Ten years ago there were a lot fewer. Senator, I know you had a submission before you by someone who sought to say that the department had astronomical growth over the past decade.

**CHAIR**—The advice was that it doubled.

**Ms Leon**—I am sure you would be aware that most of that succeeded the events of September 11, after which the department took on significant new responsibilities for national security. These matters were of significant concern to the previous government and continue to be for this government. Those new functions for, first, national security and then later for emergency management naturally came with resources.

**CHAIR**—Can you take on notice the staff numbers for 10 years ago, please.

**Mr Wilkins**—We will provide you with a profile over the period.

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**CHAIR**—That is fine. All I want to know is how many staff—

**Ms Leon**—In 2002-03 the FTE was 774. Now it is 1,394.

**CHAIR**—This year is 2010. I want to know what it was for 2000. Do you have that figure with you?

**Ms Leon**—No.

**CHAIR**—If you could provide that, please.

**Mr Wilkins**—We will provide all of those years.

**Ms Leon**—We can tell you that all those numbers are on the public record. As I say, I think that the comparisons neglected to take into account that the commission has continued to have one function throughout that time, which is to do two references a year, whereas we have had significant new functions for which we have been resourced.

**CHAIR**—Thank you. You have made that point very well. Do you have a position on the timeliness of government responses to ALRC reports? You respond, for example, to Senate reports within a certain time frame; do you have a view on the response to ALRC reports?

**Mr Wilkins**—That varies, and it is a matter for ministers. They do traverse policy in different areas. There is not a hard and fast rule on that. One of the things that we are hoping to see, as I was saying to Senator Crossin, is a streamlining of the process of getting reports that are really relevant to government policy considerations at the time and getting quicker responses as a result. If you get reports that are, if you like, more practically oriented to particular problems, like classification—and you know we have been discussing this in estimates committees—

**CHAIR**—We have. If you have not got a view—or a view that that is a matter for government—that is fine. I am just asking if you have a position.

**Mr Wilkins**—It is a matter for the government. I think the Attorney would like to see take-up, but not take-up because there is a rule about when you need to respond but because the report actually answers a need that is required and will be taken up.

**CHAIR**—Do you have a view as to whether it should be tabled in parliament?

**Mr Wilkins**—They are tabled, I think. Do you mean the government's response?

**CHAIR**—The ALRC report and the government's response by a certain date.

**Mr Wilkins**—No, I do not.

**CHAIR**—Many submitters in evidence to our committee recommended both those actions.

**Mr Wilkins**—I do not think so. I think that is just sort of bureaucratic form. I think that is counterproductive.

**CHAIR**—It is not for the Senate, I can assure you. We appreciate the fact that it is there and that the government does respond by a certain date.

**Mr Wilkins**—And the government should respond to that. All you will do is force in some cases the government to respond arbitrarily or in a pre-emptory fashion to something that requires more consideration. Look at the complexity of, say, the privacy report. If the government had to respond within three months, it would have been a nonsense because you would not have got a proper response to that report in three months. You would have gotten a response that said—

**CHAIR**—All I am asking is: do you have a view on the release of the ALRC report by a certain time and then the government's response by a certain time? What you are saying is you don't have a fixed view; is that right, Mr Wilkins?

**Mr Wilkins**—I do not have a view about the response.

**Mr Walter**—The ALRC reports are required to be tabled within 15 sitting days of them being provided to the Attorney-General, and the department facilitates that.

**Mr Wilkins**—Just on that: if we could get the Senate to accept those reports online, it would save a huge amount of money for the ALRC. They provide free reports to everybody online but it costs a lot of money to actually produce 350 reports, or whatever it is, specifically to table in the parliament.

**Senator CROSSIN**—That is a good idea. They should just send us a letter or an email with a link to it.

**Mr Wilkins**—It would save them a lot of money.

**Senator CROSSIN**—That is a good idea. Lots of organisations do that. In fact, they send us their bulletins and their newsletters and if you want to access the report you just click on the link.

**CHAIR**—I think you will find that, if they are already doing many of those things—

**Ms Leon**—They are doing it in relation to making their own reports available to the public, but I understand that they are obliged to provide hard copy reports to the parliament.

**Senator CROSSIN**—Why? Is it under their act?

**Ms Leon**—By the Table Office.

**Mr Wilkins**—I think by the parliamentary requirements.

**Ms Leon**—If the parliament is inclined, as you say, Senator, to receive these matters by virtue of a link then—

**CHAIR**—So they are responding to legislative requirements?

**Ms Leon**—I believe it is a procedure requirement.

**Mr Wilkins**—I think it is a procedural requirement of the parliament.

**Senator CROSSIN**—With all due respect, the Australian Human Rights Commission sends us a newsletter with a link and it says, ‘If you require a hard copy, please contact us.’ Maybe sending it by email does fulfil their obligations. We might check that out.

**Mr Wilkins**—Senator, if you could do something because I know, on the annual report side, a lot of people produce annual reports in that form because of the requirements—maybe it is tabling requirements—

**Senator CROSSIN**—It might be.

**CHAIR**—Thank you very much. The time has elapsed for this matter. I would like to say that, on behalf of the committee, I will be allowing the ALRC, if they wish, to respond to anything you have said. That goes also for Professor Weisbrot, who is overseas today. Obviously, they have that opportunity. Thank you for your time in light of the other commitments you have had, Mr Wilkins. It is always appreciated by this committee. I thank all witnesses who had given evidence to the committee today.

**Committee adjourned at 3.29 pm**