



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Budget Estimates)

WEDNESDAY, 23 MAY 2007

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
Wednesday, 23 May 2007**

Members: Senator Barnett (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Ludwig, Parry, Payne and Trood

Participating members: Senators Allison, Bernardi, Bob Brown, George Campbell, Carr, Chapman, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Heffernan, Hogg, Humphries, Hurley, Joyce, Kemp, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Barnett, Bob Brown, Crossin, Chris Evans, Heffernan, Kirk, Ludwig, Sandy Macdonald, Nettle, Parry, Patterson, Payne, Trood and Wong

Committee met at 9 am

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Johnston, Minister for Justice and Customs

Attorney-General's Department

Management and Accountability

Mr Robert Cornall AO, Secretary

Mr Miles Jordana, Deputy Secretary, Criminal Justice and Security

Mr Ian Govey, Deputy Secretary, Civil Justice and Legal Services

Ms Jan Blomfield, Acting General Manager, Corporate Services Group

Mr David Finlayson, Assistant Secretary, Public Affairs

Mr Graham Fry, General Manager, Information and Knowledge Services

Ms Sue-Ellen Bickford, General Manager, Financial Services Group

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Outcome 1: An equitable and accessible system of federal civil justice

Output 1.1

Mr Kym Duggan, Acting First Assistant Secretary, Civil Justice Division

Ms Sandra Power, Assistant Secretary, Civil Jurisdiction and Federal Courts Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Mr Peter Arnaudo, Assistant Secretary, Family Law Branch

Mr David Syme, Assistant Secretary, Dispute Management Family Pathways Branch

Ms Alison Playford, Assistant Secretary, Administrative Law and Civil Procedure Branch

Mr Matt Minogue, Assistant Secretary, International Family Law Branch

Output 1.2

Mr Iain Anderson, First Assistant Secretary, Classification, Legal Services and Native Title Division

Ms Janet Power, Assistant Secretary, Office of Legal Services Coordination

Ms Amanda Davies, Assistant Secretary, Classification Policy Branch
Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Output 1.3

Ms Philippa Lynch, First Assistant Secretary, Information Law and Human Rights Division

Ms Helen Daniels, Assistant Secretary, Copyright Law Branch

Ms Joan Sheedy, Assistant Secretary, Information Law Branch

Ms Gabrielle Mackey, Acting Assistant Secretary, Human Rights Branch

Output 1.4

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law

Mr Greg Manning, Assistant Secretary, International Security and Human Rights Branch

Mr Stephen Bouwhuis, Assistant Secretary, International Law and Trade Branch

Output 1.5

Ms Marjorie Todd, Acting First Assistant Secretary, Office of Legislative Drafting and Publishing

Output 1.6

Mr Iain Anderson, First Assistant Secretary, Classification, Legal Services and Native Title Division

Ms Tamsyn Harvey, Acting Assistant Secretary, Claims and Legislation Branch, Native Title Unit

Mr Geoffrey McDougall, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

Output 1.7

Ms Katherine Jones, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division;

Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch;

Mr Albin Smrdel, Acting Assistant Secretary, Legal Assistance Branch.

Output 1.8

Dr James Pople, First Assistant Secretary, Personal Property Securities Division

Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

Outcome 2: Coordinated federal criminal justice, security and emergency management activity for a safer Australia**Output 2.1**

Dr Dianne Heriot, Acting First Assistant Secretary, Criminal Justice Division

Dr Karl Alderson, Assistant Secretary, Criminal Law Branch

Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

Mr Anthony Coles, Acting Assistant Secretary, Strategic Policy Coordination Branch

Mr Craig Riviere, Principal Legal Officer, Strategic Policy Coordination Branch

Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch

Output 2.2

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division

Ms Catherine Hawkins, Assistant Secretary, Mutual Assistance and Extradition Branch

Mr Steven Marshall, Acting Assistant Secretary, International and Assistance Branch

Output 2.3

Mr Geoff McDonald PSM, Acting First Assistant Secretary, Security and Critical Infrastructure Division

Ms Annette Willing, Acting Assistant Secretary, Security Law Branch

Ms Meegan Fitzharris, Director, Counter Terrorism Strategic Policy Unit

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch

Output 2.4

Mr Tony Pearce, Director General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Emergency Management Policy

Mr Trevor Clement, Assistant Secretary, Community Development

Output 2.5

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre

Ms Belinda Moss, Assistant Secretary, Information Coordination Branch

Ms Leonie Horrocks, Acting Assistant Secretary, Policy and Services Branch

Ms Leonie Mack, Assistant Secretary, Security Programs Branch

Output 2.6

Ms Elizabeth Kelly, Executive Director, AusCheck

Ms Annette Bouchier, Assistant Secretary, AusCheck

Ms Jamie Lowe, Assistant Secretary, AusCheck

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar

Ms Sian Leathem, Assistant Registrar

Mr Steve Wise, Finance Manager

Australian Commission for Law Enforcement Integrity

Prof. John McMillan, Integrity Commissioner (Acting)

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer

Mr Kevin Kitson, Executive Director, Criminal Intelligence Strategies

Mr Paul Southcott, Acting Chief Financial Officer

Mr Joseph Stablum, Chief Information Officer

Mr John Veale, Human Resources Manager

Australian Customs Service

Mr Michael Carmody AO, Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Mr Jon Brocklehurst, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Murray Harrison, Chief Information Officer

Rear Admiral James Goldrick, Commander (Border Protection Command)

Mr Tom Marshall, Director General (Border Protection Operations)

Mr Brian Hurrell, National Director (Enforcement and Investigations)

Ms Jane Bailey, National Director (Cargo)

Ms Jan Dorrington, National Director (Passengers)
Ms Sharon Nyakuengama, National Director (Compliance)
Ms Sue Pitman, National Director (Trade)
Mr Ian Grey, National Director (People and Place)
Mr Jeff Buckpitt, National Director (Intelligence and Targeting)
Ms Tonie Differding, National Manager (Research and Development)
Mr Geoffrey Johannes, National Manager (Trade Measures)
Mr Matthew Corkhill, National Manager (Cargo Operations)
Ms Jo Corcoran, National Manager (Industry Engagement and User Services)
Ms Gillian Savage, National Manager (Strategic Development—Passengers)

Administrative Review Council

Ms Margaret Harrison-Smith, Executive Director
Mr Robert Cornall AO, Member

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr Peter Drennan, Acting Deputy Commissioner
Mr Tony Negus, Acting Chief Operating Officer
Mr Andrew Colvin, Chief of Staff
Mr Alan Gaukroger, Chief Financial Officer

Australian Government Solicitor

Ms Rayne de Gruchy, Chief Executive Officer
Mr David Riggs, Chief Financial Officer

Australian Institute of Criminology and Criminology Research Council

Dr Toni Makkai, Director
Mr Tony Marks, General Manager Corporate

Australian Law Reform Commission

Professor David Weisbrot, President
Mr Alan Kirkland, Executive Director

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Australian Transaction and Reporting Analysis Centre

Mr Neil Jensen PSM, Chief Executive Officer
Mr Alf Mazzitelli, Chief Finance Officer
Mr Thomas Story, Executive General Manager

CrimTrac

Mr Ben McDevitt AM APM, Chief Executive Officer
Ms Nicole McLay, Chief Financial Officer

Family Court of Australia

Mr Richard Oliver, Acting Chief Executive Officer,
Mr Grahame Harriott, Executive Director Corporate Services
Ms Teresa Kane, Acting Principal Registrar

Family Law Council

Mr Kym Duggan

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer
Mr Philip Kellow, Deputy Registrar
Mr Gordon Foster, Executive Director Corporate Services

Federal Magistrates Court

Mr John Mathieson, Chief Executive Officer
Ms Charlotte Stockwell, Executive Director, Operations
Mr Glenn Smith, Chief of Staff
Ms Louise Kenworthy, Coordinator of Court Services

High Court of Australia

Mr Christopher Doogan AM, Chief Executive Officer and Principal Registrar
Ms Carolyn Rogers, Senior Registrar
Mr Tony Martin, Manager, Finance and Administration

Human Rights and Equal Opportunity Commission

Hon. John von Doussa QC, President and Acting Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination
Mr Graeme Innes AM, Human Rights Commissioner and Commissioner Responsible for Disability Discrimination
Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Commissioner Responsible for Race Discrimination
Ms Susan Roberts, Executive Director
Ms Karen Toohey, Director, Complaint Handling

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive and Inspector-General in Bankruptcy
Mr David Bergman, Adviser, Policy and Legislation
Mr Peter Lowe, Executive Director

National Native Title Tribunal

Mr Chris Doepel PSM, Registrar and Chief Executive Officer
Mr Franklin Gaffney, Director Corporate Services and Public Affairs
Mr Max Szmekura, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Damian Bugg AM, QC, Director of Public Prosecutions
Mr John Thornton, First Deputy Director
Ms Stela Walker, Deputy Director Corporate Management

Office of Film and Literature Classification

Mr Donald McDonald, Director
Mr Paul Hunt, Deputy Director
Ms Kelly Williams, Assistant Secretary

Office of Parliamentary Counsel

Mr Peter Quiggin, First Parliamentary Counsel
Ms Glenyce Francis, General Manager

Office of the Privacy Commissioner

Ms Karen Curtis, Privacy Commissioner
Mr Timothy Pilgrim, Deputy Privacy Commissioner

Mr Mark Hummerston, Assistant Privacy Commissioner

Mr David Richards, Finance

CHAIR (Senator Barnett)—I declare open this public meeting of the Senate Legal and Constitutional Affairs Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2007-08 for the Attorney-General's portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is due to report to the Senate on 19 June 2007 and has fixed 6 July 2007 as the date for the return of answers to questions taken on notice. The committee's proceedings today will begin with the examination of agencies in the Attorney-General's portfolio followed by examination of the department.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. 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 a contempt. It is also a contempt to give false or misleading evidence to a committee. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates committee hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has also 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 the minister. This resolution prohibits only 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.

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. 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. For the record, I note that there remain no outstanding responses to questions taken on notice from the additional estimates rounds in February 2007.

I welcome Senator the Hon. David Johnston, Minister for Justice and Customs, also representing the Attorney-General in his new capacity, and congratulate him again on that position.

Senator Johnston—Thank you, Chair.

CHAIR—As I did at the beginning of the estimates hearings on Monday, I acknowledge the many years of service of Senator Marise Payne as chair of this committee. Hers are very significant shoes to fill and I will be doing my best to do so. She did that job with dedication,

professionalism and in an entirely appropriate manner and I want to put that on the record for the officers here as well. Thank you, Senator Payne.

Senator PAYNE—Thank you, Chair.

CHAIR—I also welcome Mr Robert Cornall, Secretary of the Attorney-General's Department. Minister Johnston or Mr Cornall, do you wish to make an opening statement?

Senator Johnston—I do not have an opening statement other than to congratulate you on your appointment to what is a very august committee and wish you well in the coming estimates.

CHAIR—Thank you, Minister, for that.

Mr Cornall—I welcome you to this committee as well. I do not have an opening statement, save to say that I endorse your remarks about the outgoing chair and I would like to thank Senator Payne for her courtesy and leadership over all the years that I have been secretary and attending this committee, and those are thanks on behalf of all officers of the department.

CHAIR—Thank you for those comments.

Senator LUDWIG—In terms of the workload, I know that the annual report towards the appendix at the back provides a range of statistics for the High Court. Some of those I will be able to go through in some detail but I was trying to follow the number of matters carried over each year. I am not sure whether those statistics in the High Court annual report show that in a way that I can follow, although they may be there.

Mr Doogan—The situation, as I am sure you understand, is that not all cases filed in a financial year are dealt with in that particular year, so they will flow over into the following year. You will see, for example, in the annual report statistics for the 2005-06 year that 720 special leave applications were filed during the year—we are using those at page 89—and the number of matters finalised during the same year was, by comparison, 767. So, in fact, during the financial year the court disposed of more matters than were filed. The overflow from the previous financial year was processed in that financial year and the same principle pretty much applies for most categories.

Senator LUDWIG—That is as I thought. If you follow through from page 89 for 2005-06, those numbers in some instances are higher than the number of matters that were filed in that particular year. That led me to the question, in trying to establish how long is the tail: if you are filing X and you are doing more than X, how many more X do you have to do to complete, to catch up, in that sense? So what is the tail? In workers compensation cases that I have had experience with in the past, they called it a long tail when a number of cases might take two, three, four or up to seven years to conclude so are carried over. There are also new matters filed in each of those succeeding years so they then graph the number of cases, and the number of cases that are still continuing or have not been completed in previous years, just to understand the workload and the amount that they have to complete additionally, in a sense, to catch up.

Mr Doogan—You can get a picture of that from the statistics in the tables that deal with elapsed time. For all the various categories of matters you will find statistics in the tables. The

'Elapsed time for criminal appeals finalised' table breaks it through, from the moment of filing through to being ready for hearing. I am looking, for example, at table 38 on page 110 where you will see that 95 per cent of matters were ready for hearing within six months of filing and the other five per cent were ready within six to nine months.

Senator LUDWIG—Yes, but if you go to the statistics for the over 12 months they are zeros except for in 2004-05, which is six and 46 per cent. What does that mean? Under 'Filing to ready for hearing', 'Ready for hearing to hearing' and 'Hearing to decision' there are none in the over 12 months category but then the total elapsed time shows six and 46 per cent. My math fails me at that point—how do we get the six and the 46 per cent?

Mr Doogan—Sorry?

Senator LUDWIG—The over 12 months row has zero all the way along till you get to the total elapsed time section which has six and 46 per cent. That is the total elapsed time, but what is that reflecting? It is the total elapsed time for what?

Mr Doogan—These are criminal appeals we are looking at. So it is from the moment the filing occurs in the registry through until a judgement of the court is delivered. In most of the criminal appeals that we are looking at here the court will after the hearing reserve its decision and will at a future time deliver its judgement in the matter. Our internal aim is to ensure that all judgements are delivered within six months of the hearing being finalised. We do not always meet that for various reasons, but mostly we do.

Senator LUDWIG—If you look at the total elapsed time for 2004-05 it has got six in the over 12 months row.

Mr Doogan—Yes, that is six matters.

Senator LUDWIG—Where are they from then? Are they criminal appeal matters that are from the previous 12 months?

Mr Doogan—Yes.

Senator LUDWIG—And that represents 46 per cent?

Mr Doogan—Yes. You are looking at a very small sample size in that example. I could not tell you where they are from. It would be a matter of having to go back and analyse each of the cases to see what caused that. The special leave cases in table 22 on page 101 have larger numbers. There are all sorts of reasons why matters are held up. It could be that there has been a delay while an applicant or an appellant is awaiting a decision of a legal aid authority as to whether or not to grant aid. It may be that there is some delay occasioned by counsel appearing for the person. There is no one reason.

Senator LUDWIG—In terms of the number of all matters and the workload, your aim is to have them finalised within the six-month period, as I understood your answer.

Mr Doogan—Yes, to judgement.

Senator LUDWIG—Yes, for judgement to be delivered within six months. Has the number of cases on hand increased or decreased over the last couple of years? In other words, are those matters that have not been resolved taking longer than six months to get to judgement and still being dealt with or waiting to be dealt with?

Mr Doogan—No. The time taken to dispose of the matters is reducing. As to the reason for it reducing, we have talked on many occasions in the past about the self-represented litigants. You will recall that in 2004 we completely rewrote the rules of court, which became effective in 2005. There is a special set of rules that apply to the litigants in person, or the self-represented litigants. One of the consequences of those new rules is that we are able to dispose of those by bringing them to consideration in a much shorter period of time. The reason for that is that the rules provide that the self-represented litigant must, in the first instance, put a written case forward, and it is a matter of discretion by the court as to whether or not there is an order made directing that that written case be served on a respondent.

Senator LUDWIG—Is there, or can you compile, a summary which demonstrates whether your workload—in other words, the number of cases on hand and the number of cases disposed of between both self-represented litigants and litigants who have counsel—has been increasing or decreasing?

Mr Doogan—Are you asking if we could do that?

Senator LUDWIG—Yes. Could you do that on notice?

Mr Doogan—Yes, we can do that.

Senator LUDWIG—In your view, taking both together, is the workload—on those figures that are compiled in the annual report—increasing or decreasing?

Mr Doogan—I think the best way to answer that is to refer to the situation up to the end of April in the current financial year. Whilst there are declining figures in some areas, if you concentrate on the special leave applications, you see that they are continuing to rise. They rise year by year. You will recall that we talked some years ago about Muin and Lie and the fact that we had 7,000 cases in one year, which was an aberration for a particular reason. But, by and large, it is a steady incline going uphill year by year.

Senator LUDWIG—Is there a percentage increase that you have detailed?

Mr Doogan—There is no particular percentage increase. It varies from year to year, but I would describe it as a steady increase. For example, over, say, the last 10 years, special leave applications have doubled over that 10-year period.

Senator LUDWIG—Could you provide to the committee in a graph form for, say, four years the types of matters—the special leave matters, the self-representative matters, broken down as to whether they have been defended and the original matters have been filed et cetera—demonstrating that in a clearer form than is in the annual report. I am not being critical of the annual report; it is set out for a different purpose.

Mr Doogan—Yes, and I should mention that the statistics in the annual report do distinguish between represented and self-represented litigants. But we will provide that.

Senator LUDWIG—Thank you. I want to talk a little bit about self-reorientated litigants. I note that the annual reports for all of the federal courts have a statement regarding the increase in the numbers of self-represented litigants and the increased burden that that seems to be placing on the court system. Yours, the High Court annual report, at page 15 says:

The demand on the Registry staff in assisting the increasing number of self-represented litigants coming to the Court remains very high.

The Federal Court also, at page 48—I will not read it into the record—has similar comments. The annual report provides figures up to that time for self-represented litigants in all matters. Is there a consolidated list for this year of how many there are between the various matters?

Mr Doogan—Yes. I can hand that up. But sticking with the unrepresented litigants, the trend is that it has gone from 20 per cent in 1995-96 to 58 per cent for a full financial year in 2005-06. For the current year it has increased, up to the end of March, to 63 per cent. So a little over six out of 10 special leave applications filed in the court are from self-represented litigants. As we have previously discussed, a very significant proportion of those are immigration matters.

Senator LUDWIG—That was what I was going to ask about. Of those people who have commenced proceedings going back over a couple of years, could you provide the numbers of self-represented litigants? Using the four-year period, could you indicate more broadly, if they can be described, which type of case they are—if that is available? If it is more work than necessary then perhaps do not do it.

Mr Doogan—The immigration matters, because of the interest of the committee in those over several years, we do separately record. As for other civil types, we do not because it is across the full spectrum.

Senator LUDWIG—I accept that. The immigration matters as a proportion would be helpful to understand. Is it your view that there has been an incremental increase in self-represented litigants or has there been a slightly different experience?

Mr Doogan—It is a steady growth. I should also say that the steady growth includes in the immigration matters people who are going through the court system more than once.

Senator LUDWIG—Through your court more than once?

Mr Doogan—No; through the whole court system. In other words, they have been to the tribunal, for example, and have gone to the federal magistrates court and then on to the Federal Court and on to the High Court for special leave and have been refused. We are noticing a small trend where they will turn up again in another year, 18 months or two years because they have gone back to start the whole process again on a different ground. So they have been through it once on ground one, they have failed and they have had another crack at it on a different ground, and again it goes through.

Senator LUDWIG—So rather than filing multiple grounds in the first instance they might take one at a time.

Mr Doogan—They take one at a time because—

Senator LUDWIG—We perhaps can guess why sometimes.

Senator Johnston—They might even have some children in the interim.

Senator LUDWIG—Yes.

Senator Johnston—Which introduces that other factor.

Senator LUDWIG—Yes—other grounds that come in as well, so there is new ground. Do you have specialised staff at the registry to deal with self-represented litigants? When I say

'deal with' I mean inform them of the processes of the court and how they might then proceed through the court. You mentioned the special procedures for self-represented litigants.

Mr Doogan—Yes, we do. In each of the offices of the registry there are documents that are provided to the litigants to assist them in complying with the rules and preparing their cases.

Senator LUDWIG—Is it just the usual registry staff that undertake that role or do you have a nominated person to undertake that work?

Mr Doogan—No; it is the usual registry staff. The reason for that is that in the registry we have two types of staff: we have qualified lawyers, who are the registrars—all of the deputy registrars are qualified and experienced lawyers—and the clerical staff, who in most instances also are very well experienced and have been with the court for quite a long time.

Senator LUDWIG—Most of the procedures and the registry staff are dealing with—correct me if I am wrong—court based solutions for the self-represented litigant; that is: 'This is the form you need; this is how you might proceed; here is a procedure that you need to follow.' Am I correct with that?

Mr Doogan—Yes, you are.

Senator LUDWIG—Do you have any registry staff that deal with non-court based solutions that might advise them that the type of matter that they want to proceed with could be dealt with by another means?

Mr Doogan—No, for a number of reasons. The first is that we are limited to dealing with matters that are covered by the law. Secondly, we do not give legal advice to applicants. If we are still talking about the immigration matters—

Senator LUDWIG—More broadly.

Mr Doogan—Where it appears to us—and by 'us' I mean the registry collectively—that the person may benefit by being legally represented, we have arrangements in place with the various bar associations to seek pro bono assistance.

Senator LUDWIG—I understand that. This is more a case where a self-represented litigant is seeking a legal solution, when on the face of the material or the record a community service might be just as able to solve their problem.

Mr Doogan—Occasionally, if it appears to us that that is the case—and I must say to you that every matter that is filed in the court is actually examined by a lawyer as part of the process—and if there is some alternative method that might assist the litigant then we will draw that to their attention. But we do not give them legal advice, in correspondence or across the counter. And we make a point of telling them that we are not giving them legal advice.

Senator LUDWIG—Have you discussed the issue of non-court solutions at any level within the court structure or with your colleagues between courts?

Mr Doogan—Are you thinking of alternative dispute resolution?

Senator LUDWIG—No, I mean non-court based solutions. Anecdotally there are a range of people that will seek to pursue self-represented litigant matters in courts—perhaps not so much in the High Court, but I will ask the Federal Court and the Federal Magistrates Court about this as well—when it may be that on the face of the record it looks like a community

centre might be a better place to go. It might be a range of matters that clearly could be litigated but it might be better to start somewhere else first.

Mr Doogan—With 13 years experience in the High Court, I have to say that these cases are at the end of the line.

Senator LUDWIG—I figured that, but I thought I would ask at this point.

Mr Doogan—Come hell or high water, in most instances, they are going to have what they describe as their ‘day in court’. I think last year I handed up an article to the committee that had been written by a forensic psychiatrist in Melbourne who had made a detailed study of self-represented litigants. I think I recall saying that we considered what was written in the article to be an extremely accurate description of self-represented litigants. And I know, from speaking to my colleagues in other courts, that they do as well. Once the matter has got to the stage of going to the end of the appeal line, they are very loath to take any suggestion or advice. Hence, the matter proceeds through the court to final determination.

Senator LUDWIG—All right. The Federal Magistrates Court produced a report titled *An evaluation of services for self-represented litigants in the Federal Magistrates Court*. Has the High Court had an opportunity to examine that report?

Mr Doogan—I have not.

Senator LUDWIG—That ends that line of questioning. I suggest that you have a look at that report to see whether it has any recommendations that might be helpful for the High Court. I know that that is not a question—I could turn it into one.

Mr Doogan—We will take examining the report on notice.

Senator LUDWIG—This could be the question: could you advise me, having looked at that, whether there is any value for the High Court in the recommendations or the evaluation that the FMC provided?

Mr Doogan—If you are agreeable, we will examine the report and be in a position on the next occasion that we are here to discuss the matter further.

Senator LUDWIG—That would be helpful, thank you. Have you commissioned any reports to examine self-represented litigants?

Mr Doogan—No, we have not done so. We have previously cooperated with research that was done by the University of Wollongong on self-represented litigants. Factually, once you have got to the High Court, you are at the very end of the line. It is a different situation from when someone is, for example, commencing proceedings at a lower level.

Senator LUDWIG—I accept that. On a broader note, it appears from the PBS that you have a \$3.6 million dollar or 26 per cent increase. Is that right?

Mr Doogan—There is some one-off funding that has been provided in order to fix leaks in various balconies and a roof garden on the building. The membrane that keeps the water out of the building is now more than 30-years old and has deteriorated. This is a one-off payment that is being made so that we can fix those water leaks.

Senator LUDWIG—In which buildings?

Mr Doogan—The High Court building here in Canberra.

Senator LUDWIG—Will that meet all the cost?

Mr Doogan—Yes.

Senator LUDWIG—Do you have a quote for that cost?

Mr Doogan—Yes, we have.

Senator LUDWIG—And the quote is worth?

Mr Doogan—Approximately \$3.5 million.

Senator LUDWIG—I thought that I would just check.

Mr Doogan—They are estimates. We hired architects and engineers to advise us, and this is their best estimate. They have not yet got down under the surface to be able to determine precisely how bad it is.

Senator LUDWIG—I did not want to go to the next question—we will leave it as an estimate. You have a one-off appropriation to meet that estimate, and it is not for any purpose other than to fix the roof leak. It appears that there are three staff positions that will be removed. Is that right?

Mr Doogan—No.

Senator LUDWIG—Maybe I am reading that wrong. It might include—

Mr Doogan—Are you looking at the average staffing level?

Senator LUDWIG—Yes. If you look at Budget Paper No. 1 pages 10 to 29, it shows that you expect to lose a net three FTE positions in 2007-08.

Mr Doogan—The staff reduction that you are referring to fluctuates from year to year. If you look back over the various years it goes up and down in part because of the fact that a lot of the staff are casual staff. For example, when the court reporting typists come in to record proceedings while the court is sitting, the full-time equivalent then varies according to how many cases and how long they run for. You are right in thinking that there will be reductions. There have been two positions merged into one and we have had some changes in the library where, following resignation, one position has not been filled. So it is reflecting what we believe will be the actual situation for the 12 months.

Senator LUDWIG—What has brought that about? It seems to me that you are saying that the workload is not decreasing.

Mr Doogan—No, it is not.

Senator LUDWIG—But you are then losing three full-time equivalent staff. I would have thought it might have gone the other way.

Mr Doogan—No. The effect of the growing workload that we see progressing each year is predominantly felt in the registry area, whereas the changes to positions have occurred in the administrative and library areas. It has simply been the case that we have had a couple of resignations following movement to other agencies or departments and we have taken the opportunity with those vacant positions to do some small reorganisation.

Senator LUDWIG—In terms of the administrative cost of the court, are you able to separate those out between the current full-time equivalent staff that relate to communications, human resources—clearly we know how many judges you have—IT staff and other administrative staff such as the library and the like, and then, more broadly, the cost of accommodation—well we know the High Court—and the use of other establishments. I was just trying to understand the breakdown.

Mr Doogan—For the sake of accuracy I would prefer to take that on notice and we can then break it down, for example, between staff and related costs. Because of the nature of the function of the High Court, a very significant portion of the expenditure relates to salaries and related costs because it is people rather than services that are being used. There is also a significant sum in there as well for depreciation because of the value of the building itself. Unlike other courts, the building is accounted for within the budget of the High Court itself.

Senator LUDWIG—It may not be that relevant in the High Court, but do you share facilities with other bodies?

Mr Doogan—Yes, we do. For example in Brisbane, Adelaide, Perth and Darwin we use the Federal Court registry facilities for filing and in Hobart we use the Supreme Court of Tasmania for the same purpose of filing matters. So the result of all this is that it is possible to file in the High Court of Australia in every state and territory capital city.

Senator LUDWIG—In terms of the accommodation in those capital cities and in the Supreme Court in Hobart, is there a payment made to the various state and federal courts? Is that met out of your budget or their budget?

Mr Doogan—Yes and no. When the seat of the court was established in Canberra in 1980, there were arrangements put in place with the various Supreme Courts. The arrangements provided for the High Court to pay those Supreme Courts. Progressively, over time, the services have moved across. With the development of the Federal Court of Australia, they have moved away from the Supreme Courts into the Federal Court. With the construction of the Commonwealth building in Adelaide and the moving of federal courts into that building, we ceased to have the Supreme Court undertake functions for us. But, up until that point, when the Supreme Court was providing services on behalf of the High Court, the Supreme Court was paid. But there is no payment made to the Federal Court. I should say that in Darwin the Supreme Court has been providing services for the court and will continue to do so until 1 July this year, when it will change over to the Federal Court.

Senator LUDWIG—Has there been any major upgrade of the IT system of late?

Mr Doogan—No. There has not been any major upgrade.

Senator LUDWIG—Could you remind me what case management system you are using?

Mr Doogan—It is a Lotus Notes based system.

Senator LUDWIG—Have you looked at or are you considering the Federal Court or the Federal Magistrates Court's Casetrack system?

Mr Doogan—We have had discussions over the years with the Federal and Family Courts about Casetrack. We have agreed in principle with those courts that if the need arises in the

future for us to change the system that we operate on, the Casetrack system will be available to us if we need to use it.

Senator LUDWIG—Are there any discussions currently underway between the registry and the department about expanding the court, requiring additional space or seeking an additional judge to deal with the workload?

Mr Doogan—No, there are not.

Senator LUDWIG—Is the current IT system managed in-house?

Mr Doogan—Yes, it is.

Senator LUDWIG—And that is, if I could use the term, a simple process of using Lotus Notes and the like to manage your database?

Mr Doogan—Yes. We have several different systems in operation. There is the case management system, but we have other systems in place as well in relation to the library, the pay systems, the accounting systems and so on.

Senator LUDWIG—Have there been any costings done on when you may in future, as you indicated, decide to move from your existing system to Casetrack?

Mr Doogan—No, because the current system currently meets our needs.

Senator LUDWIG—Is your website operated in-house or is it externally operated? Is its operation contracted out?

Mr Doogan—It is a bit of both. Mr Martin is the expert on IT for the court.

Mr Martin—The website itself is hosted by AustLII, and the development of the website is both managed in-house and a contracted resource.

Senator LUDWIG—Could you explain that? It is managed by whom?

Mr Martin—It is hosted by AustLII. The hardware that the website is sitting on is operated by AustLII.

Senator LUDWIG—How is that contract managed? Is there is a monthly fee or an annual subscription?

Mr Doogan—No, it is free. With the exception that we make a nominal payment to AustLII in order to facilitate their applications for research grants and so on. By and large they actually provide their service for free.

Senator LUDWIG—Are you provided with how many people access page impressions or download cases from the website? The statistical traffic, I guess, is one way of putting it.

Mr Doogan—AustLII have quite elaborate statistics on this. According to what they tell us, it is a very high rate.

Senator LUDWIG—Could you take it on notice and provide the statistical data about people accessing the High Court website hosted by AustLII? There are different ways of expressing it and I will give you an example—the web people would know a little bit more detail than perhaps I could summarise: the types of page impressions means the number of

hits that people make or the number of cases people might search and/or download through your portal or through your web page.

Mr Doogan—Yes. We can do that by asking AustLII to provide us with that information in the first instance. I think you know that AustLII is operated by the University of New South Wales and UTS law schools. I was talking to one of the directors recently about who was accessing it and he mentioned in passing that one large law firm in Sydney was accessing it 40,000 to 50,000 hits a month—and that is only one firm.

Senator LUDWIG—That is your website?

Mr Doogan—No. It is their website accessing our judgements.

Senator LUDWIG—I see. That is a lot.

Mr Doogan—Yes.

CHAIR—I am just having a squiz at the website now. It is linked with the state and territory jurisdictions as well, not just the Commonwealth.

Mr Doogan—Yes, that is correct. That again has all been devised by AustLII.

CHAIR—Yes. It is very comprehensive.

Senator LUDWIG—Do you know how much contribution you make to AustLII?

Mr Doogan—Yes, I do. It is \$5,000 a year.

Senator LUDWIG—How is that determined?

Mr Doogan—It is determined on the basis that I have told the directors that that is all we can afford.

Senator LUDWIG—I wish I could talk to some of my people that way.

Senator CROSSIN—A good bit of honesty.

CHAIR—A tough negotiator.

Senator LUDWIG—Have you looked at any options about how much it might cost to maintain your own website or develop your own database to maintain your own judgements on?

Mr Doogan—No. We have not had the need to do that, as yet.

Senator LUDWIG—In terms of the cases and decisions that are made, you do not host them on your own servers or your own web service? They are all hosted by AustLII?

Mr Martin—That is correct.

Senator LUDWIG—When they are decided and the decision is then published, like recent cases on your site, it is then all done through AustLII?

Mr Martin—It is forwarded to AustLII, who then mark them up on their website.

Mr Doogan—I should say that that is usually done within no more than 30 minutes of the decision being handed down. We routinely hand down a decision at 10.15 in the morning and by 10.45 or 11 o'clock it is usually on the site unless there is some problem.

Senator LUDWIG—I can attest to that. It is very quick. I have sought to get them at short notice and they are there. It is much appreciated, if I can say that.

Senator HEFFERNAN—The Law Council of Australia—you would consider them a pretty responsible body, would you?

Mr Doogan—They are the peak body for the legal profession.

Senator HEFFERNAN—They have expressed a view that there ought to be a federal judicial commission: ‘A federal judicial commission will enhance parliament’s role in dealing with complaints all to the better of the administration of justice.’ Do you disagree with that?

Mr Doogan—I think that is a matter for the government of the day to determine.

Senator HEFFERNAN—Thanks very much. Mr Doogan, do you know if any member of the High Court has ever been put under police surveillance?

Mr Doogan—No, I do not.

Senator HEFFERNAN—In the matter of a situation where a member, perhaps of your court, would have given serious legal advice on a matter and then sat in judgement on the matter, would that concern you as the registrar of the High Court?

Mr Doogan—That is a hypothetical question.

Senator HEFFERNAN—No, it is not. Would it concern you?

Mr Doogan—I can only answer that by saying that, certainly in my time in the court, and I believe beforehand, there is a long history where judges actually exclude themselves from sitting on cases in which they have been previously involved.

Senator HEFFERNAN—That is right, and if they did not it would be a reason for concern. Would that be a fair enough assumption?

Mr Doogan—It is a hypothetical question, because it is going to vary according to the particular circumstances. There is a doctrine of necessity that applies from time to time—and it does not apply simply to the High Court but to all courts—that, where the judge in question has provided details of past involvement with litigants or the case or whatever the circumstance might be, it may be necessary in particular circumstances for that judge to sit. But all I can say is—

Senator HEFFERNAN—That is fair enough.

Mr Doogan—by and large, they do not sit on cases that they have, in my experience, previously been involved with.

Senator HEFFERNAN—Thanks very much for that. Say there was in existence a police document—which, by the way, is dated 1 April 1999, and I will not name the judge; it is information coming from a document that was handed up to the Attorney-General’s Department in November before last in which I asked for documents to be verified—in which a solicitor was being officially interviewed regarding premises at 54/5 Darley Street Darlinghurst. He was put on by a London law firm to give advice—I think you know what I am talking about. Regarding this particular solicitor in this particular matter the document said:

By his own admission, he then advised—

this is to the police—

that the case was substantially more complicated than he had been led to believe. He subsequently sought the assistance of [Judge ...] to draft a submission to the lawyers in England.

It goes on to say that the solicitor—

... advised that this report was rejected initially but after some mutual modification was accepted and the judicial process concluded.

According to the solicitor:

... the final report did not differ a great deal from the original one he had submitted with [the judge's] assistance.

The prosecution apparently was successful and, by [the solicitor's] own admission he was well paid for his services.

Prior to terminating our interview—

this was the police—

... he indicated rather sheepishly that the judge would not want it to be known he was involved and gave certain advice in the matter concerning the matter—

and he named the matter. The document continued:

... as there may be some matters arising in the nature of appeal which would involve [the judge] and be a clear conflict of interest where [this person] is concerned.

If that were true, would that concern you?

Mr Doogan—I cannot comment. I do not know the case you are talking about; I do not know the circumstances or the people.

Senator HEFFERNAN—But if it were true it would concern you?

Senator Johnston—That letter is laden with hearsay and innuendo in a context that is still in the ether. The bottom line in all of this is that there are appropriate channels for you to put that letter through—this is probably not one of them.

Senator HEFFERNAN—Thank you very much, and I will take advice because I am being careful.

CHAIR—Senator Heffernan, if you could ask a question.

Senator HEFFERNAN—Well, I have asked the question. Eighteen months ago I handed up these documents, along with a pile of other documents, to both the Attorney-General's office and the Australian Federal Police as evidence of the need for the progression—as the Law Council of Australia says—in Australia for the establishment of a federal judicial commission, and I am merely making the point that—

Senator Johnston—I think we should talk to those agencies about those documents.

Senator HEFFERNAN—And there is plenty more where that came from.

Senator Johnston—I do not think Mr Doogan can advance his opinions on those matters.

Senator HEFFERNAN—Thank you. Can I then go to Mr Cornall. In recent times it seems to me that the Australian community is gradually being put through a process where things like child porn are being derecognised as to the seriousness of the nature of the business to the point where, in recent days, a character called Patrick Power in Sydney was found to have—after a long and lengthy procedure of denial—29,000 images on his computer, which included some very graphic video and stills of child porn. Ian Barker QC said in the court that the community owed this person a debt of gratitude—that is, the person who had all this stuff on his computer—and that in fact it was a victimless crime. Mr Cornall, do you think that is a victimless crime?

CHAIR—Senator, I would like to interrupt and caution the department and the senator in terms of the use of names. I am not familiar with the names that have been referred to, but I would like to express caution.

Senator HEFFERNAN—That is fair enough. I am actually reading that out of a paper clipping, so it is a public document.

CHAIR—Could you alert the committee to the paper clipping?

Senator HEFFERNAN—It is the *Sunday Telegraph* of 6 May 2007.

CHAIR—Thank you. Mr Cornall?

Mr Cornall—Yes, I have that article in front of me, Senator. I see where you are quoting from.

Senator HEFFERNAN—I did give notice of this.

Mr Cornall—My opinion is not relevant in this matter, but the fact is that I would have thought that there is an increasing concern in terms of child pornography, evidenced by increasing laws against child pornography, increasing concern in the community and increasing enforcement of offences relating to child pornography.

Senator HEFFERNAN—There has been no criticism of the remark by a senior QC that this is a victimless crime, for God's sake. Hands up all of those in the room who think it is a victimless crime.

CHAIR—Senator, if you could frame your questions to departmental officials.

Senator HEFFERNAN—Yes, I am going to make a very strong point in a minute. Then a professor of criminology at ANU went on to say of this person: 'I hope he will make a new contribution when he gets out of jail to a just and decent community in the way he was doing until this terrible thing was revealed.' Mr Peter Farris has also mentioned something that I am familiar with and everyone thinks he is on some other planet. What concerns me is that the documents that I handed up to the Attorney-General's—and you correctly returned them to me without copying them, and I appreciate that; they are still in the hands of the AFP—contain a list of people.

Among those people are 19 judicial and legal figures. Four of them are judges, three of them are QCs. This particular document, which no-one wants to verify, was signed by the senior counsel assisting the Wood royal commission, addressed to the service solicitor, New South Wales Police and notated 'Child protection enforcement agency file 97/350, date 4/9.

Please advise on this dissemination.' I note with great regret that some of the names that appear on that list appear in the *Sunday Telegraph*.

CHAIR—Senator, do you have a question for Mr Cornall?

Senator HEFFERNAN—I think it is time we got serious about not only those documents but the denial phase at a certain level in the legal and judicial fraternity. I just repeat again that it disturbs me that there is some correlation between some of those documents and a case in New South Wales, which was recently suppressed, in which a judge gave a non-custodial sentence to the father of a little girl, whom he was assaulting, including assault with a gun barrel rifle. He got a non-custodial sentence and allowed back into the matrimonial home, and there is some correlation between that case and these documents. I am sick of it and I am not going to give up, and I will take the matter up with the Australian Federal Police.

CHAIR—Senator, would you like to frame that in the form of a question or have you concluded your remarks?

Senator HEFFERNAN—My question is: why can't we have a process to deal with questions in the legal and judicial constituency, especially in the federal jurisdiction, where matters that are, shall I say, not cut and dried as criminal offences can be dealt with? Why can't we have it? The only way to do this, as I have said before, Mr Cornall, is to assemble both houses of parliament, and I think we have heard before that that is just not practical, because it cannot happen.

CHAIR—I think Mr Cornall may wish to respond and the minister may wish to respond as part of that question relating to policy.

Mr Cornall—You have crossed a lot of territory in your observations.

Senator HEFFERNAN—I have indeed, but I am trying, without being defiant, to deliver the message.

Mr Cornall—I understand, Senator. The answer to your question is, firstly, there are criminal laws which should be enforced if there are criminal offences being committed. In relation to members of the profession, there are professional conduct requirements which should be enforced if misconduct is taking place. In relation to judges, they can be removed from office for proven incapacity or misbehaviour and that process can be actioned if it is necessary. It has never been necessary in respect of a federal judge but that does not mean that it cannot be actioned if in fact it is required—and that is the answer to your question.

Senator HEFFERNAN—So there is absolutely nothing we in the public, the general public, can do about the fact that this document is a request to put a judge under criminal surveillance? There is nothing we can do about it. I asked the AFP in estimates earlier in the year, given this document which sets out the interview that I referred to with Mr Doogan, and there is absolutely nothing the police can do about it.

Mr Cornall—I don't know exactly which document you are talking about.

Senator HEFFERNAN—You have had the document, so I can send you the documents back again.

Mr Cornall—But if it is a matter of a criminal offence or a potential criminal offence, it is a matter for the police to decide the extent to which they prosecute the matter.

Senator HEFFERNAN—I am frustrated and I apologise for my frustration, but when you have a case which is high profile, as with this matter—of whatever he was, the prosecutor in Sydney—and you have a group of people generously and with good intent step up to the plate to give references, and some of those people are known to the police, it concerns me that there is nothing we can do about it.

Mr Cornall—That is the matter of a particular case where people are giving references for the court to consider in terms of the appropriate penalty. The judge hearing the case would give them whatever weight the judge thinks is appropriate, but they are no more than character references.

Senator HEFFERNAN—No, I understand that. But shouldn't it be challenged when a senior QC steps up to the plate and says that the most graphic of child pornography—including all sorts of torture et cetera, which is too graphic to describe here—is a victimless crime to finance the industry that makes that stuff? Shouldn't that be challenged in some place in Australia's legal system?

Mr Cornall—That is a matter for the person who wants to make that sort of statement and it is a matter for the judge who considers it to give it whatever weight, if any, the judge thinks is appropriate.

Senator HEFFERNAN—I will return later but I am absolutely disgusted. Thanks very much, Mr Chairman.

CHAIR—Any further questions for the High Court?

Senator HEFFERNAN—I have got some that I will be putting on notice to the High Court.

CHAIR—Thank you, we are happy to receive those questions on notice. Thank you to the High Court.

Mr Doogan—Just before I go, if I could seek your indulgence for a moment. I wish to inform the committee that this is the last occasion on which I will be appearing before this committee and I would like to thank the committee, you and the rest of the committee—and in particular Senator Payne, who was chairing the committee for many years while I have been coming here—for the courtesies and so on that have been extended to me and to other officers of the High Court.

CHAIR—Thank you for your service, Mr Doogan, and thank you for your comments today. We appreciate it.

Senator LUDWIG—I want to associate myself with those remarks and also wish you well in whatever career you intend to pursue after finishing here—and I hope you manage to answer my questions before you go!

Mr Doogan—I will do my best, Senator.

CHAIR—Well done, Senator Ludwig! We will now move to questions for the Australian Federal Police. Welcome, Mr Keelty and the Australian Federal Police officers. Thank you for being here.

Senator PAYNE—Before you start, I just want to acknowledge on the record that, in the time since the committee last met in an official capacity with the Australian Federal Police, the organisation has suffered the loss of three very important officers in tragic circumstances. I think the plane crash in Yogyakarta occurred 11 weeks ago—if not to the day then very close. The deaths of those officers and the tragic death of ACT Chief Police Officer Audrey Fagan are very sad events for the organisation. I as a former longstanding chair of this committee want the commissioner and members of the organisation to know that our thoughts, sympathies and condolences are with the organisation and the families of all of those officers.

CHAIR—Thank you Senator Payne; that is most appreciated and I think you speak on behalf of the committee in that regard. It is noted and we thank you for expressing those words of condolence.

Senator LUDWIG—I want to associate myself with those remarks—both with and independently of Senator Marise Payne and the committee. It is a very sad time for the Australian Federal Police and I also want to express condolences on behalf of the Australian Labor Party both to the two officers and to Audrey Fagan, her relatives and friends and their relatives and friends as well.

Mr Keelty—Thank you very much. The organisation very much appreciates not only the condolences being sent to the organisation by members of the committee but also the attendance by members of the committee at the various funerals. I will pass on the comments to the organisation and also to the families involved. On behalf of the organisation I also note that Senator Marise Payne has moved to a different role, and it has been a pleasure for the organisation to work with Senator Payne in her capacity as the chair of this committee. I think Assistant Commissioner Andy Hughes is in the back of the room somewhere; Andy and I were saying that we have been doing this for nearly 10 years now. It has been good to work with Senator Payne and we wish you well in your future endeavours.

Senator PAYNE—Thank you, Commissioner.

Senator LUDWIG—I hate to do this, but I am going to go back to question No.103. It may end up being one that you can recall, Commissioner. The original question went to an explanation for the AFP receivable projections reported over the four years. I would like to return to the original premise of question 103, which was asking for an explanation for the fluctuations in receivables. When I compared the 2006-07 PBS with the latest 2007-08 PBS, at page 195 it appears that they are fluctuating again. So I am in your hands in this instance. I was after an explanation of what is behind the fluctuation. Can you see where Mr Gaukroger said in October that they have expected the receivables to decline as the agency embarked on capital expenditure, yet it appears to be increasing significantly again. The 2006-07 receivables are up by \$51 million on last year's PBS, and the difference is growing to \$108 million by 2009-10.

Mr Gaukroger—Since the last figures were published, we have had two significant new measures come into the budget. One is the accommodation for airport security at the 11 airports and the other one was the future operational systems. The majority of that fluctuation upwards for those forward estimates is due to the funded depreciation component of those two measures.

Senator LUDWIG—Could you explain what those two measures are worth and then how that funded depreciation works, just so I can follow from where you see the receivables on page 195 commence at \$346,998 and end at \$513,428, which is—

Mr Gaukroger—There was some \$139 million in capital expenditure provided for in the budget measures for aviation security, and we are also funded for its depreciation component. So, with the eventual replacement of the fit-outs for those 11 locations, we are setting aside the cash that will build up over those years until such time as the eventual replacement of that particular measure. Similarly, with the—

Senator LUDWIG—How much would that be?

Mr Gaukroger—I will just check the figures. There is \$139 million in capital over three years and the depreciation component in 2007-08 is \$3 million, \$14.5 million in 2008-09, \$16.5 million in 2009-10 and \$16.5 million in 2010-11. That gets added to the receivables balance for the eventual replacement of that particular item. The other expenditure was on the future operational systems, and there is a capital component of \$46.3 million that has been provided in the estimates over four years. The depreciation component is half a million dollars in 2007-08, \$2.6 million in 2008-09, \$6.1 million in 2009-10, \$8 million in 2010-11 and \$8 million in 2011-12.

Senator LUDWIG—In terms of both the future operations and the accommodation, they will be finalised construction over that four-year period or is it a—

Mr Gaukroger—They will be finalised before that four-year period but the depreciation component we have funded for so that at a future date, when those systems and the accommodation is up for replacement, we will have the cash set aside to be able to refit the airports and also to be able to replace the future operational system.

Senator LUDWIG—In terms of the accommodation then, has that commenced at the 11 relevant airports?

Mr Gaukroger—The planning has commenced.

Senator LUDWIG—When is it due to be completed by? These are new buildings or a fit-out?

Mr Gaukroger—They are actually fit-outs.

Senator LUDWIG—Are they all fit-outs?

Mr Gaukroger—They will be specially built buildings at each of the airports in most cases and the fit-outs will be funded by the Australian Federal Police.

Senator LUDWIG—I might just step back a bit. So there will be one building which is then funded out of this program, the 139 million.

Mr Gaukroger—Not the building, the fit-out component of the building.

Senator LUDWIG—The fit-out component of the building. So who providing the building.

Mr Gaukroger—The building will be provided by the airport owners.

Senator LUDWIG—That is their contribution or you will then lease that back from them.

Mr Gaukroger—We will lease that back from them.

Senator LUDWIG—So you will then undertake the design with the airport owners.

Mr Gaukroger—That is correct.

Senator LUDWIG—When is it directed to be finalised by, at least of the 11? I am happy for to you take some of that on notice.

Mr Gaukroger—To give you a more accurate answer on that it would be best to take it on notice but within the next two years is my recollection on that.

Senator LUDWIG—And there will be a component which is a building and then in addition additional space within the airport existing. What I am trying to understand is there will be a separate building or a building attached to the existing airport and then will there be a separate office within the airport or does it differ between—

Mr Gaukroger—It is probably best to take that one on notice. My recollection was that they will be separate buildings pretty much next to the airports but rather than—

Senator LUDWIG—Speculate we should—

Mr Gaukroger—Speculate, it is probably best to take that on notice.

Senator LUDWIG—No, I would be happy for that, thanks very much. In terms of the 2006-07, looking at page 195, more broadly then, has there been any delayed implementation measures. In other words, measures that haven't been done in this financial year that were specified to be done?

Mr Gaukroger—That is for capital?

Senator LUDWIG—Yes.

Mr Gaukroger—Yes, there are a number of those predominantly with the aviation security and with the international deployment group.

Senator LUDWIG—I am happy for to you take that on notice as to the detail of the size of the of the expenditure and what has not been done and what is yet to be done. Does that make sense?

Mr Gaukroger—Yes.

Senator LUDWIG—And then non-capital.

Mr Gaukroger—Non-capital, we are expecting to return 15.7 million for the aviation security portion for unspent moneys this year, but nothing else.

Senator LUDWIG—So you might have to help me with the phrase the accountants use. So that is not carried forward. It is not rephased, it is returned to, what, consolidated revenue?

Mr Gaukroger—That's correct.

Senator LUDWIG—Why is that?

Mr Gaukroger—It is part of the no win no loss agreement that we have got with the government for both aviation and with the international deployment group. With the international deployment group we are expecting to break even, aviation security we are expecting unspent moneys of 15.7 which we will return to government at the end of this year.

Senator LUDWIG—Say that again, no win no—

Mr Gaukroger—No win no loss. That's correct.

Senator LUDWIG—I thought you said 'no gain'. Are they the only two programs that have that?

Mr Gaukroger—That is correct.

Senator LUDWIG—What were the total of those two programs originally? I am happy for you to take that on notice.

Mr Gaukroger—Yes.

Senator LUDWIG—So the \$15 million in terms of the aviation security is unspent. Is there a reason for it not being spent on aviation security?

Mr Gaukroger—Yes, it is predominantly because of the state police not coming on board as soon as we expected.

Senator LUDWIG—Is that staffing?

Mr Gaukroger—That is correct.

Senator LUDWIG—How many staff were expected to come on board? I am sorry, are we going to a different area?

Mr Keelty—We have got the figures here on the staffing levels. While we are getting the figures for you, I can say that the New South Wales police have not contributed police to Sydney's Kingsford Smith Airport. Queensland police are yet to contribute police to their three designated airports—Gold Coast, Brisbane and Cairns—although they should be starting by 30 July. In terms of numbers, 113 in Queensland have not been provided and 70 in New South Wales have not been provided.

Senator LUDWIG—Does that roughly represent the \$15 million?

Mr Gaukroger—That is correct.

Senator LUDWIG—While I have the call, at page 195 of the 16 October transcript, you talked about a ratio of one to two being the safe and normal operating range. If my calculations are correct, the AFP is within that at the moment, notwithstanding that it may rise slightly above that over the forward estimates. Is that the rule of thumb that you still use?

Mr Gaukroger—That is correct.

Senator LUDWIG—Is that a rule of thumb for the Australian Federal Police and which you generally stick to—I am not an accountant, clearly—in the market or within the general financial management arrangements with the Commonwealth?

Mr Gaukroger—It is a good measure of solvency. It varies from organisation to organisation, depending on the particular make-up of the balance sheet.

Senator LUDWIG—How do you calculate that?

Mr Gaukroger—It is purely the current assets divided by your current liabilities, and it gives you a measure of solvency.

Senator LUDWIG—Would you agree that, to maintain good financial management, you would maintain that rule of thumb?

Mr Gaukroger—That is correct. It is one of a number of measures that one would use. Obviously one would look at the cash holdings, the receivables, the capital commitments and the like. The current ratio is a way of complementing and looking at all those other figures.

Mr Keelty—In addition to the police that I have just mentioned that have not been provided to the Sydney and Queensland airports, there are also 38 police officers yet to be provided in the Northern Territory, and Western Australia has only provided 12 of the 36. That is 24 police officers who are not in place there either. In total, there were supposed to be 365 police at the designated airports as part of this program, and only 111 are in place.

Senator LUDWIG—There are 111 in place out of the 365. But the balance does not include the commitment by the states; is that right?

Mr Keelty—No, some states have fully committed. Victoria, Tasmania and South Australia are fully deployed but other states are partially deployed.

Senator LUDWIG—And is the difference between that which is there—the 111—and the 365 the difference between the state commitment and deployment or is there also an Australian Federal Police commitment that has not been met?

Mr Keelty—No, they are all state police who will come and work for the AFP, funded by the AFP. The AFP commitment is all in place, and they include the airport commanders.

Senator LUDWIG—Have you received a reason as to when the remaining staff will come on board, from the various states and the Territory?

Mr Keelty—Yes, negotiations are continuing with New South Wales, the Northern Territory, Queensland and Western Australia.

Senator LUDWIG—I should preface my remarks with ‘as far as you can say’.

Mr Keelty—Yes, and I should point out that the commitment to co-ordinate this is through the Department of the Prime Minister and Cabinet, not through the AFP. That was the agreement at COAG. However, we have been negotiating with New South Wales, Northern Territory, Queensland and Western Australian police on a memorandum of understanding to provide the police. New South Wales has committed to provide staff prior to APEC later this year and Queensland says that it will progressively meet its commitment between July this year and June 2008. Western Australia has told us that it will progressively provide the rest of its complement by the end of 2008.

Senator LUDWIG—So no-one has said no?

Mr Keelty—No.

Senator Johnston—No, effectively they have said ‘eventually’.

Mr Keelty—It has taken a lot longer than anyone had anticipated. But part of that—and I think we have talked about this before at estimates—is due to the general shortage of qualified police around the country.

Senator LUDWIG—So the eventual position, with the 365 police, is not likely to be achieved till 2008. Have you looked at any interim measures to deal with the staffing requirements between now and 2008 at those airports where there is not a full complement?

Mr Keelty—We cannot because we just cannot create experienced community police officers out of the AFP. It really is a commitment that needs to be fulfilled by the states and territories, as agreed at COAG.

Senator LUDWIG—You cannot commit any additional resources, or there has been no commitment by the Australian Federal Police, to fill the shortfall until such time as the state police come on board?

Mr Keelty—No, we would not be in a position to do that.

Senator LUDWIG—In terms of their operational capacity, if they are not operating with a full complement of staff, has there been an assessment done on the efficiency of the service that can be provided to meet the likely circumstances that could arise? These circumstances are the types of operations that would need to be conducted, the range of activities that the Australian Federal Police would be expected to conduct through the commanders at those airports and the response by the Australian Federal Police or the commander to exigencies that arise.

Mr Keelty—We rely on the pre Wheeler review arrangements—that is, these are community policing roles at airports and, if offences are identified by either our protective service staff or other AFP staff at airports, then they would call upon the state to provide a policing response to those events. But clearly what Wheeler was trying to achieve is that these would be people whose full-time role would be dedicated to airports, and they would then become part of what they call the airport uniform policing model.

Senator LUDWIG—Whilst the full complement of officers and ancillary staff are not there, there has not been an assessment done of what degradation of service that has on the overall operation, if any? In other words, an assessment of how it impacts upon the ability to be able to respond to emergency or emergent circumstances.

Mr Keelty—The short answer is that there has not been an assessment done. Getting the community policing role at airports in place has been an ongoing process. There are other roles such as the joint investigation teams, the joint intelligence groups and the counterterrorism first response roles that are being provided by the AFP and by some states in some places, but the short answer to your question is, no, there has not been an assessment done of the impact of not having them there. It was a recommendation out of the Wheeler review.

Proceedings suspended from 10.30 am to 10.46 am

Senator LUDWIG—We might return to question No. 103, Commissioner. The answer to that question was sent to the committee last week. For the *Hansard*, allow me to read this:

‘The main drivers of the surplus were delays in implementing new measures (particularly recruitment activities) and an underspend of \$32 million for PNG related activities.’ The same paragraph as amended is in the so-called additional reply. So a further reply was provided and it reads: ‘The main drivers of the surplus were delays in implementing new measures and an underspend of \$32 million for PNG related activities.’

Before I go any further, I might put it in context for the chair and the minister, who were not serving in their present roles—you weren’t here then—when a special hearing was also conducted with the Australian Federal Police on 16 October 2006. A large proportion of the discussion surrounded this question, and I thank the chair and the committee and the AFP for allowing that to happen. At the hearing, significant shortfalls in recruitment over the last couple of financial years were revealed, which I will not go into right now, but I am therefore curious as to why the Australian Federal Police’s response would be amended to remove the reference to recruitment activities. Was it that, in providing an updated reply, that amendment to the answer to question No. 103 did not come with an explanation? I am not sure whether it in fact amounts to an additional reply, given that it was a subtraction. So, in that sense, it is not additional material, especially when it did not come with an explanation and it came with a subtraction. I am curious as to whether the AFP sought this change and then provided the change to the answer to question No. 103 or whether the minister required the change.

Mr Keelty—It was actually me, because I raised with the chief financial officer and the former chief operating officer that the answer that was provided that referred to the recruitment was at odds with other knowledge that we had in relation to recruitment. Mr Gaukroger might be able to elaborate further. But there was no suggestion from the minister or the minister’s office; it was an intervention of my own when I raised the question about the reference to recruitment and the reference to PNG, because there had been no recruitment for PNG.

Mr Gaukroger—I would have to have another look at that if I could, just to be able to articulate an explanation with that.

Senator LUDWIG—The committee seems to be able to second-guess me now.

Mr Gaukroger—I would have to take that on notice if I could.

Senator LUDWIG—Yes. I wanted you to have a look at the reasoning and whether the minister was aware of the change and the reason behind it. Also, the way it has been undertaken, you may or may not be aware—and the chair can advise me whether I am right or wrong about this—is that, in normal circumstances, if it were a correction or clarification, you would put a letter in to say that there was a correction or clarification to the record. If it were additional material, you would then provide additional material. It is not additional material; it appears to be a correction or clarification; hopefully you can explain that. If it were, the normal protocol would be to provide a letter to the chair of the relevant committee—it would in this instance be Senator Barnett—and advise the committee that there has been a correction or clarification and provide the explanation. So, perhaps in providing your answer, you can explain why that was not undertaken as well. I do know that the Australian Federal Police is familiar with the rules about how we do this—it may have been an oversight.

Mr Gaukroger—We will check that.

Mr Keelty—And I will say that I accept full responsibility for that, because I intervened when I saw the answers. If you go back to the first part of the question, it talks about the receivables of \$145 million in 2003-04 being due to the forecast surplus of \$80 million and deferred capital expenditure of \$64 million. When you then looked at the next part of the answer, it did not correspond with the first part of the answer. So the correction was done at my request, but it was an oversight not to advise the committee why we did it that way, so I accept full responsibility for that.

Senator LUDWIG—I will separate this out. Recruitment activities are separate from what you are then expressing in No. 103. If you recall, we did canvass the issues of recruitment activities a lot, if I can use that expression.

Mr Keelty—I was going to say ‘at some length’.

Senator LUDWIG—I may do some of that again, but I do not know whether I am going to go into the same depth and I do not want to excite us all over that. I want to understand what that now all means in terms of No. 103.

Mr Keelty—What it means is that the answer provided in the more recent version of the response is the correct answer. It does not mention recruitment. It says:

The main drivers of the surplus were delays in implementing new measures and an underspend of \$62m for PNG related activities due to start-up delays, all of which were expected to be fully expended by 2004-05. This is reflected in the deficit of \$48m which AFP had forecast for 2004-05.

Then it goes on to talk about the reduction in receivables, which we have discussed.

Senator LUDWIG—I am satisfied. I am going to move on; I am not going to dwell there, if that suits everybody. In terms of the recruitment of state and territory officers—

CHAIR—Can I just come in there. I know you have asked me earlier about this and I have considered it more of a technical matter, but I think we accept the additional document that has been provided and accept it as such. I know that Mr Keelty has responded and I think we have just got to take that on board as he has responded, but I think it is a document that we can accept as a committee.

Senator LUDWIG—Absolutely; I am satisfied with the response, and I make that clear.

Mr Keelty—But I have also given an undertaking that we will write and explain the differences between the two documents and why.

CHAIR—To make that complete, it would be most appreciated.

Senator LUDWIG—What I was looking at was question 118(1)(d). I was wondering if you had that there with you. I can provide that if need be. Do these figures include all recruits who were existing members of state and territory police services at the time of their recruitment? You may need to take that on notice. I am not sure whether it is clear from the—

Mr Keelty—Going back to your original question, I would suggest that your question does not relate to—can I clarify that, please.

Senator LUDWIG—We have finished with 103.

Mr Keelty—I understand that, and we are now at 118?

Senator LUDWIG—Yes.

Mr Keelty—I am just trying to clarify that the question you just asked orally—

Senator LUDWIG—It relates to (1)(d) from question No. 118.

Mr Keelty—That is correct, but the question that you have asked orally does not correspond necessarily with the question that you have asked in the written form.

Senator LUDWIG—Well, 1(d) says that since the announcement of the future strategy, the IDG has recruited 15 former members of state and territory police services. Then the following material shows the breakdown. Do these figures include all the recruits who were existing members of state services? Yes, they were former ones. But were they existing ones and then they resigned to then join?

Mr Keelty—The IDG?

Senator LUDWIG—Yes.

Mr Keelty—Not the AFP.

Senator LUDWIG—No, sorry.

Mr Keelty—That was the point.

Senator LUDWIG—Yes, the IDG.

Mr Keelty—The answer to your question is yes.

Senator LUDWIG—And then were there any recruits to other parts of the AFP in that time?

Mr Keelty—Yes, there would be lateral entries to the AFP. As for IDG lateral recruitment, we have a table that we could provide. I can read out what is in the table to you. Victorian police have provided 27, New South Wales have provided 12, Queensland police have provided 23, Northern Territory police have provided seven, Western Australia police have provided 31, South Australian police have provided five and Tasmanian police have provided three, which is a total of 108. It would be less than honest of me if I did not indicate to you that I am aware of significant other applications from state and territory police wishing to come into the IDG as part of the future strategy. We expect that we will have lateral applicants of some 159 coming from state and territory police, as well as New Zealand, as a result of advertisements that were placed in national papers for the IDG in the course of the last fortnight. I can indicate to you that as of yesterday's date there have been 670 applications for those positions. As I have just indicated to you, 159 of those are from state and territory police and from New Zealand.

Senator LUDWIG—They are applications though as this point in time?

Mr Keelty—That is right. I answered your question in the sense that, in terms of the recruitment of state and territory police into the AFP, it is a significant number of people.

Senator LUDWIG—Take those that have been recruited into the IDG. Is the percentage of the number that you are seeking to recruit, and we will come to that, for sworn officers or unsworn personnel?

Mr Keelty—Both.

Senator LUDWIG—Is there a breakdown of what you are seeking? Perhaps we could start at the beginning. In terms of the IDG itself, what are the recruitment projections as to those that you will need and as to both sworn and unsworn personnel?

Mr Keelty—In raw numbers, as part of the new measure we are trying to build the IDG to a total number of 1,200 staff by the end of the 2008 calendar year. Assistant Commissioner Tony Negus is doing the job of the Chief Operating Officer. I think he has got a more—

Senator LUDWIG—I am happy to take that on notice. I take it Mr Negus is new in the role?

Mr Negus—Senator, I can give you some detail. If there is more that you require, we can certainly take that on notice.

Senator LUDWIG—Yes, please.

Mr Negus—As you may be aware, IDG recruitment is on track to deliver 1,200 staff in total by December 2008. Phase 2, as the commissioner has just indicated, has commenced and there is a range of roles, both sworn and unsworn, to be identified through that process. The IDG will recruit 358 people from advertisements placed on 12 May 2007. Dates of advertisement for further IDG recruitment to reach the 1,200 are still being finalised, so we do not have any specifics on that aspect. This includes 129 additional staff with additional recruitment to replace attrition, including state police with their MOUs that we have already discussed.

Senator LUDWIG—The portfolio budget statement for 2007-08, at page 179, shows obviously a total resourcing which excludes ACT policing. Do you break it down between the staff component, having both sworn and unsworn, as to the total cost?

Mr Keelty—Sorry, did you say page 179?

Senator LUDWIG—Yes. The total output is 1.053 billion. What I was trying to understand was in terms of the percentage of that which is to personnel more broadly. I was just trying to get a snapshot of what your ratio is like between both sworn and unsworn.

Mr Keelty—The projection is in total unless Mr Negus has some figures in front of him. The sworn and unsworn one will be a target figure that is used by the IDG. I do not have the target figure here but I can, with your consent, take that on notice and give you the target figure. For example, not all the positions require police powers or police skills. A lot of them are in support of the work that the police are doing in these places—such as logistical support—so we will give you a breakdown of those.

Senator LUDWIG—How many vacancies are currently being advertised for the IDG?

Mr Negus—As I indicated, 358 roles are expected to be filled out of phase 2.

Senator LUDWIG—They are currently being advertised and waiting to be filled.

Mr Negus—That is right. There will be further recruitment to get up to that level of 1,200, but the phase 2 figure is 358. I can indicate that certainly the target that we are looking at are 134 unsworn out of that 358. We expect the remainder to be made up of internal AFP members and lateral recruits, and the mix of that will obviously be determined.

Senator LUDWIG—And that is by 2008?

Mr Negus—The end of 2008. Certainly the 1,200 will be reached, but phase 2 will be completed prior to that with some supplementary recruiting to be done at the end of that process.

Senator LUDWIG—When is phase 2 likely to be finalised?

Mr Negus—I am afraid I do not have that here. I will have to take that on notice. Sorry, I have just been told that October-November this year will be the completion date.

Senator LUDWIG—Of those, is there a current intake? What I am trying to establish is whether all of the vacancies are on the books now. As you grab applications and process them, the vacancies will fill. Are all of those vacancies available to be filled if you had more applicants than you had vacancies, or is it that you are recruiting in a phased way? If so, how many are in the first tranche?

Mr Negus—The first tranche is 358—that is phase 2. We are taking a phased approach to look at getting the appropriate skill sets and then identifying where the gaps may lie. The third phase will actually fill in the rest of those people. Phase 1 was 58 people. As you would be aware, the IDG has been in place for a number of years now and had a critical mass in its own right. Phases 1, 2 and 3 are really adding to that to get to the figure of 1,200.

Senator LUDWIG—More broadly then, for all of the Australian Federal Police, excluding ACT Policing, is there a total cost of staffing? Is that reflected in the portfolio budget statement or in the annual report? I am just trying to establish the total cost of your staffing—sworn and unsworn staff, support and ancillary staff and corporate staff.

Mr Negus—It would be in both of those documents. I do not have that rounded-up figure in front of me but I am sure we can grab that for you.

Senator LUDWIG—I am happy for you to take it on notice. We have talked about the IDG. Separate from the IDG and separate from ACT Policing, table 3.1.1, at the bottom of outcome 1 on page 179, seems to indicate that you are planning an increase of 354. Is that part of the IDG or is that separate from that? How many sworn and unsworn people do you intend to recruit for the Australian Federal Police, other than ACT or the IDG, over the next four years? Is there a forward estimate of the recruiting numbers? There will be attrition as well; that will have to be taken into account. I am happy for that to be taken on notice as well.

Mr Keelty—I can give you those figures now. I will ask Mr Gaukroger to look at the figure of 5,231 at the bottom of table 3.1.1 while I am giving this answer. The 1 July 2007 opening position forecast is that the organisation will have 6,345 staff. The 30 June forecast position is 6,825. The recruitment for 2007-08 is 1,025 and the forecast attrition of 8.5 per cent, which is for the total staff, comes to 545 staff. The net impact is that 499 sworn staff will be recruited. That includes 240 base recruits and 250 for IDG. Two hundred protective service officers will be recruited, 118 state police will be recruited and 208 unsworn staff will be recruited.

Senator LUDWIG—Are you on track to recruit those?

Mr Keelty—Yes, we are. As at 22 May, there was that figure I gave to you before—645 applications for the IDG. In terms of general applications for positions with the AFP, in excess of 3,000 people have applied for jobs with the AFP at the moment. So we are on track. Our

planning in relation to recruit training and development of these people is already in place in terms of the training college. So we are definitely on track.

Senator LUDWIG—Do you have a forward plan which sets out the agreed targets that you should hit?

Mr Keelty—Yes, we do. We have commissioned a review by the former Deputy Secretary of the Department of Finance and Administration, Len Early, into the strategic financing of the AFP. We are still working through that, but we do have target figures for the out years. We have actually costed those figures, in terms of our more recent certified agreement, out until 2011.

Senator LUDWIG—Is that review available to the committee or is that an internal working document?

Mr Keelty—The review is not complete yet. I will present the findings to the minister. As to whether it should be more publicly available, I will leave that to the minister.

Senator LUDWIG—I appreciate that. Minister, I will chase that down in due course.

Senator Johnston—I am sure you will.

Mr Negus—If I can go back to your question a few moments ago in relation to total employee expenses. That figure is \$482,158,000 and it is contained on page 196 of the PBS. I just might add that, from a recruitment perspective this year, the AFP is on track to exceed its original recruitment estimates by 92. This is due predominantly to the IDG growth and some increased commercial activity in the protection area. For next year, certainly from the planning that has been undertaken so far, we are very confident of meeting our projected targets.

Senator LUDWIG—How many state and territory police do you have on secondment, if any, in ACT Policing, in the AFP's more general policing areas and in the IDG? I think we might have dealt with the IDG already.

Mr Keelty—ACT Policing does not have any state or territory police seconded to it. The recruitment of state and territory police goes into two main areas—the IDG and aviation. The total number of state and territory police that we have seconded is 215.

Senator LUDWIG—Do you include the Protective Service officers as part of that?

Mr Keelty—No, that is separate.

Senator LUDWIG—They will be directly employed and there will not be any secondments—obviously.

Mr Keelty—That is correct.

Senator LUDWIG—I might just finish off that question. You do not get non-sworn secondees from other state or territory police to come in as Protective Service officers?

Mr Keelty—No, we do not.

Senator LUDWIG—I thought I should cover that just in case.

Mr Negus—To be clear, though, there are certainly ex state and territory police officers who do apply to become Protective Service officers, but they are not on secondment.

Senator LUDWIG—Do you second financial investigators or other non-sworn officers from other police forces?

Mr Negus—Only in a joint operational sense. The rest of them would have been covered in the Commissioner's explanation of IDG and aviation. We do have some coming in on a range of ongoing joint investigations with state and territory police and other agencies, but they are not secondments as such.

Senator LUDWIG—In terms of the training for the airports that are there, do they receive additional training for the posting? Is it called a posting to the airport or is it a transfer to a different section?

Mr Negus—Yes, they do. They require training and certainly a program has been developed specifically for those people to be posted to the airport. That gives them the opportunity to look at the rest of the AFP and the way it works in a functional sense but also covers areas specific to legislation around the aviation industry and Commonwealth law.

Senator LUDWIG—Is it a separate course?

Mr Negus—It is a separate course. I am not sure of the length.

Senator LUDWIG—I am happy for you to take that on notice.

Mr Negus—I think it is two weeks but I could be corrected.

Senator LUDWIG—For the airports, will a complement of protective service officers be part of the airport security arrangements, and how many or what proportion?

Mr Negus—Certainly the counterterrorism first response component—

Senator LUDWIG—I have fallen into that one again. Only the initiative which relates to the—how do you want to describe it so I can use the correct term—airport.

Mr Keelty—The community policing role.

Senator LUDWIG—Yes, the community policing role.

Mr Keelty—The PSOs perform the counterterrorism response.

Senator LUDWIG—So they will not be part of the community policing response and the PSOs will continue to do those tasks that we have discussed before and which relate to the first response for counterterrorism and all of those roles?

Mr Keelty—That is correct.

Senator LUDWIG—We have asked about that before so I will not pursue that here but I will pursue this one. I am not sure I understood that as well. Just come back to the IDG: you said that where there are secondees you provide the payment for the officer; is that right? I was just trying to understand the costing. I think at question number 119 we asked about how that breakdown occurs. It goes on to say, 'With reference to state and territory police officers seconded to the international deployment group, could you provide a breakdown of the factors listed below with regard to the total costs associated with all of the secondees?' The question then is how a replacement for the secondee in the service is funded, so the breakdown of the total costs associated with the secondees—

Mr Keelty—Just so I have got it right, are you asking about the backfilling?

Senator LUDWIG—Yes. I just want to clarify who is responsible for funding a replacement for the secondee. When they come to you, you have then provided the funding of what you provide and how that is broken down, but does the AFP assist state and territory police services with the costs of replacing the secondee?

Mr Keelty—Yes, we do. I stand corrected but that is in answer to your question. The \$40,000 levy—

Senator LUDWIG—That is the fee.

Mr Keelty—That is the fee and that is to cover the costs for the jurisdiction to recruit a replacement for those positions.

Senator LUDWIG—Is that an annual fee, a flat fee or is it pro rata?

Mr Keelty—It is a flat fee.

Senator LUDWIG—Irrespective of how long you hold on to them for? I will give you an example: you obtain a secondee and then they find a greener pasture and terminate. You have already paid the \$40,000 and then you have got to get another secondee. Do you pay that again?

Mr Keelty—No, we would not pay it again but it does vary from state to state on the memorandum of understanding with each state and what the arrangement is, because some states—

Senator LUDWIG—Should you be telling me it varies?

Mr Keelty—Some states have greater costs for recruitment so it might be one on one in negotiations with those states.

Senator LUDWIG—So the flat fee is irrespective of how long the secondee remains with the Australian Federal Police. Or is it that whatever the memorandum of agreement says for the duration of the secondee, such as 12 months, 18 months, two years, three years, the \$40,000 is paid for that and if one goes and then leaves the organisation the state has to provide another secondee but they do not get an additional fee; you have already paid the fee for the duration?

Mr Keelty—That is right. It is basically a one-off fee because once the position is replaced or backfilled by the state there is no need for us to refill it again. If the person who has by that time come into the AFP leaves the AFP or goes somewhere else they still supply another person to us with that one-off cost already having been paid.

Senator LUDWIG—I am happy for you to take this on notice, but are you able to say how often that might occur?

Mr Keelty—I will have to take that on notice.

Senator LUDWIG—In terms of the \$40,000, is there a set duration that is for? Is that worked off a period of time?

Mr Keelty—No, it is a one-off, so it is for as long as we retain a person from that police force on secondment.

Senator LUDWIG—How long is the longest secondment?

Mr Keelty—They rotate, so say you had a particular state police force offering up 15 positions for the IDG, it would be 15 times \$40,000 as part of the fee for the backfilling of the recruit and that would be in place until the secondments are finished.

Senator LUDWIG—In terms of the IDG, that could be years?

Mr Keelty—That is right, but in the meantime the individual can rotate back into their police force and another one replaces them. But the administration fee has been paid on that one occasion.

Senator LUDWIG—We will use an example then. In terms of the IDG, that has been running now for quite some time, if I recollect. I will not try to hazard a guess. Could you tell me when it started and whether one fee has been paid for one secondee position for the whole period or whether there has been a renegotiation at some future point with the flat fee?

Mr Keelty—It started in 2004 and the negotiations with the states and territories started at the same time. It varies from jurisdiction to jurisdiction. For example, there are no New South Wales police in the IDG, whereas other organisations, particularly the Victorian police, have been strong supporters of the IDG. We can give you figures in relation to those that have been seconded and have had to be replaced and whether there were any costs associated with that and whether we have any future costs associated with commitments that we have under the memorandums of understanding.

Senator LUDWIG—And whether there has been a fee for renegotiation on a seconded position. I do not expect so, but if someone has been seconded for three years and wants to be extended do they negotiate a new flat fee in that case or does everyone accept that the fee has been paid?

Mr Keelty—We will provide that as part of the answer, but the duration for the secondment is generally 100 weeks.

Senator LUDWIG—That is helpful. And you then enter into MOUs with each of the state and territory police?

Mr Keelty—That is correct.

Senator LUDWIG—Is that including the ACT or do they have a different arrangement?

Mr Keelty—They have a different arrangement. There are currently in training two courses of ACT police who will be used to enable ACT policing to rotate staff into the IDG without a loss of numbers in the ACT.

Senator LUDWIG—That is additional or above the ACT requirement?

Mr Keelty—It would be a surplus to the ACT requirement but it is a surplus that they will not realise because the police will be used on IDG duties.

Senator LUDWIG—How many are in those two cohorts?

Mr Keelty—Forty; two classes of 20.

Senator LUDWIG—Your new headquarters at Anzac Park West: can you confirm the date on which the Australian Federal Police was originally intending—this is assuming that you

have not moved in yet—to move into the new headquarters? And what is now the revised date?

Mr Keelty—The revised date we expect to be in there by is May 2008. I would have to take on notice the part of your question about any previous deadlines that we had. This has obviously been a longstanding negotiation between us and the department of finance, going back to when I became commissioner in 2001.

Senator LUDWIG—Yes; I think that is right. Well, of course it is right if you say that, but my recollection is that it has been ongoing for some time between DOFA and the AFP. From the AFP's understanding, are you able to articulate the main causes for the delay?

Mr Keelty—Just in broad terms?

Senator LUDWIG—We will start off in broad terms, if that is all right.

Mr Keelty—Part of it was the initial negotiations with the department of finance on the terms for the building. Then there were the delays we experienced in the preparation of the building to base standard. We went through a difficult stage of negotiations over what constituted a base standard. We now have it at base standard and we have moved forward to—sorry, the building was prepared to base standard by the end of last year. It now is in fit-out stage. It will take us 12 months to fit out the building and the associated physical security required for the building.

Senator LUDWIG—What will be the annual rent for the new headquarters?

Mr Keelty—Mr Gaukroger might be in a better position to answer that.

Mr Gaukroger—I will have to take that on notice; I just do not have the figure here with me.

Senator LUDWIG—All right. Is there just one rent figure? Perhaps the leasing arrangement might be helpful, as well, just to help us understand—so much as you can provide.

Mr Gaukroger—We will be leasing the whole building, so it will be a single rent for Anzac Park West.

Senator LUDWIG—I see. In the answer to question on notice 121, the locations that are relocating to new headquarters are mentioned in 1(c). Are they being relocated in part or in their entirety? It was not clear. Maybe it was the way I drafted the question, though I do try to get it precise. But the question really goes to: when you relocate, are you moving all of those locations in 1(c)? In other words, no-one is being left behind anywhere?

Mr Gaukroger—Yes, it is predominantly the enabling services that will be moving to Anzac Park West. My understanding is that the entire 109 Canberra Avenue, for example, will go over to Anzac Park West; the same with West Block and the enabling components with headquarters in Drakeford.

Senator LUDWIG—It says: 'The AFP intends to relocate some functions to Anzac Park West from headquarters building, Drakeford Building, West Block and 109 Canberra Avenue. The functions remaining at centre court are specialist training. The functions remaining at 90 Wentworth Avenue also form part of the protection portfolio and have been identified to

occupy second headquarters building.' Of those in the headquarters building, Drakeford Building, West Block and 109, are there still functions that will remain in those buildings?

Mr Gaukroger—In 109?

Senator LUDWIG—Yes.

Mr Gaukroger—Yes, there are.

Senator LUDWIG—What about West Block?

Mr Gaukroger—The same—there are functions there now, too.

Senator LUDWIG—And Drakeford Building?

Mr Gaukroger—That is correct, yes.

Senator LUDWIG—And the headquarters building?

Mr Gaukroger—Yes.

Senator LUDWIG—So you will move some of those functions to Anzac Park West.

Mr Gaukroger—The corporate services functions will go over to Anzac Park West. Some of those will move in their entirety, for example, with West Block and 109, but there are also two in part (d) of the question with Mort Street and Fujitsu House, and those functions will move over as well.

Senator LUDWIG—So all of those will still maintain leasing arrangements and continue as part of the Australian Federal Police?

Mr Gaukroger—There will be some leasing that will continue on after we have moved over to Anzac Park West and we will be looking at subleasing that if we can.

Senator LUDWIG—They will then be vacant?

Mr Gaukroger—That is correct.

Senator LUDWIG—And you will then be able to sublet it?

Mr Gaukroger—That is correct.

Senator LUDWIG—So those leases are for some time into the future then; you have a commitment to undertake.

Mr Gaukroger—Yes. From recollection, I think the longest lease goes up to about 2009.

Senator LUDWIG—I might add some more questions in that area. What I was trying to understand is what functions are going—so far as you are able to say, of course—to Anzac Park West out of those existing locations? What is going to remain in those locations? And how much vacant space will remain, not so much in square metres but in terms of function? What functions and staffing will then remain in those other locations? What taskforce, if any, remains? Do operational people go to Anzac Park West, or is it only the corporate people who will go?

Mr Gaukroger—We do have that information and it would probably be best to give you a detailed response on notice.

Senator LUDWIG—Are the leases of the headquarters on Northbourne Avenue due to expire or are they ongoing leases? I am happy for you to take that on notice.

Mr Gaukroger—They all have expiry dates and I will take that on notice.

Mr Keelty—I should indicate to you that we are still negotiating with the Department of Finance over another arrangement, close to Anzac Park West, to relocate completely those other functions that are mentioned in the answer to your question 121, and it would be premature to indicate how successful those negotiations have been. If we do not succeed in that, we will obviously need to go to a developer to look for another solution to our accommodation problems because the organisation has grown so much in recent times that we simply cannot keep it spread out over the city the way it is at the moment.

Senator LUDWIG—That was the impression I was gaining from the answer that I was getting. So they are not actually all being centralised into the headquarters? You are still going to end up with a headquarters and dispersed activities in a range of other locations?

Mr Gaukroger—In relation to Anzac Park West, yes.

Senator LUDWIG—And that will also have parts vacant and then sublet?

Mr Gaukroger—That is correct.

Mr Keelty—I would just point out that the answer to question 121(b) lists for you the lease expiry dates as at June 2004. I am not sure why it goes back to that point in time. Clearly we have renegotiated with Stockland on the current lease for the headquarters building to take us out at least until a point in time where we believe we might have a second building available in addition to Anzac Park West.

Senator LUDWIG—That is why I have really asked because only one of them seems to remain relevant which is 90 Wentworth Avenue which is out to 31 August 2009. The others would mean you would be out on the street by now and I am sure that is not the case, or you are in breach of your lease.

Mr Keelty—You are correct, it is not the case. We will get those dates for you.

Senator LUDWIG—There is a third alternative: they could have expired and you are on a monthly tenancy. That could always be the case.

Mr Keelty—But it varies from building to building, so I will get the proper answer for you. The lease for 109 Canberra Ave has been renegotiated to 5 November 2009, the lease for Mort St has been renegotiated to 28 February 2009, the lease for Fujitsu House has been renegotiated to 31 August 2010, the lease for the main headquarters building has been renegotiated to 7 June 2011, the Drakeford Building is to 30 June 2009 and West Block is to 28 February 2008.

Senator LUDWIG—And 1(c), the headquarters building—is that Anzac Park East?

Mr Keelty—The headquarters building is the current headquarters, at 68 Northbourne Avenue.

Senator LUDWIG—Is that entirely occupied by the AFP?

Mr Keelty—No, it is not. The Australian Crime Commission sublets one floor of that building.

Senator LUDWIG—When were the 24 Mort Street and the Fujitsu House buildings first occupied?

Mr Keelty—I would have to take that question on notice.

Senator LUDWIG—I will list a couple of questions about that, too, Mr Gaukroger: specifically, the cost of the leases, when they were entered into, the terms of the leases, when the leases are due to expire and whether they were established as temporary accommodation to meet the overflow.

Mr Keelty—Mr Gaukroger might not have been with the AFP at the time that those leases commenced. But the purpose was largely due to the growth in some of the new measures where we have been recruiting in roles that we did not have when the headquarters were first established at 68 Northbourne Avenue.

Senator LUDWIG—The other part of the question, of course, is whether they were established as temporary accommodation while the new HQ was being set up and whether they are going to relocate to the new HQ or continue on.

Mr Keelty—The answer to the first part of the question is: yes, it was intended that they would be short-term leases because we had anticipated that, by this time, we would have been in our new headquarters, or certainly in Anzac Park West. The answer to the second part of the question is that some of the enabling functions will, as Mr Gaukroger pointed out, go to Anzac Park West. But until we are successful in some sort of negotiation over an additional building—whether that be through a developer building a building for us or a building which we have been trying to reach agreement with the department of finance over for some five years now—the balance of those resources will move to that second building, whatever it looks like.

Senator LUDWIG—In terms of the occupants more broadly, how many will there be in each? I am happy for you to take that on notice. Part (f) of the answer identifies a successful tenderer—HBO + EMTB. How was that contract affected by the delays that have occurred? More specifically, was there any compensation required to be paid, or are they simply on hold? And are there any other contracts that might be affected? This question is more of a catch-all in terms of ones that I may not be familiar with: have other contracts been delayed and have any costs been accrued because of the delays?

Mr Keelty—I know that there are specific clauses in respect to the negotiations with the department of finance for liquidated damages for delays, but we would have to take that question on notice to you give you a specific response.

Senator LUDWIG—Thank you. Part (g) indicates that some premises did not meet *Commonwealth Protective Security Manual* minimum standards. I do not want you to compromise the specific premises, but is it possible to indicate what particular standards are not being met?

Mr Keelty—We will take that on notice but I can indicate to you that part of the problem we were confronting is that we have had to significantly upgrade the security of the AFP IT

systems as part of our interoperability with the Australian intelligence community. That also has ramifications in terms of the physical security required for some of our staff documents and IT locations. But we will give you a more complete answer on notice.

Senator LUDWIG—Part (h)(ii) refers to the need to address a number of risks prior to awarding the contract. Are you able to elaborate on what those risks were and how they are being addressed? I am happy for that to be taken on notice if you do not have a general response available.

Mr Keelty—I will take that on notice.

Senator LUDWIG—The real catch-all, of course, is why weren't they envisaged earlier, in the sense that they are only being articulated now?

Mr Keelty—I will take that on notice. Obviously a lot of the corporate knowledge on this rests with the former Chief Operating Officer, so—

Senator LUDWIG—I see that you do not have the staff member—I think Mr Van Dam has moved on to greener pastures, if I can use that expression. For some of that knowledge you would presumably have to go back to that section.

Mr Keelty—We have also had a change in our building and accommodation area. We have employed new staff into there. So I will take that on notice.

Senator LUDWIG—Thank you. Parts (k)(i) and (k)(ii) refer to the upward cost pressures caused by the high-level activity in the current Canberra market. It seems to me that there is a 102 per cent increase in the cost estimate. Is that all accounted for by the upward pressure in the Canberra market or is there some other driver? It may be Mr Gaukroger who can help me with that.

Mr Gaukroger—That is not the only one, Senator, but I cannot recollect at present. I will take that on notice. It is more than just the Canberra market that caused the upward pressure.

Senator LUDWIG—Perhaps you could help me explain that, just in case the real estate industry gets nervous about a 102 per cent increase. There is also an increase in 1.9 in consultants' fees. Could you provide an explanation of why that has occurred and how much of the \$48.9 million will come out of internal resources—that is, funded out of receivables.

Mr Gaukroger—The entire amount of \$48.9 million will come out of receivables, internally funded.

CHAIR—We will make a change here and call Senator Nettle.

Senator NETTLE—I have a couple of areas I want to ask about. The first is the \$35.7 million in the budget for national security measures. Could someone explain for me the break-up of that? The media release from the Attorney-General's Department talks about \$20.5 million being for control orders.

Mr Gaukroger—The \$20.5 million in relation to the control orders over four years is on page 170 under 'Agency measures'. It goes over a period of four years with \$5.916 million in 2007-08 and then numbers for the forward estimates. There is also a capital measure on page 172 of \$610,000 in 2007-08.

Senator NETTLE—Can you point out to me on page 170—

Mr Gaukroger—On page 170 it has ‘Strengthening national security—implementing the Anti-Terrorism Act’. That is \$20.5 million over four years. The profiling of that is \$5.916 million in 2007-08, then \$4.6 million, then \$4.652 million, and then on page 172 there is also a capital component of \$610,000 in 2007-08.

Senator NETTLE—So that is for control orders?

Mr Gaukroger—That is correct.

Senator NETTLE—That is a lot of money for control orders. I was trying to work out what this line item is. Is it the ‘David Hicks’ line item? \$20 million for control orders over the next four years gives us an impression that there is an intention to introduce a number of control orders. There is still only one, isn’t there?

Mr Cornall—Yes, that is correct.

Senator NETTLE—What are we supposed to read from this? What kind of increase in the number of people being put on control orders is intended over the next four years?

Mr Cornall—Perhaps I can assist with this matter. The principle behind this new policy proposal, this new measure, is that, if there were a need to increase control orders quickly as they are very demanding of police and other resources, the AFP has the capacity to respond to that demand should that demand arise. It is against the background of the Pendennis Operation where we have identified, I think, 22 people who are subject to prosecution at the moment in relation to terrorism-related offences. If, for example, that number of people were ever to be subject to control orders the demand on the AFP’s capacity would exceed its present ability to meet the demand. The proposition is that it needs to be adequately resourced to meet a potential demand should it arise because it could arise quickly, but it does not foreshadow an expectation at this stage that the demand will arise.

Senator NETTLE—So are you saying that those 22 people or others may be put on control orders? If it comes through the court that they are released, might they be put on control orders?

Mr Cornall—If that occurred the AFP would have to be in a position to respond immediately. That is right.

Senator NETTLE—Is that from the raids in Sydney and Melbourne? Is that the 22 you are talking about?

Mr Cornall—Yes, the Pandanus Operation. Using that as an example, the fact is that there could be matters that come to the attention of the police, the Attorney and the courts quickly and the AFP has to have the ability to respond immediately. At the present time it would be difficult to do that with its current level of resources for this purpose.

Senator NETTLE—What is the current expenditure on the one control order?

Mr Keelty—We would have to take that on notice because I do not have the figures here. I am concerned that it would provide details of how the control orders are being enacted, so I would have to take it on notice and consider the response.

Senator NETTLE—It looked like this was a line item. Will it be in a line item for you to go back and look at the expenditure for the current control order? Have we got a line item for this or is it going to be a gathering from elsewhere?

Mr Keelty—Because we did not have resources allocated for control orders it is currently being absorbed by the organisation, but clearly we have learnt the lesson of what is required to support a control order, as Mr Cornall just outlined. We have sought and received funding for any future control orders that might be put in place.

Senator NETTLE—If you could take that one on notice that would be great. What about preventative detention orders? Are there any of those out at the moment?

Mr Keelty—No.

Senator NETTLE—Does this line item cover control orders and preventative detention, or just control orders?

Mr Keelty—Preventative detention would mean that people are in detention and would therefore not put a stress on AFP resources.

Senator NETTLE—Right, so this is a control order line item?

Mr Cornall—There are other matters in this measure which go to the costs of prosecuting terrorism cases. They include security resources for the courts—the cost of clearing people in courts who are dealing with these matters—and also the cost of computers and other facilities required to conduct these trials in a secure fashion. So there are a number of items in this measure, but the control order item is the most significant financially.

Senator NETTLE—Okay, that is what takes it up to \$35.7 million. Am I reading that correctly?

Mr Cornall—Yes.

Senator NETTLE—And \$20.5 million is the control order component of that?

Mr Cornall—Yes. It is possible that if there was to be a preventative detention order, there may be some additional cost to police, but the significant cost would be the control order cost.

Senator NETTLE—I want to ask about the AFP operations in Afghanistan. We talked about this during the last estimates. I am interested in a bit of an update. In particular there was a question that I had on notice—question 111—which was about how much money was being spent contracting a private company for the protection costs associated with the AFP being in Afghanistan. The answer that was provided to me said that the AFP would be better placed to provide costs and details once the negotiations were complete. I want to know whether they are complete and therefore whether some more of the figures about the cost of the private contractors in Afghanistan can be provided.

Mr Keelty—The details of the cost of the contractor pending at this time are commercial in confidence. The contract cost will include additional support, including identification, refurbishment and leasing of several premises in Jalalabad, as well as close personal protection services to be provided in Kabul. Finalisation of the contract is imminent, and is dependent upon the MOU being signed between the Afghan and Australian governments on the provision of the police to Afghanistan. The deployment has not yet occurred.

Senator NETTLE—When that negotiation for the contract is completed, will it then be a public figure?

Mr Keelty—I will have to take that on notice. My advice is that it is going to be commercial in confidence.

Senator NETTLE—Is anybody else able to add any more info to that? If we are paying private contractors to protect the AFP in Afghanistan I think we should know how much we are spending on doing that. Can the minister or anyone else indicate whether they think that it is appropriate for people to know how much we are spending on private contractors so that the AFP can be in Afghanistan.

Senator Johnston—We will not know until the contract is negotiated.

Senator NETTLE—Surely we will know whether or not it will be made public.

CHAIR—Mr Keelty has advised, I think, that he has taken that question on notice.

Senator NETTLE—Was that a no from the minister? We will not know whether it can be made public?

Senator Johnston—We will take that on notice.

Senator NETTLE—What about the issues of liability for the AFP for the actions of the contractors? Can you shed any more light on that? Will the AFP be liable for the actions of the contractors?

Mr Keelty—The actual terms of the contract will cover some of these areas. In answer to your question, No. 111 part B, we said that the liability for the actions of the contract will be addressed in the indemnity clauses in the contract. But, as I just pointed out to you, the contract is still not fully negotiated.

Senator NETTLE—Have we got any other similar contracts for private contractors protecting the AFP in any other deployments? If so, have the details of those been made public?

Mr Keelty—The answer to the first part of the question is no. If it is not, I will correct the record. But I do not recall that we have entered into a contract with another private provider for the protection of our own staff on a previous occasion.

Senator NETTLE—If you can provide any more information down the track, that would be great. In relation to what the AFP is doing in Afghanistan—this is refreshing my memory—it is focusing on narcotics. Is that right?

Mr Keelty—That is correct.

Senator NETTLE—There has been reporting in the media, and there was a Reuters article a couple of days ago talking about different approaches to eradicating narcotics. The article presents two different approaches amongst the NATO forces there. One is the burning of poppy fields as a US approach. The article points out that the approach that the British are taking is to convince the farmers that there will be other avenues for them to generate income. So it is an ‘all guns blazing’ approach or a persuasion approach. Could you indicate which of those two directions the AFP are taking in the narcotics work in Afghanistan?

Mr Keelty—We have not got there yet, so part of the work we will be doing will be working with the Afghan authorities and others—particularly the UK authorities—on the ground. Whether it is Afghanistan, whether it is Colombia, whether it is Burma, crop eradication and crop substitution have, for a long time, been part of the strategy to deal with the production of heroin. In neither case have they been entirely successful. It is generally a combination of strategies—not only crop eradication and crop substitution in the countries of origin but also trying to suppress cultivation and getting to manufacturing plants. Then you have got the market issues in terms of supply, which the AFP has interest in, as do other agencies such as Customs, in terms of interdiction. One size does not fit all, and we will be contributing in Afghanistan in a way that is most appropriate.

Senator NETTLE—The work that the AFP is doing in Burma is along similar lines. You said that that approach in Burma and elsewhere has not been particularly effective. Can you give us any insight into how that approach is going in Burma?

Mr Keelty—I do not have the records in front of me, but there are significant bodies of work, particularly by the United Nations Office on Drugs and Crime that look at the progress that has been made in Burma. It becomes difficult when the country of origin is in differing political circumstances, if I can put it that way, in terms of how much support is given to eradication projects and how much support is given to production projects. The simple answer is that I do not have the detail here but there is a body of work that has been done by the Office on Drugs and Crime in the UN.

Senator NETTLE—I have one more question on Afghanistan and then I will keep going on Burma. When was the deployment due to occur?

Mr Keelty—It was due to occur in April, but we have yet to be successful in negotiating the memorandum of understanding with the Afghanistan government.

Senator NETTLE—Is it the negotiations with the Afghans or with the private contractors that has led to the delay?

Mr Keelty—The Afghans.

Senator NETTLE—Is the AFP doing any other operations with Burma, or is it purely focused on narcotics in Burma?

Mr Keelty—It is largely narcotics, with the Myanmar National Police. The position in Rangoon, or Yangon, links in with the work that has been done with the Royal Thai Police in Thailand and the Ministry of Public Security police in China. The major focus of that work is on narcotics.

Senator NETTLE—How many AFP officers are in Burma at the moment?

Mr Keelty—There is just one officer.

Senator NETTLE—How long have they been there?

Mr Keelty—Since 1998—since the commencement of the National Illicit Drug Strategy.

Senator NETTLE—Do you have a cost associated with the Burma deployment?

Mr Keelty—There would be. It has varied from time to time. We have had up to two officers over there working with the Myanmar National Police, but we could give you those figures since the commencement of the National Illicit Drug Strategy.

Senator NETTLE—Yes. I am happy for that to be on notice. Another question on Afghanistan: can you shed any light on why the delay has occurred? You said it is negotiations with the Afghans. Can you shed any light on what the sticking point is or what the problem is?

Mr Keelty—It is simply a continuing negotiation of the MOU with the Afghanistan government.

Senator NETTLE—In the negotiations with the Afghan government, I know the approach in Papua New Guinea has been around indemnity for AFP operating over there. Is that part of the arrangement in Afghanistan as well?

Mr Keelty—I am not sure that it is appropriate for me to discuss the MOU prior to it being fully negotiated. It is a matter for the Afghan authorities—what is acceptable and what is not. Until we actually have an agreement in place, I do not think it is helpful for me to discuss the contents of that, because it may never come about.

Senator NETTLE—All right. You said it was a continuation of the existing MOU. Does the existing MOU with Afghanistan go to providing indemnity for Australian officials there?

Mr Keelty—I did not say it was an existing MOU. We do not have an MOU with the Afghanistan government.

Senator NETTLE—Thank you. In Burma, is there any counterterrorism training going on, or is it just narcotics?

Mr Keelty—Not to my knowledge.

Senator NETTLE—I want to ask you about climate change. I note that the Australian Defence Force has done a report, *Joint operations for the 21st century*, which deals with climate change, and the Office of National Assessments has done a number of reports in relation to climate change. Has the AFP done any work yourselves, or with ONA, or with the Department of Defence, about how climate change is going to impact on the security environment and therefore the work of the AFP?

Mr Keelty—We are doing work as part of our environmental plan that will touch upon climate change. We are reaching into the academic world as much as the other government agencies. We have not got a formulated position on climate change and its impact on crime at this point in time, but we are working on it.

Senator NETTLE—Can you give us any idea about the time frame?

Mr Keelty—I cannot at this point in time.

Senator NETTLE—Were you involved in the reports by Defence or the ONA on climate change?

Mr Keelty—We certainly were not involved in the Defence report, although I am aware of the Defence report. On the instructions I have got, we did not contribute to the ONA report either.

Senator NETTLE—So the work that you are doing is specifically for the AFP, and that is in interaction with academics, to be able to write a position paper? Is that the sort of thing?

Mr Keelty—What we are looking at, obviously, are predictions of the impact on crime and our preparedness to deal with that. Of course it does not just affect the AFP, but we are hoping that we can join with other law enforcement agencies of a similar nature to ours to try and look at the issue and analyse it.

Senator NETTLE—Is that for the purpose of producing a public document?

Mr Keelty—It would not necessarily need to be a non-public document. Most of the material that we would be relying upon would be on the public record. Until the document is finalised, I would not be able to say what the security caveat on the document would be, if there would be one at all.

Senator NETTLE—There were some media reports about the AFP being in discussion with other agencies about conditions for David Hicks when he is released. I wonder if you could shed any light on that for us.

Mr Keelty—I do not think I can discuss the matter of David Hicks publicly. Obviously he is in custody at the moment, and we will develop a position on that later on.

Senator LUDWIG—Do you have a role to play while he is in custody, given that he is an Australian federal prisoner?

Mr Keelty—No.

Senator LUDWIG—Have you been requested to provide a role?

Mr Keelty—No.

Senator NETTLE—Perhaps somebody could advise me—or maybe I will just ask the Attorney-General's Department when we get there more generally—in relation to him being a federal prisoner and who we can ask questions about that. I can do it in the later Attorney-General's Department section, if that is the right place to do it.

Mr Cornall—As you know, the Commonwealth does not have any federal prisons and we have arrangements that all federal prisoners—and there are usually something of the order of 600 or so federal prisoners around Australia—are accommodated in state prisons in accordance with the normal conditions of incarceration in those prisons. Decisions about those conditions are made by the corrections and prison authorities in the relevant jurisdictions, and it is not a matter in which the Commonwealth has any direct involvement. If any of our officers who deal with these matters on a daily basis think that I have not explained that fully, I will ask them to do that when we come to the department session later today.

Senator NETTLE—It is my understanding that raids on Tamil community members in Sydney and Melbourne over the last two years were part of an ongoing operation about terrorism financing. When those raids happened in Sydney and Melbourne, they happened just after a series of raids in Europe, so I wonder if the project here is part of an international project at all.

Mr Keelty—It was not.

CHAIR—Senator, I will just mention to you, while you are considering your thoughts, that under output 2.3 this evening there will be opportunities to discuss or ask questions about David Hicks.

Senator NETTLE—In relation to AFP investigations around Sheikh al-Hilali, there was reporting about one that was to do with finances and then there was subsequent reporting around an investigation relating to sedition. Have I got that right in terms of there being two investigations—one that has been finalised around funding, and a separate investigation that relates to sedition?

Mr Keelty—Both matters have been finalised.

Senator NETTLE—So there is no proposal to use the new sedition laws?

Senator LUDWIG—There are no charges.

Senator Johnston—That is the logical inference.

Mr Keelty—In respect of Mr Hilali, at this point in time that is correct.

Senator NETTLE—So we are still going 50 years without a charge using sedition laws.

Senator CHRIS EVANS—Can I just reassure Senator Nettle that we are keeping a close eye on her as a potential candidate! Mr Keelty, I would like to follow up on a conversation we had last time about investigations into weapons stolen from ADF establishments. Last time I think you referred to three investigations that were ongoing. I would not mind an update on where those three investigations are at and on whether you have had any further references to you, in the first instance, involving weapons thefts.

Mr Keelty—I will ask Acting Deputy Commissioner Peter Drennan to respond to that.

Mr Drennan—There are a number of ongoing matters. There is one matter which relates to internet access to child pornography and abuse. That matter is still ongoing and it is with the DPP.

Senator CHRIS EVANS—That is internet use?

Mr Drennan—That is correct. There are several matters in relation to inappropriate access to the internet which are in various stages—they are either before the courts or there are ongoing investigations.

Senator CHRIS EVANS—I am particularly interested in the weapons threats rather than the more general matters at the moment. Last time we heard that you have around 130 references. I am interested to know whether you have had any further references since the evidence in the last hearing. As I said, I am particularly interested, in the first instance, in stolen weapons issues.

Mr Drennan—There have been a number of additional matters referred to us where there have been allegations that weapons material has been either stolen or located. I do not know the exact details of the ones which have been located, but the most recent of those are matters which the state police have been pursuing.

Senator CHRIS EVANS—I am getting a bit confused here. Are you saying that, since the last estimates hearings, you have located further weapons?

Mr Drennan—No. The best way to put it is that, since the last estimates, spent ADF or military ordnance has been located at recyclers and places of that nature, but they are not matters which have been investigated by the AFP.

Senator CHRIS EVANS—Did we know they were missing before they were located?

Mr Drennan—They are matters that relate to some time back. I could not advise you in relation to the details of the history of those weapons.

Senator CHRIS EVANS—Where were they located?

Mr Drennan—The one that I recollect is from Queensland.

Senator CHRIS EVANS—This was a discovery of ex-military ordnance in the public arena?

Mr Drennan—Yes.

Senator CHRIS EVANS—One was in Queensland. What did that involve?

Mr Drennan—I do not have the details here. As I said, that was, as I recall, a matter which was explored by the state police.

Senator CHRIS EVANS—Was that weaponry?

Mr Drennan—Yes, I think it was weapon cases of spent rocket launchers.

Senator CHRIS EVANS—Spent rocket launchers?

Senator Johnston—Apparently not of a type used by the Australian Defence Force. As I understand it, some military packaging that nobody can identify as being relevant to us was washed up on a beach. I think it is in the hands of the Queensland police.

Senator CHRIS EVANS—Did this contain rocket launchers?

Senator Johnston—No, just packaging—boxes with stamps.

Senator CHRIS EVANS—Is that matter being handled by the Queensland police?

Senator Johnston—Apparently.

Senator CHRIS EVANS—Is there an AFP ongoing engagement with that case?

Senator Johnston—I do not believe so.

Mr Keelty—No.

Senator CHRIS EVANS—What was the other instance you referred to?

Mr Drennan—I would have to check, but there was another matter in relation to Victoria, which was a referral to the AFP, and that is an ongoing investigation.

Senator CHRIS EVANS—What did that involve?

Mr Drennan—That involved allegations of a range of equipment—ammunitions.

Senator CHRIS EVANS—That had been stolen.

Mr Drennan—That is correct.

Senator CHRIS EVANS—Sorry, is this a location or a reported theft?

Mr Drennan—It is an allegation of theft.

Senator CHRIS EVANS—From which base?

Mr Drennan—It was in relation to Puckapunyal Army base.

Senator CHRIS EVANS—So is this another Puckapunyal incident?

Mr Drennan—This is a matter which relates to January 2007.

Senator CHRIS EVANS—This is the one we discussed last time. I am sorry, I am getting confused. I asked two questions and I suppose I should only ask one. I am interested in an update on the three cases that Mr Keelty referred me to last time, and subsequently I will ask you about whether you have had anything since then. I think, because I asked the two questions together, we are going at cross-purposes.

Mr Keelty—In answer to the second question first: since I last spoke to you, we have not had further referrals that I am aware of in terms of ADF missing weapons. But, since I spoke to you, there is now a matter before the court in relation to one of the matters that I spoke to you about—a person is alleged to have been involved in the theft or on-supply of between eight and 10 rocket launchers, which I think I may have referred to in the last hearings. He has been charged with a total of 21 offences and there has been nothing more to add on the other two matters that I had raised previously.

Senator CHRIS EVANS—I am getting a bit confused. Are these the M72s or the 66 millimetre, or are they the same thing?

Mr Keelty—These are the light anti-armour weapons. I only recall referring to them as light anti-armour weapons or rocket launchers.

Senator Johnston—They are also referred to as M72s.

Senator CHRIS EVANS—Yes.

Senator LUDWIG—They are 66-millimetre rocket launchers, I take it.

Senator Johnston—Yes. I think that is right.

Senator CHRIS EVANS—So that is the one that is proceeding in the court and there has been press coverage of the court case. Are your investigations closed? They have not all been recovered though, have they?

Mr Keelty—No. They have not all been recovered and our investigation is continuing.

Senator CHRIS EVANS—So there are AFP investigations, not just the NSW police.

Mr Keelty—It is a joint investigation with the NSW police and with Defence.

Senator CHRIS EVANS—I gather that you have only recovered one of the rocket launchers.

Mr Keelty—That is correct.

Senator CHRIS EVANS—So part of the ongoing investigation is trying to track down the others?

Mr Keelty—That is right.

Senator CHRIS EVANS—The second one was the theft of munitions and weapons from Puckapunyal.

Mr Keelty—I think the acting deputy just referred to that.

Senator CHRIS EVANS—Yes. It was referred to you on 25 January 2007.

Mr Keelty—That is correct.

Senator CHRIS EVANS—Have there been any charges laid in relation to that matter?

Mr Keelty—Not yet. It is an ongoing investigation.

Senator CHRIS EVANS—Is that expected to conclude soon?

Mr Drennan—No. There is still a significant amount of work to be done there.

Senator CHRIS EVANS—Have those munitions and weapons been recovered?

Mr Drennan—There were, as I recall, some recovered during search warrants. However, the allegations are of a broad nature and it is unclear whether there would be some still outstanding.

Senator CHRIS EVANS—I am not clear what you mean. Do we know what was stolen, or do we just know that there are allegations that munitions were stolen?

Mr Drennan—There are allegations of munitions and equipment—without being specific to a particular list of equipment.

Senator CHRIS EVANS—So Defence has not been able to identify whether or not any of their weapons and munitions have been stolen?

Mr Drennan—No, it is the allegations in relation to the source of the information that says that equipment has been stolen. Part of the investigation would be to quantify what has or has not been.

Senator CHRIS EVANS—That was in January, though. Do we know, for a fact, that munitions and weapons were stolen from Puckapunyal? I am not asking in terms of your investigation whether you have found the culprit or charged them. Do we know as a fact that there were munitions and weapons stolen, or is that still in dispute?

Mr Drennan—That is still part of the ongoing investigation.

Senator CHRIS EVANS—So you do not know whether weapons and munitions were stolen.

Mr Drennan—The allegation is that they were, and part of the investigation will be to establish that.

Senator CHRIS EVANS—So Defence has not been able to verify for you that they have lost any.

Mr Drennan—We are working with Defence to assist in establishing the allegation and the quantum of what may have been stolen or may not have been.

Senator CHRIS EVANS—They are not confident that they can tell you whether they are missing munitions and weapons or not?

Mr Drennan—I would have to talk to the actual investigators to provide the details on that.

Senator CHRIS EVANS—I will ask Defence as well—

Senator Johnston—I am sure you will.

Senator CHRIS EVANS—It does not seem to be a particularly hard question. Do we know that we are looking for something that has gone missing, or we are not sure whether something has gone missing?

Senator Johnston—I think it is clear that the officer at the table is not across the actual details of how the investigation is progressing and cannot answer your question. I am sure he is happy to take it on notice and come back to you.

Senator CHRIS EVANS—I generally accept that, Minister. AFP have launched an investigation as a result of a referral in January this year. I would have thought that, by now, we would be able to at least work out whether we have a problem—whether or not anything has been stolen

Senator Johnston—It depends on the circumstances.

Senator PAYNE—In my experience, it is not within the subject matter of this committee to discuss ongoing investigations with senior officials of the Australian Federal Police anyway.

CHAIR—Thank you, Senator Payne. That is a point that is well noted.

Senator CHRIS EVANS—Actually I am following up on the discussion we had about this very matter at the last hearing. I am not trying to get details of the investigation, who is charged or any of that sort of stuff.

Senator PAYNE—You could have fooled me.

Senator CHRIS EVANS—I am just trying to ascertain whether there has been or has not been a theft of arms and munitions from Puckapunyal.

Senator PAYNE—Senator, it does make it difficult for the officers to answer questions like that when an investigation is underway.

CHAIR—Indeed—

Senator CHRIS EVANS—That was not the defence the officer used. He said he just did not know.

CHAIR—Senator, the AFP have advised that they will take that last question on notice, and we appreciate that. Are there any further questions? We have five minutes to conclude before lunch.

Senator CHRIS EVANS—I was going to ask about the third investigation, which is the theft of security Defence equipment which was referred to the AFP on 7 August 2006. Has that inquiry been completed?

Mr Drennan—Yes. I am advised that the investigation exhausted all avenues of inquiry and was unable to identify offenders or to locate the stolen defence equipment. The matter is

in the process of being finalised, and ADF have been advised of the outcome of that investigation.

Senator CHRIS EVANS—Are we clear what was stolen on that occasion?

Mr Drennan—Senator, I have said that the investigation was unable to identify the offenders or locate stolen equipment. I am not provided with the details as to whether it was established what was actually stolen or not. I can certainly provide them.

CHAIR—Do you want to take that on notice, Mr Drennan?

Mr Drennan—Yes.

Senator CHRIS EVANS—I would appreciate it if you could just clarify whether we have got investigations into allegations. This is an issue of public safety and it is of great concern. Are we missing Defence arms and ammunition or aren't we? I leave the investigation to you in terms of the search and prosecution. I am just trying to ascertain whether we have actually worked out whether we have got people wandering around with rocket launchers or we have not.

CHAIR—Senator, I am sure you can ask Defence that question.

Senator CHRIS EVANS—Yes, but I just want to be careful they do not refer me back to the AFP, who are handling the investigation—which has been known to occur.

Mr Keelty—In the interests of time, obviously what we have not got here is the detail of the investigation. I apologise for that. If you would allow us to take it on notice, we will try to provide some further detail in relation to what is alleged to have been stolen, whether the allegation has been proven to the point where the items are missing from Defence—whether that can or cannot be established in each of these cases.

Senator CHRIS EVANS—Thank you for that. We discussed last time the Defence audit of security policies and practices. You indicated you were not engaged in the first stage of that audit, and you explained why. Have you now been requested to be engaged in looking at any discrepancies found from the audit?

Mr Keelty—No, but what has been progressed since we last spoke is that I have met with the Chief of the Defence Force, and I have provided to the new provost marshal the services of a former deputy commissioner of the AFP to work with the provost marshal in respect of the internal investigations, which will include the materials referred across from the audit. Whilst we in the AFP have not been continuing to work on it as an AFP organisation, we are working in concert with Defence by the provision of a former deputy commissioner.

Senator CHRIS EVANS—But the deputy commissioner is no longer a serving officer of the AFP?

Mr Keelty—He is not, but we are in daily contact with him and we are supporting him.

Senator CHRIS EVANS—Sure. He is obviously using his skills and experience; but are you paying for that, or has he been seconded to the provost marshal?

Mr Keelty—He has been seconded to the provost marshal, and Defence are paying for that. What we are trying to use him for is a more appropriate use of AFP resources if and when required.

Senator CHRIS EVANS—You mean when Defence need them how they ought to be employed.

Mr Keelty—Exactly.

Senator CHRIS EVANS—Thank you.

Senator LUDWIG—In the couple of minutes we have got left, I want to go back to Senator Nettle's questions in respect of Mr Hicks. We will talk more generally about control orders—not specifically with Mr Hicks, but we might end up at that point. In terms of the control orders more broadly, is there a manual that you use to determine the criteria that you would use to implement a control order on someone and the process that you would then go through? We could use Mr Hicks as an example, but more broadly I am asking about the process.

Mr Keelty—There is a policy in place for control orders, and we apply that policy if and when required.

Senator LUDWIG—In terms of whether control orders will be used or not, is it a matter that the AFP decide when and if they will be used?

Mr Keelty—Not in strict terms. We may decide to apply for a control order, but it will obviously be up to both the Attorney-General and a federal magistrate as to whether the application has merit. But there will be a variety of circumstances where we may consider a control order and that is largely dealt with in the legislation and the policy.

Senator LUDWIG—The triggers for the control orders are dealt with in the legislation. What policy issues would trigger the requirement for a control order to be utilised?

Mr Keelty—I just want to be careful here because there are live matters that are very public and I do not want to prejudice those matters.

Senator LUDWIG—All right. I will put the question in reverse: what can you say about control orders and Mr Hicks?

Senator Johnston—Nothing. It is an operational matter so we would not be telegraphing any punches, if there were any to telegraph.

Senator LUDWIG—I accept that, but I still need to ask the question to ensure where we are at. Are you able to say whether there has been a commencement of the procedures to look at control orders for Mr Hicks?

Mr Keelty—I am not able to say.

Senator CHRIS EVANS—I have some questions about APEC security, which I am told I should ask under 2.5. Is the AFP engaged in that?

Mr Cornall—No, I do not think so. The New South Wales police are the principal authority for the delivery of security in accordance with the arrangements with the APEC taskforce. Unless Commissioner Keelty thinks that there is an area that might come up, I think we can deal with them in 2.5.

Mr Keelty—Yes.

Proceedings suspended from 12.33 pm to 1.36 pm

CHAIR—We are still with the Australian Federal Police. Senator Ludwig has some further questions.

Senator LUDWIG—As I understand it the Australian Federal Police have a role in classification law and copyright law. There are now a range of criminal offences that have been provided for. Do you have a separate unit that looks at those issues?

Mr Keelty—No, we do not. It is done along with the other general work that is referred to the AFP as part of the intellectual property crime.

Senator LUDWIG—In relation to the distribution of offensive material by post, have any prosecutions been made or are there any underway in the last, say, five years?

Senator Johnston—Do you mean drugs or—

Senator LUDWIG—No, offensive material by post.

Mr Keelty—Is it in relation to copyright or in relation to offensive material in the post?

Senator LUDWIG—It could go to whatever the definition of offensive material is in the Criminal Code, but that could include classification law issues, child pornography—a range of offences. I have got a private member's bill in the Senate. It is not appropriate to go to that in this committee; I mention that so that we do not particularly go to the private member's bill, but I am certainly entitled to ask about the issue.

Mr Keelty—Not that I am aware of. There are a number of referrals that we have got on intellectual property but not of the type that you have just described.

Senator LUDWIG—With respect to the offence itself, are you familiar with the penalty that is available for transmission by post of offensive material?

Mr Keelty—I am personally not aware.

Senator LUDWIG—My understanding is there a penalty of two years, regardless of whether it is child pornography material or other offensive material. But I am happy to be corrected on my understanding.

Senator Johnston—We will take that on notice.

Senator LUDWIG—So there are no current referrals in respect of these issues—offensive material by post?

Mr Keelty—No, Senator.

Senator LUDWIG—I have got correspondence that has been sent to Eros from Senator Coonan and Clare Martin and correspondence to Paul Burke, Director of Australia Post, relating to the misuse of postboxes in the Northern Territory—I want to deal with this in a sensible way—by distributing films which allegedly include a range of offences such as child pornography and rape and other films refused classification. On the one hand it is legitimate X-rated material that has been produced in breach of copyright. So there are a range of issues associated with it in the context of the Northern Territory and a post office box. I am happy to make available to you the letter from Senator Coonan.

CHAIR—You will table that?

Senator LUDWIG—Yes, if I may. The date on that letter from Senator Coonan is obscure—I assume it is February 2007, but I stand to be corrected. Towards the bottom of the letter, it says:

I have also written to Senator the Hon Chris Ellison,—
so it may have been 2006—

Minister for Justice and Customs, who has portfolio responsibility for the Australian Federal Police, to ask that he similarly request the Commissioner of the Australian Federal Police to investigate the allegations as a matter of priority in relation to possible breaches of the Commonwealth *Criminal Code*.

Has that referral been made?

Senator Johnston—I am not certain, but I have seen something in the last month or so with respect to this, and it may well have been a response to your private member's bill. I am sure that I have seen a response from Australia Post as to this topic. Now, where it is at, I am not sure, and I need to take that on notice and come back to you. But bear in mind that, if the minister has sent it to my predecessor and it is in my office or it has been through my office, I will track it down and follow it up.

Senator LUDWIG—All right, but the Australian Federal Police have not received an advice from the minister's office to investigate the allegations that are contained?

Mr Keelty—Not that I am aware of, no.

Senator LUDWIG—The allegations of course relate to the misuse of post office boxes in the Northern Territory. It talks about vendors of 'adult' material allegedly distributing illegal products, including child sex abuse material and unclassified videos and DVDs through the use of postboxes.

Senator Johnston—Yes, and I am thinking that my predecessor may have forwarded it on to Northern Territory Police. You understand the complication and confusion that may well have caused for all of us here. I will follow it up to see what has exactly transpired; I will talk to Senator Ellison and find out what has happened.

Senator LUDWIG—Perhaps I will provide another one, because it is one from the chief minister and—

Senator Johnston—And she says that we have got it?

Senator LUDWIG—Yes.

Senator Johnston—So we did send it to her, obviously; we have obviously contacted her.

Senator LUDWIG—That letter goes to the extent of—

Senator Johnston—What is the date of that letter?

Senator LUDWIG—It is dated 13 August 2006.

Senator Johnston—It is all pretty old.

Senator LUDWIG—It is not that old.

Senator Johnston—No, but it should have come to the service by now.

Senator LUDWIG—I would have expected so. This letter from the Chief Minister of the Northern Territory says:

Thank you for your correspondence of 30 May 2006 concerning the supply of illegal (unclassified) pornography to Aboriginal communities in the Northern Territory.

The Minister for Police has relayed to me advice he has received from the Commissioner of Police, Mr Paul White, regarding the matters raised in your correspondence.

The Police Commissioner has advised that this matter has been investigated and action taken to prosecute individuals or companies in breach of the Northern Territory *Classification Of Publications, Films and Computer Games Act 2005*.

I am advised that offences are subject to ongoing investigation by Northern Territory Police with a number of individuals facing prosecution.

In respect to the use of mailboxes, the Police advice is that when evidence is adduced that indicates use for sale of pornographic material, action is taken under *Schedule 14* of the *Commonwealth Postal Act* to terminate use of such post office boxes.

The letter then says that, with respect to the allegations raised, ‘the NT police have advised that the primary responsibility for the investigation of pirated materials rests with the Australian Federal Police’. I am not going to offer a legal opinion, but my understanding is that this letter seems to have been sent to you, Minister, for action.

Senator Johnston—Just give me a minute to read this letter so that I can understand exactly what it says. What I think has happened here is that we have referred the original inquiry from Senator Coonan to the Northern Territory police or have been advised of the fact that they have been investigating the matter.

Senator LUDWIG—Before you go any further, it appears that it has originated from—and this why I wanted to take you through it—what you know, what is in your office and what has been referred to the Australian Federal Police.

Senator Johnston—I do not know very much, I have to confess.

Senator LUDWIG—I was hopeful we might have had a trail and an investigation in place, but that does not seem to be the case. It appears that a letter was written to Paul Burke, the manager of the board of directors of Australia Post, on 1 May 2006 about the breach of Australia Post rules and regulations in the Northern Territory. It is about classification enforcement but it would also be in relation to any offensive material that may have been transmitted by post as well. That was from Robbie Swan, the public officer of the EROS Association. I can provide a copy of that as well. That seems to have gone to Australia Post at that time.

Senator Johnston—This letter that you have given me from the Chief Minister says that she is ‘advised that offences are subject to an ongoing investigation by Northern Territory Police with a number of individuals facing prosecution’.

Senator LUDWIG—Yes, but there are a number of elements. The element I am asking you about is your responsibility federally for Australia Post—Commonwealth offences, copyright and child pornography being transmitted by post.

Senator Johnston—Postboxes are very difficult.

Mr Cornall—I have been advised by the AFP officer that this matter was brought to the attention of the department in February. I am not personally aware of it, but we are trying to ascertain who it was for and for what purpose. When I know the answer to that, I will advise you.

Senator LUDWIG—I will not make a comment about it, but it has reportedly been referred to your office. I am trying to establish when it was referred to your office and what action has been taken.

Senator Johnston—I will take that on notice. It is very difficult to ascertain how a post office box is being used without offending some privacy rules and regulations and in fact opening mail that is in non-transparent packaging. So I suspect that that is one of the aspects of why the Attorney-General's Department has got it. We will follow it up and come back to you on the administration of postboxes, particularly relating to the Northern Territory, with respect to offensive material.

Senator LUDWIG—It is broader than that. It relates to when it got to your office, what action was taken by your office and why it was not referred to the Australian Federal Police for them to investigate, when clearly it seems that elements of the offences could be considered to be federal offences—certainly identified as associated with a post office box and associated with transmission by mail of offensive material. For what reason was it determined that it should not go to the Australian Federal Police, if in fact a decision was made, and why was that decision made? These are serious matters, as you can appreciate. They have been ongoing and it looks like they have been batted about between the Australia Post and the Commonwealth and the Northern Territory trying to get to the Australian Federal Police. The Australian Federal Police indicate that they have not received the matter.

Senator Johnston—The Northern Territory version of the Australian Federal Police have pursued it, according to the Chief Minister, and people are facing prosecution. That may have coloured the conduct that has flowed therefrom, but I take your point and we will come back to you on it.

Senator LUDWIG—So you have got the Chief Minister's letter, Senator Coonan's letter and Paul Burke's letter?

Senator Johnston—Yes.

Senator LUDWIG—There is another broader matter that has been in the media, to do with Sheik Feiz's terror DVD that was given a PG rating. The specific offence, or one of the offences that could be attracted by this, is in section 80.2(5) of the Criminal Code, to do with when a person:

... urges a group or groups (whether distinguished by race, religion, nationality, national origin or political opinion) to use force or violence against another group or other groups (as so distinguished) ...

I was wondering if the matter of the DVD was investigated by the Australian Federal Police. Is there an ongoing investigation or has an investigation been concluded? If so, what specific charges or offences were looked at in respect of that?

Senator Johnston—What is the name of the sheik?

Senator LUDWIG—Sheik Feiz. I do not like to use the colloquial phrase, but it was the terror DVDs that were in the media; I think they were referred to as ‘martyr films’ in some newspaper reports—in the *Sydney Morning Herald*, I believe.

Mr Keelty—I can advise that you the matter was referred to the Commonwealth DPP, who subsequently advised us that no offence was made out to support a charge of sedition under the relevant legislation and that the matter has been now referred to the Office of Film and Literature Classification.

Senator LUDWIG—Are you able to say what the view of the Commonwealth Director of Public Prosecutions was as to why it did not meet the elements of the offence? The reports say that it calls for Muslims to murder non-Islamic people. I am just wondering why that would not fall under the banner of urging violence within the community.

Mr Keelty—I do not have a copy of the Commonwealth DPP’s advice with me, but in the advice I have received it states that the DVDs made by the individual were examined in the context of the old sedition laws because of when the acts were allegedly committed. The Commonwealth Director of Public Prosecutions formed the view that there was insufficient evidence to support an offence under the old legislation.

Senator LUDWIG—So that was not tested against the new section?

Mr Keelty—No. I do not have the DPP’s advice in front of me, but I presume it was because of the date of the creation of the DVD.

Senator LUDWIG—The current disciplinary regime of the Australian Federal Police has now been in operation for a little while. As I understand it, there are categories one, two, three and four, and we now have ACLEI on board. I try to avoid using acronyms, but I have for the integrity commission. Are you able to say how categories one to four are being utilised—whether they are category one, category two, category three and category four and whether there have been any referrals to ACLEI?

Mr Negus—Yes, there have been a range of issues which fall into those specific categories. There have been a number of matters referred to ACLEI, and at least some of those have been referred back to the AFP for investigation. Some are still under consideration.

Senator LUDWIG—Are you able to say which ones have been referred to ACLEI or what the nature of them are?

Mr Negus—We are obliged under the legislation to refer any issues which may allege corruption by an AFP officer to ACLEI in the first instance, and those matters have been referred. As I said, I am not at liberty to say how many of them there are or what the content of them might be, but they are current investigations.

Senator LUDWIG—There is not much more I can explore then, by the sound of that.

Mr Negus—No, I think it is fair to say that, other than that I might add that the system is working well. It is designed to push responsibility for integrity across the whole organisation and back into the management field of the organisation rather than have a pecuniary or an overbearing approach being taken. So it is designed to put that responsibility back on to management.

Senator LUDWIG—Can you say how many have been finalised?

Mr Negus—I do not have that material with me.

Senator LUDWIG—Will there ultimately be a report provided about the number of matters that are referred, the number of matters that are finalised or the nature of them?

Senator Johnston—I am just exploring that with the secretary. ACLEI is to report, and we are just anticipating how far the report will go in satisfying your requirements. Mr Cornall may wish to make a comment on that.

Mr Cornall—I have not thought that far ahead yet, but I imagine the sorts of details that are provided by the Ombudsman or the Inspector-General of Intelligence and Security would give you an indication of the sort of information that one would expect. Professor McMillan will be here shortly, so he could confirm that.

Senator LUDWIG—I was going to wait and ask Professor McMillan about a couple of those matters as well, but I thought I should at least offer the Australian Federal Police the opportunity to say what they can first. That also gives me an idea of what Professor McMillan is likely to say. Are you able to say where the matter in Queensland—which I will refer to it colloquially as ‘the Laming matter’—is at?

Mr Keelty—The matters are still under investigation, and it would be inappropriate to go into any further detail other than to say that we are obviously giving the matter some priority.

Senator LUDWIG—I will be careful how I ask this: are there any related proceedings or referrals that are from that, in respect of ACLEI or any other integrity body?

CHAIR—I just express a caution in regard to the wording of such a question and I am sure Mr Keelty will take that on board in any response that he might provide.

Senator LUDWIG—I asked more broadly about Laming, but there is also Vasta and others. I assume the response covers those matters?

Senator Johnston—I think we have taken it to include the three members concerned.

Senator LUDWIG—If a nonresponse is the answer, then be that as it may.

Mr Keelty—I think it is premature to provide an answer because material is being gathered. On that material that may not be of relevance to the AFP, a decision will be made as to whether it is relevant to any other entity. There has been some correspondence between us and ACLEI, not so much in respect of—I correct myself: there has been a matter that has been raised with me by the acting commissioner for ACLEI, and I have referred that matter back to the acting commissioner for discussion about definition. But that is a peripheral issue.

Senator LUDWIG—In terms of the three matters in Queensland, are any of them concluded—am I able to ask that? In terms of the matters of Laming, Vasta and I think one other, are any of them concluded, or are they all part and parcel of the same?

Mr Keelty—None of the matters have been concluded yet.

Senator LUDWIG—That includes Laming, Vasta and Hardgrave?

Mr Keelty—Yes, that is correct.

Senator LUDWIG—I might ask the ACLEI commissioner then; it might be easier to go that way. Can we try another easy one? Let us go back to the control orders. This might even be for you, Mr Cornall, rather than the AFP. I am just trying to understand how the interaction between the South Australian prison system and Mr Hicks, as a federal prisoner, actually operates. Can you provide detail about that? In terms of his day-to-day wellbeing and all of those matters, are they dealt with by the South Australian prison system?

Mr Cornall—Yes, they are.

Senator LUDWIG—What about issues such as the sentence, or how that is then carried out—is that a matter for South Australia?

Mr Cornall—No, it is a Commonwealth matter. In terms of the length of the sentence and so forth, that is a Commonwealth matter.

Senator LUDWIG—How does that operate? Does the Commonwealth provide an authority to South Australia? If there is remission, suspension or any of those matters that are considered in the ordinary prison system in South Australia, are those matters raised with you or with the federal government through the South Australian prison system?

Mr Cornall—It is a level of detail I do not have at my finger tips. Dr Heriot and Mr Harris will be here later today, and I am sure they will be able to answer those questions accurately and in more detail for you.

Senator LUDWIG—That will be in 2.5.

Mr Cornall—In outcome 2, yes.

CHAIR—I wondered if you wanted to have a break in your questioning to allow Senator Heffernan to ask some questions.

Senator LUDWIG—Yes.

Senator HEFFERNAN—Thank you very much for your generosity, Senator Ludwig. Thank you, Mr Keelty, and congratulations once again on all the great work the AFP is doing. Hopefully, you are winning the battle. On the question of interstate drug trading versus international drug trading, does the AFP have an interest in the interstate drug trade?

Mr Keelty—We do. We quite frequently work hand in hand with state and territory police on the intrastate trafficking of narcotics. The ultimate destination of a lot of the narcotics that are imported to Australia is beyond the port and the state jurisdiction where it enters Australia.

Senator HEFFERNAN—I learnt a long time ago that in public life the more you take an interest and the more you know, the worse you feel about what you know. But since we were last here I have had an opportunity to speak to the father of a newly graduated policeman in the New South Wales Police Service who was stationed at a police station in southern New South Wales. I said to the father, who is a mate of mine, ‘Has he been offered his first bribe yet?’ and he went on to tell me the story I am about to tell you. This young bloke had been on the job for only two weeks. He and his mate in the highway patrol were asked to pull up a car on the Hume Highway on suspicion of drugs, and they did. Two gentlemen immediately got out of the car and said, ‘What’s this all about?’ and they said, ‘We want to inspect your car.’ The gentlemen said: ‘Before you inspect the car, see those two briefcases? There’s \$300,000

in each briefcase. If you'd just take the briefcases and let us go, we'd be very grateful.' I said to the father, 'What did they do?' He said, 'They searched the car, because they were frightened that it might have been a set-up.' My congratulations to the AFP, because you confront this every day.

In recent days in Adelaide—and I guess this is a matter for the coroner—there was the death of a prominent QC whom the people in Adelaide had been put on notice about a couple of years ago. If that senior legal figure had trafficked from Victoria to Adelaide whatever the substance was that ended up killing him, would that be of interest to the AFP?

Mr Keelty—I am not familiar with the detail of the case.

Senator HEFFERNAN—You are familiar with the fact that he has, sadly, passed away in the last little while?

Mr Keelty—Yes. The interest the AFP have in a case like that would be dependent on a request by the state police for us to be involved, because at the outset it is a jurisdictional matter for the South Australian police and the South Australian coroner.

Senator HEFFERNAN—There was some controversial comment by Mr Peter Farris in Victoria. He said drug taking among senior legal people is not uncommon. That raises the question of whether it would be appropriate or inappropriate to have random drug testing in areas of responsibility in the community such as police, parliamentarians and senior legal figures. Do you have a view on that?

Mr Keelty—I do not have a view on Mr Farris's comment, but the AFP has for many years had random drug testing in the workplace. Three years ago we set ourselves a target figure that 100 per cent of the workforce would be drug tested over a 12-month period. We have not quite reached that target each year, largely because of the resource commitment that requires, but certainly it is well known within the workplace that we try to drug test everybody, including me, at least once a year and that some areas that we identify proactively as high-risk areas can be drug tested on a number of occasions throughout the year.

Senator HEFFERNAN—I am leading to the point that it seems to me that, generally with the passage of time, it is a forgivable mistake to be a drug taker in a lot of sectors. I hear from all sources that a lot of people take cocaine, but I am not too sure. I know what I think but I am a bit 'out there' on this stuff. Do you think, given that it is good enough for the police to be subjected to random drug testing, that other areas of responsible decision-making people in the community ought to be subject to the same regime, including politicians?

CHAIR—Senator, I advise you that questions to departmental officials are related to operational type matters rather than policy, and matters of policy are for the minister.

Senator HEFFERNAN—Thank you, Mr Chairman. I take your advice very carefully. It seems to me that what is good for the goose ought to be good for the gander. About 18 months ago—the November before last—I sent you some documents and I simply said, 'Could you please authenticate these documents,' and we have had a few discussions about that in this place since. In recent days there has been a fair bit of publicity given to a case in Sydney of a senior counsel, Patrick Power, who after six months has decided that he had better plead guilty, which he did, to possessing child pornography, including things like a 23-minute video.

I will not give you the title because it is too disgraceful but it included what was going on with a seven-year-old Thai boy. That would indicate to me that Mr Patrick Power would have got that from a foreign source. Are we losing the battle with the importation of child pornography? While you are thinking about that, I will say that I am completely and utterly disgusted that Ian Barker QC, as a prominent legal person, would stand up and say that the community owed Mr Power a debt of gratitude and that his crime was a victimless crime. I am wondering whether, like the drug stuff, this is being gradually eroded as pointed to in an article in the paper on 29 April by Miranda Devine.

CHAIR—Senator, you have asked Mr Keelty a number of questions—if you would give him the opportunity to respond.

Mr Keelty—Since the commencement of the AFP's operations for the on-line child sex exploitation work, since 1 January 2005 we have received in excess of 810 referrals from a range of sources. The AFP have also disseminated in excess of 700 what we call 'person of interest' packages to state and territory police and to date 47 'person of interest' packages were also referred to international policing agencies for their attention. In the AFP since the commencement of our operations in what really is a two-year period, we have charged 53 people with 158 offences relating to on-line child sex exploitation. A further 26 individuals are currently the subject of investigation for offences in this regard, and eight persons charged under the new legislation have been sentenced. We do have details of some of the people charged. So in relation to the first part of your question—whether we are losing the battle—we have actually made quite a few in-roads in the two years that we have had the team in place.

Senator HEFFERNAN—My sincere congratulations on that work, Mr Keelty.

Mr Keelty—That work will obviously continue.

Senator HEFFERNAN—What I am worried about is that, from the highest of quarters, seeds are being sown in our community that it is not such a big deal to have electronic access to pornography—that in some way, as Mr Barker would try to argue, is a victimless crime; despite the fact that every time you download the damned stuff you would be funding someone somewhere around the globe to get another set of kids and pillage them to make money. I would point out that the documents that you received a couple of Novembers ago, which I asked you to verify, included a letter signed by Garry Crooke QC dated 25 August 1997. This file was noted by the Child Protection Enforcement Agency in New South Wales. It is notated for dissemination. It was disseminated to the New South Wales Police Service pursuant to section 30(4)(c) of the Royal Commission (Police Service) Act 1994. These are lists of alleged participants in, shall I say, underaged activity. The list includes, and it is notated—

CHAIR—Order! Senator, I draw your attention to the matter of privacy.

Senator HEFFERNAN—I am not naming anyone. There is a designated code, a key code. It troubles me greatly that we cannot get verification of that document. I am not going to argue about the reasons why we cannot. The only reason I am revisiting this today—and I have been very patient and will continue to be very patient in expressing this view—is that judicial legitimacy in Australia will not be firmly established until we establish a federal

judicial commission. That document includes the names of 19 judicial and legal figures, including four judges and three QCs. Sadly for the community, three of the names that appear on that list appear on the list of referees for Mr Patrick Power. I think that is a sad indictment of what is going on in the community. For many years I have said that there is a serious compromise at work in our legal and judicial circles and the quicker we get beyond denial on this, the better. So my question to you, Mr Keelty, is: could you please have another crack at authenticating these documents for me?

Mr Keelty—You will be aware from correspondence sent to you by the former minister that we have evaluated the material you provided to us.

Senator HEFFERNAN—I congratulate you for doing that.

Mr Keelty—A number of inquiries were initiated overseas. The difficulty we have is that none of those inquiries supported the allegations that were contained in the documents. So we cannot take the matter any further.

Senator HEFFERNAN—Mr Keelty, with great respect, you could only inquire into the overseas aspects of those documents, which was a very small part of those documents.

Mr Keelty—That is correct. That is the beginning and the end of the AFP role. In the absence of any further evidence or information—

Senator HEFFERNAN—I understand.

CHAIR—Senator, just allow Mr Keelty to conclude his answer, please.

Mr Keelty—In the absence of any further evidence or information we cannot take that matter any further.

Senator HEFFERNAN—Would one of the reasons why you cannot—which is quite common in this field—be that the reliability, the stability and the function of the witnesses is often unreliable, dysfunctional and probably influenced by illegal drug use et cetera. In other words, they make bad witnesses.

Mr Keelty—That is partly to do with it. We have not got witnesses to corroborate the allegations, and there are a variety of reasons as to why that is the case.

Senator HEFFERNAN—Thank you very much. In closing—and I thank you for your generosity, Mr Chairman—I think that we are ever so surely losing the importance of the seriousness of these sorts of crimes.

CHAIR—Senator, if that is not a question, I will rule it out of order. Mr Cornall, did you have a comment?

Mr Cornall—I should put on the record that in respect of the Queen's Counsel who died recently in Adelaide, there was no suggestion in any of the reports that I have read that he was trafficking drugs. Indeed, a young woman has been charged with administering a drug of dependence to him. The second thing is that, in relation to suggestions of drug use at the Victorian bar, that suggestion has been denied by the chairman of the Bar Council quite vigorously. When I last looked, the Victorian bar had between 1,200 and 1,300 members. As a consequence, I do not think you can say a known case of drug use by one or two or three people constitutes widespread drug use out of 1,300 people.

Senator HEFFERNAN—But they would say that, wouldn't they.

CHAIR—Are there any other questions?

Senator LUDWIG—I am looking at the range of what I guess you would call suspected or alleged leaks from the various agencies or federal government departments. I am not going to go into any detail, so we can relax about that. How many currently being investigated by the Australian Federal Police have been referred from Commonwealth agencies, Commonwealth departments or ministers?

Mr Keelty—The AFP groups these types of offences under the heading of 'corruption investigations', so it includes unauthorised disclosures and also foreign bribery. The AFP has received 19 new referrals in the financial year 2006-07 relating to corruption, and 14 of these relate to unauthorised disclosure.

Senator LUDWIG—Have they come from agencies or government departments or have they come from ministers' offices? In other words, where has the allegation emanated from?

Mr Keelty—The normal route for these referrals, even though they come from separate agencies, is to come through the minister's office. That appears to be the case for all of those I have just mentioned.

Senator LUDWIG—Are you able to say whether any of them relate to ministers' offices themselves—in other words they relate effectively to a complaint by a minister rather than a complaint raised within a department or agency?

Mr Keelty—All of them appear to have come from agencies.

Senator LUDWIG—Once they are referred through the minister's office, how is the task allocated? Is there a task force—a fly-in gang—or does it fall into the general area to be investigated by the AFP?

Mr Keelty—They are assessed using the model—

Senator LUDWIG—The case categorisation and prioritisation model.

Mr Keelty—and then allocated to the various work areas where obviously the most efficient investigation would be conducted. That largely is where the evidence is going to be more likely to be available for us.

Senator LUDWIG—Are you able to say the number of officers that are assigned to these tasks once they have been prioritised and accepted as an investigation?

Mr Keelty—I cannot advise you on that today. Typically these investigations will start off with an assessment where only a small number of officers are involved, and it will reach a peak if there are warrants to be executed et cetera. More officers become involved, and then there is brief preparation. It might be that the size of the team reduces. If I could take that on notice, we might be able to average it out.

Senator LUDWIG—Yes, please. What I was trying to establish is the range of work that it involves, the scale of the work, the number of officers and the general cost.

Mr Keelty—Certainly we can give you the hours and the costs.

Senator LUDWIG—That would be helpful. And can you tell me how long they take, if there is an average or typical length.

Mr Keelty—We could give you an average duration as well.

Senator LUDWIG—In terms of the model, are you able to say how many are not proceeded with?

Mr Keelty—I do not have that figure in front of me.

Senator LUDWIG—I am happy for you to take that on notice.

Senator PARRY—Commissioner Keelty, earlier this morning you indicated that the New South Wales police department were not providing officers for the IDG. Is there an explanation or a reason for that?

Mr Keelty—The issue is caught up in a question of entitlements and allowances. It is to do with the compensation arrangements for New South Wales police as opposed what they would be entitled to under the Commonwealth regime. My recollection is that, under the New South Wales system—and I think this relates not only to the New South Wales police but to other New South Wales government employees—there is no limit to the provision of workers compensation, whereas I think in every other jurisdiction the Treasury rules cap the entitlements. So it has been caught up in that discussion since we started the IDG.

Senator PARRY—Another comment you made—and you have made this comment before—was that police jurisdictions are finding it difficult to recruit, or the pool of experienced officers is depleted. From an AFP perspective, is recruitment as high as it could be, or do you think you could have more recruitment?

Mr Keelty—In terms of the available positions in the AFP, we have actually got more people trying to come into the organisation than we have positions for. I think I mentioned the figure. The figure—Mr Negus will correct me if I am wrong—is that 3,000 people are trying to come into the organisation. On the figures for recruitment this year, we simply do not have that many positions. I think it is about 245 we are trying to recruit this year.

Senator PARRY—So the recruitment issue is with state jurisdictions—or the experienced pool is just not within the states. Would that be correct?

Mr Keelty—Sorry, Senator?

Senator PARRY—There is obviously a lack of experienced police officers to fill some vacancies. Is that within the states moving into the AFP through secondment, or is that an issue of states not having enough experienced police officers within their current ranks?

Mr Keelty—I think recruitment has become problematic for all of us. For example, two jurisdictions I know of have been recruiting directly out of the UK, and it is not uncommon now for jurisdictions to advertise internationally for police recruits. There are some programs in at least two jurisdictions to give that effect. It is just a skills shortage, which affects not only Australia but also organisations like the United Nations which simply cannot recruit experienced police to go on United Nations missions.

Senator PARRY—So there are plenty coming in who are inexperienced, ready for training; it is just a lack of experienced recruits?

Mr Keelty—Yes.

CHAIR—Senator Lightfoot has a couple more questions, I understand, before we move to ACLEI.

Senator LUDWIG—I only want to clarify something. There was a question that I had been pursuing in relation to Mr Habib, in relation to the broader issue of rendition. There was a matter that you were going to take on notice back in 2005. It occurred during the transcript, and we did not follow up on it particularly at the time. We thought we had got an answer but when we looked at the answer we found it did not really go to the issue, particularly. I think we then pursued it through the committee but ultimately we are back here and we can re-ask it.

We are aware now that it appears that there were instances of rendition by the US. In relation to Mr Habib and his time overseas, did the AFP receive any reports about Mr Habib, about the allegations or about the actions, from authorities—from any authorities really—that you are able to say?

Mr Keelty—I have just been advised that the answer that we provided when the question was first placed on notice, which you have just indicated did not satisfy—

Senator LUDWIG—I think it was No. 238, but I stand to be corrected on that.

Mr Keelty—I guess the long and the short of it is: rather than provide an answer now, I will take that on notice so that we can check the records.

Senator LUDWIG—All right. The answer did not seem to marry up with the question I originally asked—back in May 2005, I think it was, but I stand to be corrected. The issue really goes to this: at the time, in May, it is clear that we did not have as much knowledge of what was going on more broadly in the world, particularly with the US, as we do now. We now know a bit more, from various reports.

What I am trying to establish is whether the AFP had any knowledge—had received any intelligence, had been provided with any material—in relation to Mr Habib during that period that might have related to whether they were aware of allegations of rendition, if I can use that phrase, in relation to him and whether there was any material or information provided to the Australian Federal Police from other intelligence agencies, outside of Australia or within Australia—that is, Australian intelligence authorities—about Mr Habib's whereabouts, how he had got there and what he was doing. You may not be able to answer any of those more broadly because they might still be operational matters or they might fall within a classified area. In fact, I might have to ask ASIO that question, and they might provide the same answer. But I am just trying to understand the overall process.

Mr Keelty—Or it might be that we as an organisation simply do not know.

Senator LUDWIG—Yes.

Mr Keelty—If I could take that on notice, we will recheck the information we have. I also undertake to check the previous answer to the previous question.

Senator LUDWIG—Thank you. If you need any assistance, I think I have highlighted with the committee the particular area in the transcript. Just to wrap up on the Australian

Wheat Board, there was an ongoing investigation. Is that still ongoing or has it been concluded?

Mr Keelty—It is still ongoing.

Senator LUDWIG—I will reverse the question: what can you tell me about the ongoing investigation in terms of an update from where I last asked, where I think you indicated that there was an investigation under way?

Mr Keelty—The task force has been established. It comprises 10 AFP officers, nine officers from the Australian Securities and Investments Commission and two from Victoria Police. The Commonwealth DPP is supporting the office. The task force has completed its scoping phase and has moved into its initial investigation phase. A senior coordination group has been established, which is consistent with Commissioner Cole's recommendation. The task force is independent and will communicate to government through a senior coordination group chaired by the Secretary of the Attorney-General's Department. The senior coordination group includes AFP, ASIC, Victoria Police, the Commonwealth DPP, the Department of the Prime Minister and Cabinet and the Department of Finance and Administration.

Senator LUDWIG—And the chair?

Mr Cornall—Yes, Senator.

Senator LUDWIG—I thought it might have been you, Mr Cornall. What can you add to that? Have you met yet?

Mr Cornall—Yes, we have met on three occasions. We have had reports on progress from Mr Drennan, particularly on behalf of the AFP, but also from Damian Bugg, as the DPP, and from ASIC as well. Mr Lucy has been attending those meetings. Our role is to oversee the progress, not at an operational level but to make sure that the matter is proceeding expeditiously. If anything needs to be done that the task force cannot achieve we can do that for them and also report to ministers.

Senator LUDWIG—Do they also provide a request form if they require any additional resources or changes to legislation or matters such as those?

Mr Cornall—Those issues have not arisen. The resources that they have are adequate for the task, and money has been appropriated in the budget for that purpose. The issue of legislation has not arisen. I can advise Senator Ludwig that the suggestion that the correspondence about the post office box issue had been referred to the department was incorrect—it has not been referred to us.

Senator LUDWIG—You did not want to venture where it is.

CHAIR—I thank the Australian Federal Police. Those officers who are leaving us now, thank you for your feedback and advice.

[2.39 pm]

Australian Commission for Law Enforcement Integrity

CHAIR—We now move to the Australian Commission for Law Enforcement Integrity and I welcome Professor McMillan to the table.

Senator LUDWIG—Is filling the position a matter that you are now undertaking to do or is that a matter that you are undertaking, Mr Cornall?

Mr Cornall—It is a matter, really, for government, and it is under active consideration by the government at the present time.

Senator LUDWIG—That is a neat phrase. When will that be concluded, and when will the role be filled?

Mr Cornall—I anticipate that it will be concluded very shortly because Professor McMillan's current acting appointment ceases at the end of June. It is our hope to have the matter resolved before then but the process of having appointments finalised through government is obviously a matter for the minister's office or the Attorney's office. It is a matter outside our control.

Senator LUDWIG—So the intention is to have a full-time Australian commissioner for law enforcement integrity?

Mr Cornall—Yes, we have conducted processes to find an appropriate person. We have made recommendations to government and those recommendations are under consideration.

Senator LUDWIG—Has there been any consideration of expanding the range of agencies that are covered by ACLEI at the moment?

Mr Cornall—No, not at the present time.

Senator LUDWIG—In terms of your work, Professor McMillan, would you tell us, as far as you are able to, about the workload that you have currently got.

Prof. McMillan—The work has fallen into a couple of areas at the moment. Firstly, there has been quite a lot of work just in establishing the office, in acquiring premises and hiring staff. Some of that was done before we commenced on 30 December. We also had to introduce ourselves to the counterpart oversight agencies in the states, get a website and everything. Most of that work has been done.

For the other, operational, area, perhaps it is easiest if I give you a quick statistical snapshot of what has come into the office, where it has come from and how we have dealt with it. We have so far had 24 cases that raised corruption allegations generally. We classified six of those as general allegations or inquiries that did not warrant further action—for example, something that was out of jurisdiction or something that of its nature could not be investigated further. So those are six that we can put aside. There were 18 cases for which we opened a file for the purpose of assessing initially whether there was a matter that required investigation and then decided how and by whom it should be investigated. Of those 18 cases, seven were referred by the Australian Crime Commission. As the committee may know, there is a statutory duty upon the heads of law enforcement agencies to refer corruption allegations and to indicate whether they are significant. Five were referred by the Australian Federal Police. Two were referred by the Ombudsman and four were from members of the public. Those are the 18.

In terms of how they have been handled, four of those cases have so far been finalised without any adverse finding or recommendation for prosecution or whatever. Of the other 14 that are still under either assessment or investigation, with one of those I have proposed to the AFP that ACLEI or the Integrity Commissioner manage an investigation by the Australian

Federal Police. With another, from the Australian Crime Commission, we have proposed that we oversight an investigation already underway. With another case, ACLEI itself did a full investigation, which is nearing finalisation. The other 11 are at various stages of assessment and discussion. Some of those will be simply assessed by ACLEI, and my guess is we will notify the law enforcement agency that we intend to take no further action. With some of them, though, for example, we have been out and interviewed on record people who have made allegations to see what substance or evidence there may be.

That deals with how the 18 have been handled. In terms of the profile of them, seven have made allegations of corruption in the way that a police investigation or prosecution has been handled—for example, allegations of false testimony; four have raised allegations about wrongful disclosure by law enforcement officers; four have raised allegations of criminal behaviour by police—for example, engagement in drug trafficking; two have raised issues about whether there was corruption in internal employment practices; and one has raised issues about whether there was corruption in contracting practices. It sounds serious to say that we have had all these allegations of corruption but allegations are—

Senator LUDWIG—It has not been going long.

Prof. McMillan—commonplace and some of them were assessed and closed without the need for any investigation of any length. Some of them have been investigated to a point where all parties involved are satisfied that there was nothing that needed to be taken any further.

Senator LUDWIG—Now that you have been in the role for a short while, do you have an opinion or view as to whether or not ACLEI's role should include agencies other than the ACC and the AFP?

Prof. McMillan—Ultimately, that is an issue for government. As you would know, the jurisdiction of ACLEI can be extended to the law enforcement functions of other Australian government agencies by regulation under the act. It does not require amendment. Ultimately, it is now a decision for government at an executive level about whether that jurisdiction occurs. Equally, I have no inside knowledge about whether there is a corruption problem there that is not being addressed by an agency or by the Australian Federal Police—or indeed whether there is a corruption problem at all. I simply have no investigation experience.

I suppose there are a couple of things I would add to that. There would be advantages to ACLEI if it did have that jurisdiction. Firstly, it would mean that it can be a large agency and that makes it easier at a functional level to establish the premises, equipment and the like needed to exercise some of the functions conferred upon ACLEI, such as the power to undertake telephone interception, undercover operations and covert surveillance. Secondly, occasions will arise in which there is an issue or allegation of corruption that is made in respect of an operation that is a joint policing operation between dedicated law enforcement agencies and law enforcement officers in another Australian government agency. However, at the moment there is still some capacity within ACLEI, individually or in combination with other agencies—the Ombudsman or the law enforcement agencies—to manage a joint investigation.

Senator LUDWIG—Why I raise it is that agencies such as Customs can end up doing joint operations with the AFP and other agencies. They have had a significant rollout of weapons and other types of powers as well which are similar to if not the same as what the Australian Federal Police have. They work on things that can be raised with the ACLEI. That begs the question of whether or not in your role you have a duty to also advise on agencies that are coming to your attention through allegations of corruption. At the moment, ACLEI cannot investigate them. It is not clear whether or not you have a duty to then provide a report or advise government.

Prof. McMillan—There is at least a limited capacity within ACLEI at present to investigate the non-policing allegations about corruption in an agency that is in a joint operation. Firstly, if the officers of another Australian government agency have been seconded to the Australian Federal Police, say, for the purpose of an operation, then they are, within the terms of the Law Enforcement Integrity Commissioner Act, regarded as coming within the jurisdiction of ACLEI. Secondly, if we are investigating allegations of corruption against police and we have the options of managing an investigation, overlooking it or doing it ourselves, that does provide some degree of flexibility to penetrate the entirety of the allegation and how it has been handled by police. As I say, there is also a capacity within the act for the Integrity Commissioner to do a joint investigation—for example, with the Commonwealth Ombudsman, in which case the Commonwealth Ombudsman would have an unqualified jurisdiction. So there is some capacity, but I acknowledge that it would not be a seamless operation.

Senator LUDWIG—In your capacity as Acting Integrity Commissioner, do you have an opinion on whether it would be beneficial for an agency such as Customs to be included—

Prof. McMillan—I will not express an opinion, because I do not have the direct experience. There is a very large debate out there because there are so many models within Australia, from the Queensland example of a body that looks at not only corruption but misconduct in public officials and policing, down to the Victorian example, where it is simply corruption, criminal activity and policing—and ACLEI fits towards that end of the spectrum. There is a large debate out there about which is the preferable model for investigating. There are supporters and detractors for every model. I will desist from joining in the debate just here.

CHAIR—Thank you, Professor McMillan. I just want to indicate that questions of policy and opinion regarding government policy are a matter for government and the minister, if—

Senator LUDWIG—A statutory office holder can have an opinion.

CHAIR—Professor McMillan is entitled to respond as he sees fit, but questions of policy and the role are set out in the legislation, which is the Law Enforcement Integrity Commissioner Act 2006 and related regulations.

Senator LUDWIG—That is what we are talking about, in that, as I understand it, there is a role for the ACLEI to indicate how it is performing, what issues are there and whether there is any remedial action more broadly.

Prof. McMillan—Perhaps I can bring it all together by saying that I have just about exhausted my thoughts on that topic!

Senator LUDWIG—You have given me a number of those that have been investigated. How are you going to ultimately report that? Have you turned your mind to that? If your role finishes shortly, will you provide a report?

Prof. McMillan—As my earlier answer indicates—and this is a public forum—I am committed to publicly reporting at least that level of detail. I see the annual report as the principal means for reporting publicly. To the extent that I will be involved in the preparation of the annual report—of course it could be a new commissioner who is chiefly responsible—it is certainly my desire to have a degree of detail and explanation that is comparable to the kind of reporting you get in Ombudsman's reports, with case studies appropriately. The other thing to add is that a unique feature of the legislative framework here is that there is a Parliamentary Joint Committee on the ACLEI. I am to have my first meeting with that parliamentary joint committee on 14 June. That provides an opportunity probably for reporting at a greater level of detail and discussion about matters.

Senator LUDWIG—You have indicated that there are in total 24 cases that have been referred. Are you able to break that down by agency? I think you said seven were ACC. I am not sure whether you indicated what other agencies were involved.

Prof. McMillan—Ten involve allegations against the Australian Federal Police and eight involve allegations against the Australian Crime Commission. Most of those are matters referred by those agencies themselves.

Senator LUDWIG—Is there any own-motion corruption issue investigation underway?

Prof. McMillan—No, there is no own-motion investigation underway.

Senator LUDWIG—Or being contemplated?

Prof. McMillan—The only sense in which it is being contemplated is this: when an allegation of corruption comes in, say from the law enforcement agency or from the Commonwealth Ombudsman or even from a member of the public, it is defined in a certain way. If, in the course of investigating, the Integrity Commissioner decides to broaden the investigation or sees other things, then sometimes it is more appropriate to put that supplementary inquiry on an own-motion basis. There is certainly one case in which I am considering broadening the issue to enable a proper investigation. But, as I say, it is not something that is entirely self-initiated. It is more a matter of how best to define and handle to completion an allegation that has come through the door.

Senator LUDWIG—Are you able to say, in a case study sense, what that matter is?

Prof. McMillan—No, because it is underway. As I say, it will be reported. It may be that it is appropriate for that matter to be discussed further with the parliamentary joint committee.

Senator LUDWIG—Do any matters that have been referred for inquiry relate to agencies other than those agencies which you can obviously investigate, and what happens with those?

Prof. McMillan—At least a couple of the matters that immediately spring to mind are allegations about corruption in a joint investigation, but I think the matters I am thinking of were finalised without any adverse finding, so there was no need to take the issue further or to refer it elsewhere. One of the features, though, of the Law Enforcement Integrity Commissioner Act is that, if the Integrity Commissioner decides not to investigate and the

matter then has to be reported back to the law enforcement agency, the law enforcement agency is then under a statutory duty to notify the Integrity Commissioner if it undertakes further investigation and identifies any corruption. So, again, it is early days, but there is that facility to ensure that things are investigated through to finality by whatever route.

Senator LUDWIG—I think you mentioned there were investigations by other agencies which ACLEI has overseen. Are there any of those within that category?

Prof. McMillan—No. There is one that we are overseeing, but my recollection is no, and I will correct that if I am wrong.

Senator LUDWIG—Have any investigations been concluded?

Prof. McMillan—Yes, four of those 18 investigations have been concluded and, as I say, there was no adverse finding recorded. At least a couple of the others are simply in a holding pattern. At least one was a matter of which we were simply notified and there are court proceedings underway, so I decided to keep the file open merely in order to see if there was anything I should investigate arising out of those court proceedings. In a couple of others I am aware that there is active law enforcement consideration of it, so I have got the file. It is open but in suspension while I await further advice.

Senator LUDWIG—There was one you mentioned earlier about the way the investigation was being conducted. I have not got the transcript in front of me, but it seemed to be with the agency.

Prof. McMillan—The options for ACLEI under the act are to investigate, to oversight or to manage an investigation. ‘Manage’ means that the investigation is conducted by the agency itself but subject to specific direction by the Integrity Commissioner; oversighting is conducted by the agency but subject to general guidance by the Integrity Commissioner; and now, with this other matter, it is subject to specific direction. For example, the decision to manage an investigation can be more appropriate, particularly at this early stage when the resources of ACLEI itself are limited or it may not be best placed to undertake some of the actions required for a proper investigation.

Senator LUDWIG—Do you form the view about whether a matter should be managed, oversighted or investigated?

Prof. McMillan—Yes, that is a decision solely for the Integrity Commissioner. I have certainly followed the practice at the moment of being open to discussion with the heads of the law enforcement agencies about the model for investigation so that we best understand it. But at the end of the day it is a decision for the Integrity Commissioner and it has very much been my approach that I have the final decision on what is the best form of investigation.

Senator LUDWIG—So one is managed and one or two are oversighted?

Prof. McMillan—One is oversighted, one is fully investigated by ACLEI and the others, as I said, are in stages of assessment, discussion or suspension while we await further developments.

Senator LUDWIG—Do you have the power to obtain warrants and the like?

Prof. McMillan—Yes. Quite a formidable range of powers is available under the act to the commissioner. They include warrants to enter premises and obtain documents, to take evidence in a private or a public hearing, to exercise telephone interception powers, use of surveillance devices, controlled operations, undercover operations and assumed identities—a complete range of policing powers.

Senator LUDWIG—In terms of the process for warrants, you follow the same or similar process as the Australian Federal Police or other law enforcement agencies. Will you report the number of warrants, TIs and all of those matters in your annual report?

Prof. McMillan—Yes, in fact we are under a statutory duty to report, for example, telephone interception warrants. Indeed, we are subject to oversight by the Commonwealth Ombudsman in that role, much as the law enforcement agencies are themselves. But certainly those matters will be fully reported.

Senator LUDWIG—How much at liberty are you to talk about a particular issue? There was a matter that Senator Wong, I think, wrote to you about and you replied.

Prof. McMillan—It is not—

Senator LUDWIG—That is why I put it in the reverse.

Prof. McMillan—That matter is not on the public record, I might say, but I can say that it is a matter where the file is open and I am in discussion with the Australian Federal Police about how the investigation will be conducted. I have already informed the senator that I propose to undertake an assessment with a view to an investigation, and I am discussing with the agency how that matter will be investigated.

Senator LUDWIG—Because it is an ongoing investigation—I am just putting it in reverse because I do not want to fall into it—it is a matter that we really cannot talk about here.

Prof. McMillan—That is right; we cannot talk about it.

Senator LUDWIG—If Senator Wong wants to follow it up, she could then follow it up with you independently.

Prof. McMillan—Correct.

Senator PARRY—What steps, initially and ongoing, has ACLEI taken to, if you like, police the police of the police—internal corruption within ACLEI? Do you have any systems in place?. You may also wish to comment on the parliamentary joint statutory committee. I am also interested in the selection of personnel.

Prof. McMillan—The oversight from the parliamentary joint committee is very much part of that framework to ensure that there is integrity within the integrity commission. Internally, we have a secure environment. It requires passes to get in and there is CCTV covering entry and exit from the premises 24 hours a day. We have a very secure telephone and internet arrangement. We have a contract with the Attorney-General's Department for providing those services. The issues that arise are squarely in relation to the recruitment of staff. We have an internal policy that all staff should have a security clearance to the level of 'secret' or above. For example, I have 'top secret (pos vet)' clearance. There is a practical issue there about the length of time it takes to get clearances through. We have had to engage some staff initially

just on a preliminary analysis. But there has also been discussion about the kinds of practices that should be followed in personnel selection—for example, if you are employing somebody who has formerly been a member of a police force, asking that person to give clearance for access to their files so there can be a thorough analysis of their entire record in policing.

Senator PARRY—Is recruitment largely from state police forces or the federal police force?

Prof. McMillan—There are nine staff at the moment. I think four of those staff members—there are eight on board at the moment—have previously been members of a state police force. Two have been members of a policing unit within another Australian government agency. That is a real issue, obviously, about recruiting from police forces. Again, there are differing views in the Australian oversight agencies. The New South Wales Police Integrity Commission has it written into the legislation that a current or former member of the New South Wales Police can never be a member of the Police Integrity Commission. That is clearly not the case with others. Indeed, my own statute anticipates that I will be employing staff with former experience in federal policing agencies.

Senator PARRY—Do you have any provision to analyse or to keep track of the personal financial holdings of staff members?

Prof. McMillan—Yes. At the moment I have not required a full disclosure from staff members, but that is one of the policies being established. I am in the slightly curious position that when I arrived the organisation had already been established, and was in implementation phase, two months earlier. But that is clearly a necessary policy within the organisation.

Senator PARRY—Were the key investigative staff appointments made prior to your arrival?

Prof. McMillan—Yes, all of the appointments were made, although there has been a bit of a turnover since then. In fact, of the nine staff positions, only four staff who were there when the organisation commenced are there now. I am one of those four. I have an acting appointment that expires at the end of June. All of the other staff members have been recruited since I arrived.

Senator PARRY—Is there a reason for the high turnover in that relatively short period of time?

Prof. McMillan—There are probably two factors. Firstly, my anecdotal experience is that all Australian government agencies in Canberra are experiencing a high mobility rate, particularly among younger staff.

Secondly, I think there has been an issue in relation to ACLEI that there is a degree of instability in staff security—necessarily in an establishment phase but also when it is known that, for example, a new Integrity Commissioner will be appointed. For example, when I arrived, expecting to be there for only two to three months, I thought it inappropriate to put anybody on a permanent footing. After a couple of months I could see that that was going to cause too much instability, so I then started to put some of the staff on a permanent or ongoing basis. Those are the two factors that I think explain it, and my expectation is that it will settle down.

Senator PARRY—Finally, apart from the permanent appointment of a commissioner, do you feel as though the staffing levels are now right and stable?

Prof. McMillan—For the work that ACLEI is undertaking at the moment, we are coping with the staff who are there. There is no doubt that, if you have only nine staff—there are three investigation staff, one manager of intelligence, a legal adviser and me in the operational area—and, for example, there is a vacancy in an investigation position, that then robs you of a third of your investigation capacity. So, when everybody is there, we are coping, but absences or departures do create a problem. Secondly, it is the case that we are not in a position to exercise some of the functions conferred upon ACLEI. For example, as I indicated earlier, ACLEI has the statutory authority to undertake telephone interception, but we do not have the resources or the staff at the moment to establish a separate telephone interception unit.

Senator PARRY—Thank you.

CHAIR—On that point, I have just been looking at your website, and I notice under ‘employment’ that you are seeking applications. Are there a number of vacancies?

Prof. McMillan—There is one vacancy at the moment, in one of the investigation positions, and interviews were conducted earlier this week. At least two of the other positions are people who are on contract appointments. Just to add to that, I think it is probably the case with most government agencies that, even when the positions are filled, expressions of interest are taken from anybody, because you never know what is around the corner.

CHAIR—Finally, I notice you have a GPO box. You indicated earlier that you were looking for premises. Has that concluded?

Prof. McMillan—Yes, we are settled into premises where we have a five-year lease.

CHAIR—I think Senator Kirk had a question.

Senator LUDWIG—I am nearly finished on ACLEI. I just have two questions for Mr Cornall. In terms of filling the statutory position, I asked where it was up to and you said it was going to be finalised before 30 June. But the question really went to where it is up to at the moment. Have you got a list of candidates, or what can you say about the process?

Mr Cornall—We have gone through all of that process, our recommendations have gone to the Attorney-General and he is considering them.

Senator LUDWIG—So it is currently before the Attorney-General.

Mr Cornall—Yes.

Senator LUDWIG—Are there a number of names before the Attorney-General, or is there one name before the Attorney-General?

Mr Cornall—That is a matter for the Attorney to deal with.

Senator LUDWIG—Is there any active consideration of expanding by regulation the number of agencies that are—

Mr Cornall—No. You asked me that before, and the answer was no.

Senator LUDWIG—I was just going to check again. You might have had a change of heart. I can be hopeful.

Senator Johnston—We do move fast, Senator, but maybe not that fast.

CHAIR—Senator Kirk has advised that she does not have a question, so you can wrap up this section, Senator Ludwig.

Senator LUDWIG—Professor McMillan, I will preface my next question by saying that you may not be able to provide any additional information as this may be an operational matter that is currently underway. I refer to a range of newspaper allegations, and I am particularly looking at an article from Wednesday, 7 March 2007, headed ‘Police Probe Lib Allowances’. It says that the Queensland Liberals have become embroiled—and it goes on, but I will not go into the details. Are you familiar with that? It says:

Prime Minister John Howard confirmed he was told of the AFP investigation last Thursday and was informed on Friday morning that the search warrants would be executed. “It’s an operational matter; the disclosure is not something that I should engage in,” he said.

Are you able to say whether that matter is being investigated as to whether that is within the proper procedures of the Australian Federal Police?

Prof. McMillan—I think I can say that that would be an operational matter at this stage, if there were an investigation underway.

Senator LUDWIG—Sorry?

Prof. McMillan—This is one of those difficult—‘neither confirm nor deny’—matters, but if there were an investigation underway into that matter then it would be at this stage an operational matter.

Senator Johnston—In other words, ‘We couldn’t comment at all.’

Senator LUDWIG—It is going to be tricky to question you in the future—or the next person who might take your role. I accept that.

[3.17 pm]

CrimTrac

CHAIR—Thank you for being with us, Mr McDevitt.

Senator LUDWIG—We have not come back to this for a while, but can you provide a quick update of where you are up to in terms of the major outputs that you are required to meet: ANCOR and the other programs.

Mr McDevitt—I will start with the minimum nationwide person profile. The MNPP was approved for national rollout on 29 June last year by the Australasian Police Ministers Council, who also approved a proposed cost-sharing arrangement. I can report that the MNPP rollout is going extremely well. We are actually slightly ahead of schedule. Victoria Police were brought online this month, so in fact approximately 8,000 additional users now have full access to the MNPP. Victoria Police were to be the first jurisdiction to have full access to the MNPP, and then there is a schedule of rollouts which will be completed by the Queensland police, who will be the last to have full access, by June 2008.

In relation to ANCOR, the last time I appeared before this committee I reported that the board of management had decided to undertake a stocktake, if you like, or a gap analysis, in relation to the ANCOR system, to determine what had been delivered and what remaining

functions should be worked on and should be packaged up in terms of a new business case. We are now at the stage where we have had significant positive reporting in relation to the ANCOR system. Suffice to say that the system is doing what it was supposed to do. There are slightly over 7,000 registrable offenders recorded in ANCOR at the moment.

Every jurisdiction is using the ANCOR database. It records the details of persons of interest, it registers the details of convicted child offenders, it allows for case management of registered persons and it shares the cases between jurisdictions. It can transfer cases to other jurisdictions. It enables basic searches, produces standard reports, displays a location map against a given address and produces PACE alerts when offender information changes.

In saying all of that, there are quite a number of additional areas of functionality that various police jurisdictions would like to see built into the ANCOR database. Basically they relate to differing legislation between jurisdictions. For example, Tasmania would like to see ANCOR be able to monitor offenders who are not necessarily offending against children. That is not the case with other jurisdictions and so we end up with a situation whereby we need to constantly have dialogue with jurisdictions about their user requirements and what else they would like to see built into it.

We are at the stage now where we are proposing to the board at our next meeting to incorporate some additional functionality, namely an advanced searching function and an ability to manage duplicate records as well as some improvements to the PACE alert functionality. Beyond that, in my view what we need to do in relation to ANCOR is take stock of the system and think about the future of managing child sex offenders in this country, start to examine issues of linkages between the ANCOR system and the MNPP system and so on, start to discuss areas about managing historical information, transition from being a stand-alone system to integration with other systems, functionality in terms of possible information exchange with overseas jurisdictions and so on. I guess what I am getting at there is my recommendation to the board will be now to undertake some sort of sustainability analysis, I guess, of the ANCOR system itself before we continue to constantly build enhancements.

Senator LUDWIG—What fields can ANCOR search on at the moment? If there are more than a couple, how many? I am happy for you to take that on notice. What I am trying to establish is the name, or the type of offence, or the types of data inputted or held in ANCOR that is available for use by various policing services.

Mr Mr McDevitt—My understanding—if I need to correct this, I will—is that the information consists of basic bio data in relation to a convicted offender. So we would have information on the nature of the charges for which the person was convicted, the place that the conviction took place, the time and date of the conviction, date of birth, full name details, addresses—that sort of basic bio data. We would have any conditions attached, following the conviction in terms of registration of the offender, any reporting requirements, any prohibitions on travel interstate or overseas.

Senator LUDWIG—Do you also then keep spent convictions? If the conviction is spent, does the material stay on the database?

Mr McDevitt—I will have to take that on notice.

Senator LUDWIG—And is that available to all the law enforcement agencies or only the ones you have memorandums of agreement with? I am happy for you to take that on notice as well.

Mr McDevitt—Not all operational police have access to ANCOR at the moment. There are around 1,000 officers across the country who have access to the ANCOR system. They are primarily the jurisdictional registrars and their support staff, and child sex offender investigation teams and so on, so it is not a system that is generally open. There is some access to external agencies in relation to ANCOR, I think. No—in fact, it is limited to the police services at the moment, although we are doing some work with the Australian Crime Commission in relation to access by the ACC to the ANCOR database.

Senator LUDWIG—That would make sense; they have a number of joint operations. I think they have a referral at the moment to look into child sex offences in the Northern Territory, don't they, Mr Cornell?

Mr McDevitt—I totally agree. That is one of the very reasons why I think we need to take stock of ANCOR at the moment, to look at future functionality and at whether or not the ACC might have intelligence based tools which might, at some point in the future, be applied to the ANCOR database and so on. So I think there are significant opportunities for synergy between us and the ACC in relation to ANCOR's future.

Senator LUDWIG—So the ACC cannot access ANCOR at the moment?

Mr McDevitt—They have written to me requesting access to ANCOR and we have had some initial officer-level discussions. I have written to Commissioner Keelty in his capacity as chair of the ACC and we have agreed to set up a small working team to look at the technical legislative policy issues and so on in relation to access by the ACC to the ANCOR database.

Senator LUDWIG—And are there prohibitions on sharing that information? For instance, if a law enforcement agency which had access were to share the information that it had accessed through ANCOR with another agency, would there be a penalty for that?

Mr McDevitt—Absolutely. That is one of the areas that requires further exploration. Quite frankly, the access would be very limited.

Senator LUDWIG—So we have looked at ANCOR, we have looked at the MNPP—

Mr McDevitt—Let us look at the national fingerprint database, the NAFIS database. At the moment it holds about 3.7 million fingerprint records and, on average, links 21,000 people to crime scene identifications each calendar year. I think I have made the comment before that I believe we are at the forefront in terms of world's best practice in fingerprint technology. You would be aware that now we have the live-scan devices rolled out across the country?

Senator LUDWIG—Yes.

Mr McDevitt—There are around 202 of those across the country. We are doing some exploratory work on fast ID devices with the New South Wales police which would let us identify suspects in the field and then have remote connectivity to the national fingerprint database.

We have also implemented 'Lights Out' processing, which removes the need for a fingerprint expert. Obviously, in downstream court processes there may still be a requirement for a fingerprint expert, but basically the 'Lights Out' processing allows, through very advanced algorithms in the system, for data sent from a police live-scan device to NAFIS to be searched and matched and a result returned without additional human intervention. That is a very powerful and time-saving tool.

Senator LUDWIG—What about the National Criminal Investigation DNA Database?

Mr McDevitt—I am very pleased that since the last time I appeared before this committee some significant progress has been made on the National Criminal Investigation DNA Database. In fact, we now have five of the nine jurisdictions across the country matching to some extent with their DNA profile information. We also have tens of thousands of profiles now loaded to the NCIDD that we did not have loaded only a few months ago. You are aware of the changes to the Commonwealth legislation which occurred in November 2006, which dealt primarily with an obstacle around the legal status of the NCIDD. That legislation recognised that the NCIDD is a national database that comprises an amalgam of all or parts of jurisdictional DNA databases. That removed the significant impediment. In saying all of that, we do not yet have full interjurisdictional matching across the country. We have significant effort—and enthusiasm, I might add—going into achieving that. Considerable work has been done by the Commonwealth Attorney-General's Department, in concert with their state and territory colleagues. I take every opportunity I can to continue to ensure that there is a lot of focus on this issue. I am quietly confident that within—

CHAIR—Order! I advise that it is shortly after 3.30 pm. We will break for 15 minutes.

Proceedings suspended from 3.32 pm to 3.48 pm

CHAIR—We are dealing with CrimTrac. Senator Ludwig has some questions.

Senator LUDWIG—Thank you. I knew I would forget where I was up to. We were talking about the DNA database, but I think the next issue we were going to talk about was interjurisdictional matching. You mentioned that five out of the nine were matching to some extent. I think you said 'extent' but I have written 'degree'. Are you able to say which jurisdictions have signed up, which jurisdictions have not signed and, to the extent that the jurisdictions have not signed up, why. Could you help me through that if you are able to. Would you also indicate where the problems are with the interjurisdictional matching. If that is too long a question you can certainly take it notice. I thought I would just put it out there.

Mr McDevitt—I will give you the key dates at which certain jurisdictions started participating in interjurisdictional matching. Bear in mind that, aside from interjurisdictional matching, a number of the jurisdictions have been using the NCIDD for intrajurisdictional matching for some years. But the more important area is the interjurisdictional matching, obviously. In June 2005 Queensland and Western Australia began interjurisdictional matching. I might add that when that occurred we got some fairly immediate results from those jurisdictions matching.

Senator LUDWIG—Yes, I think there were news stories around that issue.

Mr McDevitt—That is exactly right. Obviously when jurisdictions that do not share a border start to get results like that, it makes us even more anxious to see full interjurisdictional matching right around the country. In October 2005 Queensland and the Northern Territory began interjurisdictional matching, and in January 2006 Western Australia and the Northern Territory also did so. December 2006 saw Queensland and the Commonwealth begin their interjurisdictional matching, followed in January 2007 by Western Australia and the Commonwealth, in March 2007 by New South Wales and the Commonwealth and, also in March 2007, by the Northern Territory and the Commonwealth.

So there is a growing, increasing, degree of interjurisdictional matching occurring. The issues have been legislative ones. As I stated earlier, a significant one was resolved with the passage of Commonwealth legislation in November of last year in relation to the legal status of the DNA database. Various jurisdictions have had to amend their own legislative regimes to be able to participate in the interjurisdictional matching. CrimTrac and the Commonwealth Attorney-General's Department co-hosted a meeting in November of last year, at which we brought together police representatives, forensics representatives and legal representatives from around the country to discuss trying to resolve the residual issues and impediments.

As a result of that meeting, seven recommendations were formulated and they went to the Australasian Police Ministers Council in November of last year. All seven of those recommendations were endorsed by the APMC, and the key thing there was about having a single ministerial arrangement for the exchange of DNA data and related information via the NCIDD rather than continuing down the path of having multiple ministerial arrangements. So we basically moved from the situation in which we might have needed in the order of 36 ministerial arrangements to an aim of having just the one ministerial arrangement. The situation at the moment, as I understand it—and colleagues from the AGD might correct me if I am wrong—

Senator LUDWIG—I have no doubt about that!

Mr McDevitt—Yes. Perhaps I will go through specific areas. Late last year New South Wales indicated that it was going to be unable to sign the single ministerial arrangement and that its legislation would require a specific arrangement with CrimTrac and then separate ministerial arrangements with each of the other jurisdictions. So we signed an agreement between CrimTrac and New South Wales on 27 February this year, and a ministerial arrangement between New South Wales and the Commonwealth allowed matching to begin between those two jurisdictions on 22 March. New South Wales still needs to go through the process in terms of recognition of existing ministerial arrangements with other jurisdictions, and where there are any issues or impediments identified then new ministerial arrangements will have to be developed. That is essentially the case with all of the jurisdictions.

So we are getting to the stage now where we will host another meeting—I think it is in June—to again try to resolve the remaining issues around ministerial arrangements. They are the sorts of issues that you would imagine: around specific wording of the arrangement and so on. There has been a lot of toing and froing on that. I am hopeful that the majority of jurisdictions will sign the single agreement. Those that do not sign the single agreement will then need to go through the process of setting up bilateral arrangements with the other jurisdictions.

Senator LUDWIG—My understanding is that, with the intrajurisdictional matching, they upload the profile; so Queensland is online, it uploads its profiles and then that is available for Queensland?

Mr McDevitt—That is correct.

Senator LUDWIG—And so on around the states. All the states have signed up to that extent. Is that right?

Mr McDevitt—To further complicate the issue, a number of jurisdictions had, and still do have, their own state DNA database. So a number actually utilise the NCIDD, the national database, and just have a partition—

Senator LUDWIG—Yes, a window for themselves—

Mr McDevitt—within it for themselves. Others have just used their own DNA database up until now, but are now at the stage of uploading the profiles from their own database onto the national DNA database.

Senator LUDWIG—About another 30 questions come to mind. It is easier if you can provide—if you do not mind, through the minister—a snapshot of what the issues are and what the problems are. It seems that there are multiple problems; there are problems now identified in terms of intrajurisdictional matching, problems with databases that have not been uploaded and may need to be uploaded, the compatibility of data and issues surrounding that. The databases might not be compatible, then you have got matching problems, you have got legislation in a state that might also have certain profiles. I suspect you are working through that. Perhaps you could provide an overview or a snapshot of where this is at now and the way forward. Certainly with the interjurisdictional matching there seems to be an encouraging sign that we are working through ways of people being able to share the data.

Mr McDevitt—I guess there are probably some lessons here in relation to the building of databases and so on. If you look at the fingerprint situation, there is a single national fingerprint database for the whole country. Jurisdictions do not have their own fingerprint databases and so on. Whereas, in this case, in the history of the way it evolved, a number of the jurisdictions did build their own DNA databases to use for intrajurisdictional matching. We are now at the stage where you build a national DNA database but it needs to be recognised by the independent jurisdictions and they want and need all of the protections in terms of the data that they put onto the national system and subsequent disclosure of that data and security and integrity of the data and so on, which leads to the need to have a strong, robust policy framework which consists of arrangements between ministers for the sharing and exchange. That really is what we are grappling with at the moment. As you say, considerable progress has been made recently and it is very pleasing. I am confident as to the residual issues, which are not technical issues, by the way—so if you are under the impression that there are technical impediments, there are not.

Senator LUDWIG—There are not matters where there are databases that hold the data in a particular way that then prevents it being uploaded. So all of those matters are capable of being addressed?

Mr McDevitt—That is exactly correct. I can tell you now that every jurisdiction other than South Australia has loaded their profiles onto the national database. I will give it to you quickly: ACT has put on about 3,000 profiles; the Commonwealth, 900; New South Wales, 35,000; Northern Territory 11½ thousand; Queensland, 102,000; Tasmania, 22,000; Victoria, 32,000; Western Australia, 78,000; and South Australia at the moment is in the process of preparing themselves to be in a position to upload their data. So there are no technical issues in relation to getting the data onto the system. And I suspect that in time we will probably get to the stage where the need for jurisdictional DNA databases will have passed and we will have a single national DNA database.

Senator LUDWIG—Are the individual states uploading all of their data? In other words, do they have a backlog of data to clear, or have they provided all the data and it is up to date?

Mr McDevitt—It is reasonably resource intensive. For example, the first batches of data that New South Wales has uploaded are obviously those relating to serious crime, cold case investigations—those sorts of matters. It also relates to the issue of the matching table to ensure that we work towards a single matching table with categories of offenders, suspects, convicted offenders, crime scenes and so on.

Senator LUDWIG—Is the legislation in the various states and the types of profiles they capture consistent? For argument's sake, my recollection—and correct me if I am wrong—is that federally there is a voluntary database of people who have committed offences and there are different ways for the data to be structured and held, and that you can then use it for certain purposes and you cannot use certain profiles for other purposes.

Mr McDevitt—That is correct.

Senator LUDWIG—Is that consistent around the states?

Mr McDevitt—There is consistency in that there is recognition of eight separate categories, if you like. You have suspects; crime scenes; offenders; volunteers, which fall into two categories—being limited purpose volunteers for specific crimes and unlimited purpose volunteers; missing persons; unknown deceased; and a non-volunteer category, which I think is specific to the Northern Territory.

Senator LUDWIG—Can you tell me what a non-volunteer is?

Mr McDevitt—I will need to correct this if I am wrong, but my sense is that it would be somebody who is not clearly in the position of being categorised firmly as a suspect. They are not a volunteer but may well be a person of interest who has not graduated to the point of being recognised as a suspect. I will need to correct myself if that is not right, but I think that is what it is.

Senator LUDWIG—There is relative consistency around that, so it seems to me that we have to go through the process of signing up, if we use another colloquial phrase, to get them to have interjurisdictional matching.

Mr McDevitt—I think we are quietly confident that we are getting pretty close to that.

Senator Johnston—We are working our way through those issues.

Senator LUDWIG—Is there a timetable on that, which I will hold you to?

Senator PAYNE—It is a rigorous estimates process to deal with.

Mr McDevitt—There will be another meeting of officials prior to the next meeting of the police ministers, which is scheduled for 28 and 29 June. The officials will meet on 14 June with a view to finalising the single ministerial arrangement.

Senator Johnston—We should tell you that the state and territory attorneys-general met about three or four weeks ago here in Canberra. Mr McDevitt made a presentation on DNA database matching across states and territories with Commonwealth coordination, and the attorneys did not resist the proposition that we need to get this in order. Rather than having more than 20 bilaterals, we need one agreement that canvasses all of the issues between the states so that we have a model that we can go forward with confidence on such that everybody can access the information with reasonable expediency in a coordinated way. There is no opposition to that, so we are now bringing everything together. There are minor issues between the states on certain things, but none of those appear to be insurmountable. We are just putting the dots on the 'i's and the crosses on the 't's at the moment.

Mr Jordana—We already have a number of jurisdictions which are matching with each other which are, in a sense, already operating within the zone. Both the ACT and Victoria have indicated that they require legislative change to enable this to happen. The commitment is there but they need to get the legislation onto their own legislative timetable and get it through their respective systems. As Mr McDevitt said, New South Wales has said that they would find it difficult to use this single ministerial arrangement; they might have to do bilaterals with each of the jurisdictions, although I know they are looking at that again. When we can say the whole thing is up and running will depend to a certain extent on when some of the jurisdictions are able to finalise their own legislative requirements.

Senator LUDWIG—That is to allow interjurisdictional matching, not intrajurisdictional matching?

Mr Jordana—By way of example, already Queensland, Western Australia and the Northern Territory are matching with each other. That is already happening.

Senator Johnston—And the Commonwealth?

Mr Jordana—The Commonwealth is matching with New South Wales, Queensland, Western Australia and the Northern Territory. You can see that, as new people switch into the system, depending on the arrangement and the basis on which they are coming in, either they will be able to match with everybody else who is in the system or, using New South Wales as an example, they might be brought in jurisdiction by jurisdiction as they reach agreements with them. It is a matter of putting the jigsaw puzzle together.

Senator LUDWIG—Those are the four main outputs.

Mr McDevitt—Those are the four main deliverables.

Senator LUDWIG—There is the missing persons one. That is part of the MNPP, as I understand it.

Mr McDevitt—Yes.

Senator LUDWIG—Is that now fully operational? There was also a question of sharing data with Immigration, which has now been overcome through a memorandum of agreement. I think we passed legislation to give effect to that.

Mr McDevitt—We look at the issue of missing persons as being a subset, if you like, of the minimum nationwide person profile. There are 11 reasons why you could be a person of interest on the MNPP. One of those could be that you are a missing person. Following the Palmer review, some recommendations were made on the need to enhance the capability in relation to missing persons functionality. Increased functionality was included in the scope of works which led to a pilot between New South Wales and Victoria on missing persons and the MNPP. The outcome of that trial was a significant commendation on the additional functionality that had been built into the MNPP. Essentially what it meant was that, prior to the MNPP capability around missing persons, if an investigator from one jurisdiction came across somebody who was a missing person in another jurisdiction, under the previous arrangements—the national names index—the only information they would have would be the fact that the person had been recorded as missing in another jurisdiction. Now they get the time, the date and the location where the person went missing, what the person was wearing, the circumstances of the disappearance, whether or not they had been reported missing before, the mental state of the missing person as per the person who reported them missing and so on. Far richer data is now available through the MNPP.

In saying all of that, I should point out that last year we took to Australian police ministers a proposal to conduct further work in relation to missing persons, particularly to look at additional functionality between the national DNA database and the national fingerprint database and so on. So there are opportunities to integrate data. For example, if somebody goes missing for a certain period of time there is the opportunity to get a DNA profile from their toothbrush or whatever and load it onto the national DNA database so that that would be automatically matched against located human remains or whatever. The ministers approved us to undertake that scoping study for additional work. I think we have of the order of \$400,000 to undertake that work. We will be reporting by the end of 2007 in relation to that work. So significant work has been done in relation to missing persons. There is some additional work that can be done and we are scoping that out at the moment.

Senator LUDWIG—That would mean that if remains were found you could run that past a DNA profile of missing persons to establish whether or not that was one you had on record, which might then be able to aid identification.

Mr McDevitt—Absolutely.

Senator LUDWIG—Does that extend to family, if you do not have the DNA of the person?

Mr McDevitt—That is another area that we are exploring—

Senator LUDWIG—I understand it is a little more complex.

Mr McDevitt—It is known as kinship matching. It is an extremely powerful tool and one that we used following the Bali bombings and so on. It is something that the board of management have asked us to prepare a discussion paper on. In fact, at their next meeting they will be getting a discussion paper from us on kinship matching and the requirements. It is

not something that technically you could do at this point in time with the national DNA database as it is configured at the moment.

I will just go back to a question that you asked me at my last appearance, which was in relation to a post-implementation review of the NCIDD. I think I said to you then that we were putting it on hold until we had more interjurisdictional matching happening, because we would not really be able to test it until that was the case. We are now about to scope out the requirements for a post-implementation review, which I am hoping we will have endorsed by the board and will have completed within the next 12 months. One of the areas that that will look at is the issue you raised of kinship matching.

Senator LUDWIG—Minister, I wonder if I could get on the circulation list for the papers. That would be helpful.

Senator Johnston—I will take that on notice!

Senator LUDWIG—In the missing persons database, can you search criteria other than a name or address? In other words, if the police or an agency is looking at a report of someone missing and has a range of criteria such as hair colour, eye colour and height but does not have the name, can they search those? They may have had a report that a person might match a particular description.

Mr McDevitt—I will need to take that on notice and come back with the exact search fields. My understanding is that, yes, you can.

Senator LUDWIG—That could produce a range of names. I understand that.

Mr McDevitt—You could produce a range of names, but you would want the capability to search for tattoos and all sorts of things.

Senator LUDWIG—Identifiable features.

Mr McDevitt—All the people who went missing in New South Wales between the ages of 18 and 30, for example. My understanding is that that sort of functionality is available, but I will take it on notice and come back to you with the exact criteria and the extent of flexibility on searching.

Senator LUDWIG—Is that available to all jurisdictions?

Mr McDevitt—That will be available when we finish the national roll-out. It is fair enough to say that, on the current schedule, by July next year that will be available to every police officer across the country.

Senator LUDWIG—Are there any new funding initiatives in your budget? I do not think I saw one.

Mr McDevitt—Our recurrent budget had been funded by a combination of subscriptions from jurisdictions and fees for services to 2003-04. From 2004-05 CrimTrac has been funded from fee-for-service arrangements. We operate under a special account. It is called the National Policing Information Systems and Services Special Account. The reality is that there has been an increasing requirement for background checking, criminal history checking, which is the primary means of funding which comes into the organisation. In fact, about 95 per cent of funding to CrimTrac comes from police background checking. Our funding in

2006-07 from criminal history checking is in the order of \$38 million. Other than that, obviously the organisation has the opportunity to participate in new policy proposal bids for funding and for bids for funding under proceeds of crime and so on.

Senator LUDWIG—So there was no new funding for CrimTrac?

Mr Cornall—A comment on page 290 says CrimTrac does not have any measures.

Senator LUDWIG—That is what I was looking for. So that is right: there are no new measures?

Mr Cornall—Correct.

Senator LUDWIG—I see on page 297 that departmental appropriations total \$3.181 million and there is interest supplementation of \$3.122 billion. What was that? Was that an additional supplementation?

Ms McLay—CrimTrac earns interest on its cash holdings via appropriation.

Senator LUDWIG—I see, so that is the interest?

Ms McLay—That is the interest, yes.

Senator LUDWIG—I see there is ‘interest supplementation’. I now follow it. I am looking at page 301, where it has ‘Net cash from (or used by) investing activities’. There is a negative figure. Can you explain that?

Ms McLay—The net cash used from investing activities is the portion of CrimTrac’s cash balance reinvested into the agency, so into projects, the acquisition of property, plant and equipment and the development of internal systems.

Senator LUDWIG—Does that mean that your net cash held is decreasing? In other words, are you spending your investment? I am trying to get a sense of this.

Ms McLay—Net cash over the forward estimates actually increases.

Senator LUDWIG—This is what I am trying to understand. It has got ‘Net cash from (or used by) financing activities’. It starts off at 62 and then dips to a positive 2 and then goes back up to 11. But the net increase in cash held starts at 49. That is a negative, I assume, as it is in brackets.

Ms McLay—The difficulty in reading this statement is that the cash is transferred to the official public account and therefore CrimTrac only retains, as you can see on the bottom line, an operating cash balance or a working cash balance of around \$600,000. It is perhaps simplest to look at the net cash generated from operating activities and compare that to the net cash used in investing activities.

Senator LUDWIG—So compare the net cash from operating activities, which is \$23.52 million with the net cash used, which is \$10.359 million.

Ms McLay—Yes, \$10.3 million.

Senator LUDWIG—Except for the forward estimates there is one which is above—the \$19 million is above your operating activities.

Ms McLay—In that year.

Senator LUDWIG—That one is a skinny year.

Ms McLay—It is a year of high investment.

Senator LUDWIG—Where do you find the extra \$2.25 million?

Ms McLay—From the agency's cash balance. That is the effect of the cash transactions in that financial year.

Senator LUDWIG—Can you give me a snapshot? You are operating with about 95 per cent of your cost. Where does the other five per cent come from? In other words, your income is about 95 per cent of what you need to operate on.

Ms McLay—We receive significant interest earnings per annum, via appropriation.

Senator LUDWIG—On what amount is that?

Ms McLay—At 31 March the agency's cash balance was \$64.2 million. A large portion of that was committed to projects already underway. In fact at that time it was \$29.9 million. The remainder is a combination of surpluses that we have realised in each financial year and the accumulation of depreciation funding for reinvestment in systems. Our total asset base is around \$39.2 million, which we would expect to refresh. The majority of it is in hardware and software so we do expect to refresh over a time frame of three to seven years, depending on the item.

Senator LUDWIG—Where will that money come from?

Ms McLay—From the accumulated cash.

Senator LUDWIG—Is there sufficient to meet the projections? Has any analysis been done of the range of activities you have, the range of activities you may choose to do and whether your current funding arrangements and asset base are sufficient to meet those requirements?

Ms McLay—A capital investment plan has been prepared. We can certainly fund our current commitments. All approved projects and existing systems have funding. Then it is a matter of how much new work we want to take on within available funding arrangements.

Senator LUDWIG—Or the replacement of existing hardware.

Mr McDevitt—I can add to that. In terms of the funding arrangements, if you look at the MNPP as an example, the Commonwealth injected seed funding into the system and now with the national rollout the Commonwealth has put additional money into provision costs for the information and then we seek funding from the states and territories to actually consume the information. With all of our systems there is an issue of whether police jurisdictions around the country want to explore a new system and then there are decisions made about whether they see it as being a system which is worthy of them investing in.

Senator LUDWIG—Thank you.

Senator PARRY—Correct me if I am wrong, but I understand that funding has been provided for a scoping study into automatic registration plate identification. Is that correct? Is that from this financial year or last financial year?

Mr McDevitt—That is correct. My understanding is that in the order of \$2.2 million has been approved by the minister from the proceeds of crime fund to allow for a scoping study into automatic number plate recognition.

Senator PARRY—Can you elaborate on how that scheme will work? Is it going to be rolled out nation wide?

Mr McDevitt—I will perhaps give you a little bit of history about automatic number plate recognition. I went over to the UK in about May of last year and had a number of presentations on automatic number plate recognition and then came back and gave a presentation to our board of management. I offered to bring together jurisdictions and prepare a discussion paper on automatic number plate recognition. The board approved that. We then brought together jurisdictions in October of last year to review the application of the technology in Australia.

Automatic number plate recognition is widely used in the United Kingdom and also in the US. It is an incredibly power tool, using infrared camera technology and software to recognise and capture vehicle number plates. It is similar to the technology used by speed and red light cameras. You can see some of that infrastructure in place in Australia, with the safety cam and so on for picking up trucks between A and B to see how long it takes them to arrive. That is the same technology. The British have embraced this technology to the extent that it is used significantly. They have had huge success in crime prevention, crime reduction and crime detection through the use of ANPR technology.

In the workshop that we conducted, we brought together police and representatives from road traffic authorities to look at the issues. It was basically agreed that a nationally coordinated and integrated approach would assist in recognising the full potential and benefits of the technology. We subsequently put up the bid to the minister seeking POCA funding to undertake a scoping study. As I stated, that has now been approved. We have started bringing together resources for it. It will run out until September 2008. It will involve several elements, the first being a stocktake of existing and planned ANPR infrastructure across the country. It will review the current required communications network capacity. It will assess the international approaches to the use of ANPR. It will consider national procurement approaches and the development of national standards. I should add that ANPR technology is already embraced, to a greater or lesser extent, by all of the jurisdictions. At the moment, what we are talking about is a national approach to it.

Senator PARRY—By ‘national approach’, do you mean that it will be coordinated through CrimTrac and operated by the jurisdictions in each state?

Mr McDevitt—That is a way that it could occur. I am not saying that it will occur that way. The scoping study will look at options for doing it. As an example, in the UK, each of the 43 police forces puts up a hot list, if you like, of vehicles of interest to them across the three areas of traffic enforcement, intelligence and investigations. Those hot lists are held within a central computer system. When a vehicle of interest crosses an ANPR site, a flag is raised with the relevant jurisdiction about that vehicle.

Senator PARRY—Would that be on a fee-for-service basis, like other services?

Mr McDevitt—I would expect that it will operate on a fee-for-service basis, but that is one of the issues that need to be assessed. Obviously, there is also a range of privacy issues in relation to this technology, the same as with any other technology that is used for law enforcement purposes. The scoping study will include a full privacy impact assessment as well.

CHAIR—Thank you very much to CrimTrac, Mr McDevitt and Mr McLay. We appreciated your time.

[4.31 pm]

Australian Customs Service

CHAIR—Thank you for being here, Mr Carmody, and officers from the Australian Customs Service. Senator Ludwig?

Senator LUDWIG—I have here a list of the people who are appearing with you, Mr Carmody. Is the organisational chart in the annual report still current, or is there a new chart? Some of these names I recognise, like Ms Pitman's, but some I do not.

Mr Carmody—There have been some new organisational arrangements since the last annual report.

Senator LUDWIG—Is that chart available?

Mr Carmody—I do not have it on me, but perhaps one of my colleagues has. It is on a website; someone might be able to get it for you. I could explain it to you, if you like.

Senator LUDWIG—I will have a look at the website, but I just need an overview. Most of these names I think are still in the relevant places, although some of them are new. It becomes concerning after a while, to me, anyway, that I start to recognise everybody!

Senator Johnston—Well, the feeling is mutual!

Senator LUDWIG—No doubt. Perhaps you could just go through the changes from the annual report to now, in terms of the overall make-up of Customs.

Mr Carmody—In terms of overall structure, we have three deputy CEOs, and I guess the main features of the changes are that we now operate on a national program basis, whereas previously it was more a matrix, with the broad division of strategy and policy here in Canberra and the operations managed regionally. We now operate through national programs. Those national programs are grouped under the three deputy CEOs.

Neil Mann is on passenger and trade facilitation, and he has under him a number of national directors for programs to deal with our cargo operations, trade operations and passenger operations. When it comes to cargo and passengers, they are responsible for the end-to-end aspects of our operations including the primary interventions, so that, in cargo, the primary CEFs—container examination facilities—examinations come under Neil and his people. So that is one program. You can see it there.

Senator LUDWIG—Yes, Thank you.

Mr Carmody—Marion Grant is acting in border enforcement. That has all of our offshore operations, our first port boarding and investigations that come from our primary intervention,

such as from the CEFs and so on. Jon Brocklehurst is acting in the third deputy role. That role includes, if you like, overall corporate support, including IT, finance, people and place and so on.

Senator LUDWIG—The positions are currently advertised, are they? Is that why they are acting?

Mr Carmody—Yes, they are acting. They have been advertised and there has been an executive search going on which is nearing completion now.

Senator LUDWIG—The labour market is pretty tight, I am told.

Mr Carmody—It is an exciting place to work.

Senator LUDWIG—I am sure of that. I might jump around a little bit here because I was working on a different matrix, but we will see how we go. The Customs system modernisation: what depreciation funding has been provided for existing Customs IT systems? Looking at the Australian Customs Service capital for 2007-08, it has a related expense of \$2.8 million. I quote:

The Government will provide \$26.7 million over two years for the replacement of the IT system used by the Australian Customs Service in assessing and clearing international travellers.

Further:

This measure includes \$6.3 million in expense funding for project management and consultancy services. Part of the cost of this ... will be met from within the existing resourcing of the Australian Customs Service.

Does depreciation funding form part of that? I also have a broader question about depreciation funding for current IT projects. Where would I find that in the PBS?

Mr Brocklehurst—The depreciation funding that Customs has been provided with for the redevelopment of the passenger systems does include an element of depreciation of those new systems once they have been developed. I can dig those numbers out if you want them.

Senator LUDWIG—You can take it on notice. What I also wanted to get relates to what we have just been talking about—the additional funding in the measure, net of depreciation.

Mr Brocklehurst—We are replacing existing systems. There was an element of funding that was provided to Customs a number of years ago in association with the systems that we are looking to replace. I can get the number for that, but it was not a large portion of the funding requirements. I think it was in the order of \$3 million which, in essence, forms part of our funding base. That has contributed towards the funding requirement for that project.

Senator LUDWIG—For the one that we have been talking about specifically, previously there was about \$3 million for depreciation, and that is why, or at least partially why, your commitment is for \$3.6 million to be met from existing resourcing.

Mr Brocklehurst—That is correct.

Senator LUDWIG—Is the total amount of that expenditure—the \$26.7 million—net of depreciation or is it included in the depreciation amount?

Mr Brocklehurst—When you mention the \$26.7 million—

Senator LUDWIG—I quote:

The Government will provide \$26.7 million over two years for the replacement of the IT system used by the Australian Customs Service ...

Mr Brocklehurst—Can you just remind me where that reference is—which page of the portfolio budget statements?

Senator LUDWIG—That is going to challenge us all.

Mr Brocklehurst—The only reason that I ask is that some of the numbers are shown as fiscal balance numbers and some are shown as net numbers.

Senator LUDWIG—No. I will have to come back to it. They have extracted it from one of these tables.

Mr Brocklehurst—Actually, I think I can help. I think the number is \$23.1 million excluding depreciation, so I think the numbers that you are referring to may include the depreciation funding that we have received, but I will need to check that.

Senator LUDWIG—It is probably out of the budget statement. Perhaps we can clarify that at some point. I have another broader question, though. Have depreciation amounts been provided for all existing IT?

Mr Brocklehurst—There is a relatively complicated answer to that question. It depends when the system was developed, because if it was developed prior to accrual accounting being introduced then it may well be that there is no depreciation element within Customs appropriation for that system. If it was developed subsequent to accrual accounting being introduced in the late nineties and it was funded by the government then there would be a depreciation element to the funding that was provided by the government.

Senator LUDWIG—I see. Do you know, then, what money you have in your IT depreciation account?

Mr Brocklehurst—Yes. We will have an annual amortisation expense this year of about \$60 million, and we would be able to identify how much of that relates to IT software and how much relates to other things. We would be able to provide that if you want that.

Senator LUDWIG—That would be helpful. The passenger movement charge is revenue collected at airports and seaports for the year. Is there something that charts it from about 2001-02? Do you have those figures—the revenue that has been—

Mr Brocklehurst—Do we have the revenue that has been collected in each year since then?

Senator LUDWIG—Yes.

Mr Brocklehurst—Yes, we certainly do, but that is something that I will have to take on notice.

Senator LUDWIG—Do you have an estimate as to what it will be in the future?

Mr Brocklehurst—We have an estimate of \$412 million for 2007-08, but I have now been provided with the amounts that we collected as passenger movement charge revenue for all of those years.

Senator Johnston—Well done.

Mr Brocklehurst—It was provided as an answer to a question on notice, No. 3160, that Senator Sherry asked. But, if you like, I could read out the numbers.

Senator LUDWIG—He has been in before me then. I might take that up independently with Senator Sherry. If someone has already done it, I would be only too happy to have a look at it. There were a couple of questions I have around that.

Mr Brocklehurst—We can table this now if you wish.

Senator LUDWIG—Please.

Senator Johnston—I always feel reassured when they are going over old ground. It is very good.

Senator LUDWIG—There is not a lot of new ground, if I can say that.

Senator Johnston—That is good.

Senator LUDWIG—How many vessels do you currently have on lease?

Ms Grant—We have two vessels currently on lease.

Senator LUDWIG—That is the *Triton*—

Ms Grant—And the *Oceanic Viking*.

Senator LUDWIG—Is there consideration for any others in the foreseeable future? In other words, have you entered into negotiations? I can be more specific about a leasing arrangement for a new ship.

Ms Grant—The only other vessel that we have in the purchasing process is a vessel for Ashmore Reef, which is currently subject to a tender process at the moment.

Senator LUDWIG—What vessel is that? Perhaps you could give a short description.

Ms Grant—That would be a vessel on permanent location at Ashmore Reef to undertake both environmental tasks and border protection tasks so that we could release the patrol boats that currently do that work out there back to more general patrol work.

Senator LUDWIG—Is there a general description of the requirement that you are seeking?

Ms Grant—I will see if we have one with us. It has been put up on the tender site but I did not bring that document.

Mr Carmody—We are just getting it now.

Senator LUDWIG—I am happy for you to take that on notice.

Mr Carmody—If it is here we would prefer that to a question on notice. It is easier and cheaper than questions on notice.

Senator LUDWIG—In terms of the *Oceanic Viking* and the *Triton* are you able to say what the utilisation of those vessels is—the number of sea days per annum?

Ms Grant—For the *Oceanic Viking* we have a target of 200 sea days a year. As at the end of April, we had delivered 199 sea days. The vessel is on patrol at the moment so by the end

of the financial year we will have exceeded the target of 200 sea days. Regarding the *Triton*, we have not specified the number of sea days we would utilise that vessel for. It is fully available for Customs use, and we are programming patrols for that vessel as we need them.

Senator LUDWIG—When did it become available for utilisation by Customs?

Ms Grant—We took the *Triton* on in late January this year. It became operational in February this year and it has done a number of patrols since that time. Regarding the number of sea days, I will see if we have that exact number with us.

Senator LUDWIG—It seems to me we all work on sea days for some unknown reason.

Ms Grant—I think we will have to take that one on notice.

Senator LUDWIG—When you are providing that answer, what I am seeking is the number of sea days that it has had, the number of days it has been available for tasking or the number of days it has been unavailable for tasking from the first February date, and if there has been any—do you refer to them as repair days or dry dock days, or where the ship requires—

Ms Grant—There is scheduled maintenance and unscheduled maintenance.

Senator LUDWIG—Both of those would be helpful for the *Triton* up to today, or if there is a month that you can relevantly collect it to. Do you keep those for the Armidale vessels or are they provided by the Navy?

Mr Carmody—That is the Navy.

Senator LUDWIG—Do you then log the number of sea days that they are available for Customs?

Mr Carmody—I will just check that with my staff.

Senator LUDWIG—While they are doing that, Mr Brocklehurst, that was Budget Paper No. 2, page 327.

Rear Adm. Goldrick—We do not within the border protection command keep a formal record of the number of sea days provided by Navy. Fundamentally, there is an allocation of forces now by defence to border protection command as joint task force 639, which includes: Armidale class patrol boats; generally a major fleet unit; generally a heavy landing craft, which spends much of its time supporting the regional force surveillance units; and at the moment a coastal mine hunter.

Senator LUDWIG—You might have to provide me with an explanation now. They provide—my word would be ‘service’—and you then task it, or do they task it and then you obtain the benefit of that task?

Rear Adm. Goldrick—No, I task them in my defence identity as commander of joint task force 639. They are under my operational control for operations as I require for surveillance and response in Australian waters.

Senator LUDWIG—A ship not being available will not necessarily impact on your tasking requirements because you may not have a task at that particular time. But if you

require a task to be undertaken you then draw on the assets that are available for that task. Is that how it works?

Rear Adm. Goldrick—Yes. They are available to me under my operational control. If Defence wanted them for another purpose they would have to be removed from my operational control and I would have to be aware of that. That is something that the Chief of Joint Operations, the Vice Chief Defence Force, would have to agree to as well. Basically, there is a commitment by Defence to provide these assets continually under my operational control. Similarly, there are arrangements whereby if a vessel suffers a defect and that defect cannot be rectified within a period of time then Navy will do its best to provide a replacement while that vessel is withdrawn from service, repaired and then brought back online.

Senator LUDWIG—Have any vessels been withdrawn in the last 12 months?

Rear Adm. Goldrick—As you would be aware, there was the operational withdrawal of the Armidale class for the fuel system problems. In that case Navy provided an additional coastal minehunter and we also used heavy landing craft—not in their assigned purpose but they do have a boarding and patrol capacity. Of course, we coordinated with a Customs craft to ensure that we were able to provide adequate response capability in relation to the threats that we had at the time.

Senator LUDWIG—Was there a period during which the Armidale class were withdrawn from your use?

Rear Adm. Goldrick—Yes, there was. They have been progressively returning to service. You may be aware that it was fundamentally a problem with the fuel system. They have been having modifications—

Senator LUDWIG—I only read those things. I am told that I should not believe everything I read in the papers but I will believe you.

Rear Adm. Goldrick—Basically, there was water in the fuel system. It attracted a certain amount of attention at the time.

Senator LUDWIG—I did read about it.

Rear Adm. Goldrick—They have been having progressive modifications and returning to service. Indeed, there are several Armidale class now under my operational control, on patrol or available.

Senator LUDWIG—I am happy for you to take this on notice: what was the period during which a number of Armidale vessels were not available for use, what are the dates they were returned for your use and what vessels were added to your use during that period to provide the service?

Rear Adm. Goldrick—We can provide you a detailed answer on notice.

Senator LUDWIG—During that period what were the tasks that you set and the number of sea days that you operated? I am trying to work out how you assess the utilisation of your assets over the period.

Rear Adm. Goldrick—We do not measure Defence assets these days by sea days; it is by the availability of the assets for my tasking. In other words, it is the five which will increase to seven patrol boats.

Senator LUDWIG—Try not to tell Customs this.

Rear Adm. Goldrick—Until recently it was 1,800 sea days that were provided.

Senator LUDWIG—Yes, I am still operating on the old scale.

Rear Adm. Goldrick—Basically, we have moved away from that and indeed the Armadales will have a different availability to the Fremantle class patrol boats. The intention is that it will be a greater availability because they are moving—as Customs have for their patrol boats—to a multicrew system, which means the plan is for there to be 14 patrol boats and 21 crews. That will increase the availability of each patrol boat because some of the stand-down of the crew can obviously be conducted while another crew is manning and operating the patrol boat.

Senator LUDWIG—Of those, how do you assess whether you are meeting your tasking requirements? For argument's sake, if a request comes in for a particular task or you determine that there is a tasking requirement and you undertake that task, if these Armadales, for instance, are not available there are other assets that may be comparable but may not be comparable. Is your task reduced as a consequence? How do you assess at the end of the 12-month period or the six monthly interval that you have met your operational requirements to cover a particular area or adequately surveil a particular area?

Rear Adm. Goldrick—There are really two questions. One is surveillance. Fundamentally, surveillance is largely aerial. We obviously monitor our surveillance achievement. We conduct that, and I think we have discussed before what we call the 'risk assessment methodology', whereby each agency assigns a risk score to each area of the Australian exclusive economic zone and we fly to the highest-risk areas. We have a process whereby we look back at how well we have done and discuss it with the agencies to see that satisfaction is being achieved.

Surface vessels are mainly for response. They have a surveillance capability but it is much smaller than that of the aircraft, and they are really response assets. We coordinate as best we can to ensure that the response assets are ready to deal with finding anything that the surveillance aircraft find. We predict and plan that as best we can, because often we have an idea about where we are expecting to find things. I suppose the best way to put it is that we are after continuous improvement. In other words, if we do find something and an agency requires a response, if possible, we want to be able to respond to that.

There is a weekly process whereby the operations staff—Defence, Customs and air and surface—have a video conference and look back on the previous week to see how we have done in terms of meeting responses. But it is a complex process, because it is easy to say: 'You had 100 responses last time and you met 60. Now you have 10 responses and you met eight. Why didn't you meet all 10?' But there are speed, time and distance issues. Sometimes the tyranny of distance means that if something is detected five miles inside the exclusive economic zone and heading out, and your nearest vessel is 150 miles away, you will not be able to catch it. We are trying to get to a position where, as best as possible, if a response is

required then we are able to provide one. We are all working together to try and ensure that we can do that as best we can. It is a continuous process between Customs and Defence.

Mr Carmody—In the end event, all of those things come together in terms of the effectiveness of the surveillance and response. If you look at the most immediate challenge we have faced in the last year or two—that is, the illegal fishing to the north—then you see that, on effectiveness grounds, all of those things have come together to significantly turn around those incidents.

Senator LUDWIG—Are there statistics available on your response time or whether you have met your performance criteria or the requests that have been made? I am trying to understand the public accountability test. I looked at it earlier with sea days. Although it was a gross measure, I could see from year to year whether you were or were not meeting the projected sea days and by what percentage. I could then understand that there were ships available for patrolling. You could—and I am sure you do not—construct or reconstruct your tasking requirements to fit in with a lesser or more scenario. You could be conservative over a range of periods and look like you are meeting all of your requirements. Is that possible?

Alternatively, you could have tasks set, such as sightings made, and not have any assets there, so there would be no interception, or it could be a long way away and the tyranny of distance beats you, and that does not reflect well; it would look like you were not meeting your performance objectives when you were in fact doing more sea days. So you could be out there a lot more often but those types of sightings could defeat you because they are five miles from getting out into international water.

Mr Carmody—While the Rear Admiral is thinking about that, I will say that the effectiveness of the planning, which is about where our surveillance occurs and where we place Border Protection Command's vessels, and the combination of the tasking and the surveillance—all those measures—can be determined by asking this question: were we being effective in meeting the challenges? I believe that that is what you were getting at, and that is why I alluded to the fact that our effectiveness in bringing all those things together has been demonstrated in our response to illegal fishing in the north. From my point of view, and from the community's point of view, that is the ultimate effectiveness measure.

Senator LUDWIG—We will ask for these figures as well, but in terms of the numbers of vessels seized and sighted and how many vessels have been confiscated and destroyed—do you use those words or—

Mr Carmody—Apprehended.

Senator LUDWIG—Apprehended and then subsequently destroyed. Are those types of figures the measures of efficiency that you use?

Mr Carmody—This was a significant challenge in our northern waters. The ultimate measure is whether that challenge has been diminished. Have the incursions been diminished? Has there been a significant turnaround? And there has.

Senator LUDWIG—How do you assess that?

Mr Carmody—That would not happen unless the various factors that have been talked about—determining the areas for surveillance, the positioning of vessels, the on-water response—were operating effectively.

Rear Adm. Goldrick—The measure of effectiveness, fundamentally, is if we are reducing the number of illegal events that are taking place in the Australian EZ. We are conducting in northern waters—in terms of the fishing effort—extensive surveillance, and the number of sightings have reduced profoundly. That to me is the measure of effectiveness. Actual apprehensions as such are to some extent a measure of performance and effectiveness. But our measure of effectiveness is the fact that we have reduced the number of illegal events in the EZ.

Senator LUDWIG—You will be able to provide the figures that I have sought?

Mr Carmody—In simple terms, in the first four months of this year sightings are down 90 per cent.

Senator LUDWIG—This comes back to the tasking of the assets, though. If there is no surveillance, you are not going to sight them and then you are not going to target them.

Mr Carmody—Surveillance area coverage in those four months is also up by 10 per cent or something.

Senator LUDWIG—I will come to that; we will cover that. I was just using that as an example.

Mr Carmody—We are covering a greater area in surveillance and the sightings are down dramatically.

Senator PAYNE—Can you explain to me what the 90 per cent is relative to? Ninety per cent fewer than what?

Mr Carmody—If you compare the first four months of this year—

Senator PAYNE—With the first four months of the preceding year?

Mr Carmody—With the first four months of the preceding year.

Senator PAYNE—So it is apples with apples in that regard?

Mr Carmody—Yes.

Senator PAYNE—Do you then project for the next third of the year? What are the expectations in relation to that? What if the weather changes and it becomes more pleasant to fish in the northern EZ?

Mr Carmody—I would have to say that we do fail in some things.

Senator PAYNE—They were not listening, Mr Carmody; do not worry.

Mr Carmody—Our failure has been in projection of apprehensions. We have had some discussions at this committee in which there were projections of apprehensions and we have failed dismally to meet them—we have not apprehended anywhere near as many vessels. However, I am quite pleased to report that because, as we have been explaining, the reason that we are not apprehending vessels is because they are not coming into our waters in the same numbers.

Senator PAYNE—So it is not that we are not seeing them; it is that they are not coming?

Mr Carmody—It is that they are not coming.

Senator PAYNE—I just wanted to clarify that.

Mr Carmody—Yes.

Senator PAYNE—So you are not going to try and project those figures anymore, Mr Carmody? How is your crystal ball going?

Mr Carmody—We have put figures in the portfolio budget statements, but they are down on the last ones that we put in because of the turnaround that has occurred.

Rear Adm. Goldrick—We have put 250 in the portfolio budget statement but the key issues is that we need to maintain capacity.

Senator PAYNE—Capacity to do the job that you are doing?

Rear Adm. Goldrick—Capacity to do the job—and that really is the whole chain from surveillance and response to onshore processing and dealing with the boats and the fishermen. Indeed, much of the money that the government provided for the program to assist in this was actually the onshore side. Because the surveillance and response assets already existed, there were questions as to the ability of the shore side to deal with the numbers of boats and fishermen appropriately.

Senator PAYNE—So in terms of the onshore processing and dealing with the individuals—those sorts of issues?

Rear Adm. Goldrick—Yes.

Mr Carmody—Although in that area, of course, there are capacity costs, and they are sort of fixed costs, and we have implemented a range of those things and the money has been spent, effectively, on that. But there are revenue costs, if I can put it that way—expenditure in terms of the actual processing of apprehended fishermen. Because they are down significantly, we have in fact arranged to return some funding to the department of finance.

Senator PAYNE—For which they are ever grateful, I am sure.

Mr Carmody—I am sure they are.

Rear Adm. Goldrick—But we are maintaining the fixed capacity, and we do believe there are a number of factors at work in addition to our apprehension program in reducing the illegal fishing activity. For example, there has been a lot of work with the Indonesian government and in-country in Indonesia to explain to the fishermen about Australian laws and the regime. Similarly, the Indonesian government has been doing a lot about illegal fishing in its own waters, and it has a very serious problem. But we do believe we need to continue the effort because deterrence is very important, and actually having the patrol boats out there patrolling, particularly on the boundary where they are seen by Indonesian and other fishing boats from the other side of the boundary, is really important.

Senator PAYNE—Admiral, I cannot recall whether you have given us information on notice before in relation to the sorts of work you were just talking about doing in Indonesia. Have you given us information about that before?

Mr Carmody—We have mentioned it only briefly, at the last hearings.

Senator PAYNE—I know how much you love questions on notice, Mr Carmody, but would it be possible to provide the committee with some further information on that activity?

Mr Carmody—Yes.

Rear Adm. Goldrick—We certainly can. We will consult with other departments as well.

Senator PAYNE—Thank you.

Senator LUDWIG—I have spoken about getting some statistics on the numbers of vessels seized and sighted and the like. But if there has been a detention—or a wrongful apprehension, perhaps, if I can use that phrase—what happens if it is contested and is found to be unlawful? I guess it might take a while to litigate. But there have been two instances where a boat has been apprehended and that has been contested but in the interim the boat has been destroyed, and then it has been found to be an unlawful apprehension. What happens then? Is compensation paid?

Ms Grant—Yes, compensation is paid. We had one case in recent times where we were requested to respond, we made the response and, on subsequent examination of the breach, it turned out that indeed there had not been a breach of that particular area of the ocean for fishing. So, because the vessel had been destroyed, Customs made full compensation to the owner of the vessel in Indonesia.

Senator LUDWIG—So they made restitution. How much was that for?

Mr Hurrell—I think we finally agreed on a figure of about \$15,000. I would have to get you the exact details on that.

Senator LUDWIG—And was there any detention involved for the individuals?

Mr Hurrell—The individuals were released once they got back ashore. That was an unusual circumstance because the apprehension took place in an area of waters that is the subject of negotiations between Australia and Indonesia.

Senator LUDWIG—Is that in the box?

Mr Hurrell—No, it is not in the box; it is in an area that is currently being negotiated between the two governments, and there are some technical fisheries issues about dealing with vessels in that area. We responded in good faith. Once the vessels have been apprehended, and we have provided a report from the vessels back to AFMA, the fisheries authority—if there was no AFMA officer on board—determine whether they feel there is sufficient information to go through with the apprehension and bring the vessel in for further investigation. In this particular case they determined that there was not sufficient information to go ahead with that apprehension and prosecution. Regrettably, the situation was that the vessel itself was rapidly becoming unseaworthy. We took the people onto our vessel. Their vessel was destroyed. They were brought back into Darwin and subsequently repatriated to Indonesia.

Senator LUDWIG—Were they detained during that period?

Mr Hurrell—No, they were not detained.

Senator LUDWIG—So then what? Did you hand them over to Immigration?

Mr Hurrell—Yes. Immigration dealt with them and they were repatriated as soon as Immigration could make appropriate arrangements with Indonesia.

Senator LUDWIG—What of this disputed area of the sea? Is it now available on Customs charts so that they understand the area that is concerned?

Mr Hurrell—Yes. It is on the charts. We know exactly where the boundaries are. It is an area that we are approaching with caution at the moment while the negotiations are underway between the two governments. We take our advice from the Department of Foreign Affairs and Trade on that.

Senator LUDWIG—So you cannot apprehend a foreign vessel in that area—is that what you are saying?

Mr Hurrell—Under the Fisheries Management Act we can apprehend, but they have to have caught sedentary species in that area. It becomes a quite technical fisheries matter.

Senator LUDWIG—It is best to have an AFMA person on board when that happens.

Mr Hurrell—Indeed.

Senator LUDWIG—So what is the process now for sightings and contacts in that area?

Mr Hurrell—If there is a sighting in that area, a Customs vessel would, if directed by Border Protection Command, respond and provide as much information as it could back to the operation centre and the decision would be made from there. But we have approached this area with some caution after that last incident in terms of going into that disputed territory.

Senator LUDWIG—It is not clear to me whether you will continue to do your work in that area or not.

Rear Adm. Goldrick—Yes, we will. But it is a matter of doing it with some care. Yes, we will board and investigate if there are any sedentary and bottom species on board. If there are not any, then those on the vessel are thanked for their cooperation and they continue on their way. It is something that we have reinforced to the crews of both Customs and Navy: it is a very limited jurisdiction and a limited authority that they have.

Senator LUDWIG—So that is in that area?

Rear Adm. Goldrick—Yes.

Senator LUDWIG—So what effectively happened? You detained, apprehended, a vessel outside your jurisdiction and then destroyed it, or was it sinking and you rescued those on it? I am not clear on the advice that you have provided.

Mr Hurrell—It was a combination of factors at that time. We felt that it would not be wise, given the condition of the vessel, to put those individuals back on board that vessel.

Senator LUDWIG—Are there any other claims outstanding?

Mr Hurrell—No, there are not.

Senator LUDWIG—That is the only one?

Mr Hurrell—Yes.

Senator Johnston—Compensation has been paid.

Senator LUDWIG—That was going to be my next question, thank you, Minister.

Senator KIRK—I have a question arising out of the response to question No. 58. It is in relation to a CSIRO study that was in train estimating reliably the foreign fishing vessel effort from Coastwatch surveillance and apprehension data—quite a mouthful. As I understand, the answers that you gave us indicated that the study commenced in July of last year and it was anticipated that it would be completed in the second quarter of this year. I am interested to know about the progress of that.

Rear Adm. Goldrick—The study has just been completed. I did remark that if possible we would provide a copy to the committee. Unfortunately, the first study has so much on our operational patterns of surveillance that there are large elements of it which cannot be released publicly. We have asked CSIRO to produce a study that can be released publicly. However, the findings are actually quite clear. They have been able to develop a model which basically measures the estimate of the number of illegal fishing boats in Australia's exclusive economic zone per day. They have done that based on the surveillance data.

It is an estimate. The verbal briefing I had from CSIRO yesterday indicated that it is possibly plus or minus 20 per cent, but they have been able to give us figures per day. Those have now been calculated from January 2005, month by month, to June 2006. Basically, it is indicative that in the peak period, September 2005, we believe there to have been an average of 60 per day. But from the beginning of 2006 that dropped steadily down to 14 per day in June 2006. We will be giving CSIRO the figures to do a further assessment up until the end of this financial year. That is our intention. Our expectation is that that figure will drop even further from 14 per day. That is an estimate. I think you will need to study the full public paper to understand the methodology. It has had some pretty rigorous work in it. I must compliment the CSIRO scientists involved—it was a joint effort—on what they have done. They have also validated our surveillance patterns and quite a few other things in ways that we did not expect.

Senator KIRK—When is the limited version of the document likely to be publicly available?

Rear Adm. Goldrick—I would say it will be within a couple of months, but I can get back to you with an exact estimate.

Senator KIRK—That would be helpful. Thank you. Is there very much analysis done as to why these figures have dropped so substantially just in that period of 12 months, from 60 to less than 14?

Rear Adm. Goldrick—What is very interesting is that there are some tables in the study which compare the sightings with the accumulated apprehensions. They are actually quite striking—in particular after a decision was taken at the end of 2005 not to use the legislative forfeiture approach anymore. Under legislative forfeitures, catch and gear were confiscated. It became apparent that that was not sufficiently effective, so at the end of 2005 it was decided that there would be a systematic policy of apprehensions. At that time I believe Customs also took responsibility for the onshore processing, and indeed government provided substantial funds. From that point on, with the systematic apprehension policy, looking at the graphs it

appears that—I am not a scientist and the study does not say this; it simply puts the tables there for someone to read—there is a correlation of the cumulative apprehensions going up and the number of fishing vessels in the exclusive economic zone coming down.

Senator KIRK—What will this document be used for? Is it simply a look back to see how things have improved or is it to be implemented in some way? Are there recommendations, for example?

Rear Adm. Goldrick—It is part of a wider effort by the CSIRO to understand fundamentally the state of the fisheries for sharks and other species in the north. From CSIRO's point of view, their interest is really to say, 'All right. How many fishing days and how much catch is this likely to mean? Therefore, what effect will this have on the biomass of sharks?' I believe what they are trying to do is really to understand what is sustainable fishing from the Australian point of view and what is the balance of the ecosystem. This is simply a part of a lot of other work that CSIRO is doing. We commissioned the study, along with the Fisheries Management Authority, to get away from this issue of being told that there were thousands of sightings and QED there are thousands of fishing boats. It is quite clear from even the peak of the problem that the problem is not thousands; it is hundreds. How many hundreds is very difficult to say.

One of the other things we want to do is to take this data and start to understand, for all the various sorts of Indonesian fishing boats, what their operating patterns are. How long would they have spent in Australian waters? How long would it take to get home? When would they come back? Those are the sorts of things that, as we understand more, help us to tailor our surveillance and our response even more to ensure that we have the right deterrent effect.

Senator KIRK—What was the end cost of the study? I know that there was an original estimate of around \$140,000.

Rear Adm. Goldrick—Yes, I believe so. We provided approximately \$54,000 to the cost of that study.

Senator KIRK—And the rest was picked up by the department and the Australian Fisheries Management Authority—

Rear Adm. Goldrick—AFMA and the Department of Agriculture, Fisheries and Forestry.

Mr Carmody—And CSIRO absorbed some.

Rear Adm. Goldrick—In their standing cost.

Senator KIRK—From your point of view, would you say that it was value for money?

Rear Adm. Goldrick—I would say that it is extreme value for money. To my layman's eye, it looks like a very good piece of scientific work, and it is immensely useful to us.

Senator Johnston—It sounds like the report will satisfy the original question that Senator Ludwig asked about tasking and how do we know that the various individual performances of the assets are working. I think that is the wrong question—with respect, it is a good question—but as an integrated assessment of all the multidimensional aspects of border protection and Coastwatch et cetera, this report brings that all together and probably answers Senator Ludwig's question.

Senator KIRK—Thank you minister. I have some questions arising out of the response to question No. 104. This refers to the forecast by Coastwatch of the number of flying hours. It is the estimation of the number of sorties attempted by Coastwatch.

Senator Johnston—Senator, could you repeat that question?

Senator KIRK—I want to follow up on the answer that was given to us in relation to question No. 104. Just to summarise, the answer seems to suggest that it is not possible or feasible to forecast the specific operational circumstances that would govern the number of flights that could be undertaken. What I am interested in from this answer is that forecasts of sorties are unable to provide any meaningful data. Essentially my question is: to what extent have attempts been made to forecast?

Mr Marshall—We have not made any particular attempts to forecast the number of hours and missions because it does not necessarily serve our purpose. We have a contract with a number of providers that has a number of features. For instance, the new Sentinel contract requires the provider to provide 13,613 hours and it also provides a number of missions. Clearly, we could not provide 1,316 one-hour missions. What we do is manage the number of missions that they are crewed for with the number of hours that were in the contract with the operational need of the day. As long as we exit the year with a balance of missions and hours, we have achieved our task. But it does not serve any purpose for us to forecast either missions or hours in that manner.

Senator KIRK—You are really saying ‘as long as the numbers stack up at the end’ is the aim. Is that the aim?

Mr Marshall—Exactly.

Senator LUDWIG—What type of vessel was the one that was apprehended and destroyed?

Mr Hurrell—Type 3. One of the small, motorised wooden vessels.

Senator LUDWIG—Who made the decision to apprehend the boat in that area? How does that flow through?

Mr Marshall—Once there is a sighting of a vessel suspected of an illegal activity in the area, the Coastwatch surveillance aircraft would report that to the desk in Canberra. The desk would then report, in this case to AFMA, and say, ‘We have a vessel that we suspect is acting illegally,’ and AFMA would or would not request a response.

Senator LUDWIG—Do you provide the location?

Mr Marshall—Indeed. Exactly the location. Then we would send a vessel there if we could and the Customs officers or the Navy officers would board the vessel. They would make an assessment of the situation and then report back through the operations desk to AFMA and make a recommendation about whether the vessel should be apprehended or whether some other action should be taken. In this case, AFMA recommended that the vessel be apprehended, and that is indeed what happened. AFMA subsequently became aware that the vessel had been fishing for swimming fish rather than sedentary fish and realised that their grounds for apprehension were not as good as they had initially thought.

Senator LUDWIG—How was AFMA made aware of that?

Mr Marshall—They had all the information in front of them at the time. It was an out-of-hours situation and when the situation was examined in the cold light of day other eyes looked at it and decided that perhaps the right approach had not been taken. But in all cases the Customs officers on the Customs vessel were working under the direction of AFMA officers.

Senator LUDWIG—Does AFMA use radiotelephone or some mechanism to advise Customs to apprehend the vessel?

Mr Marshall—On a normal, day-to-day basis we have AFMA people stationed in the operations centre. On this particular occasion it was after hours and a call would have been made to the on-call person by either landline or mobile phone. He would have been aware of where the vessel was and he would have made his decision on that basis.

Senator LUDWIG—What other information is provided? Do they provide them with the type of boat and the type of evidence that has been obtained?

Mr Marshall—When the AFMA officer makes the final decision he has all that information in front of him.

Senator LUDWIG—In this instance the decision was made to apprehend. When was the decision made and who made the decision to determine that the vessel was to be sunk or destroyed?

Mr Marshall—We would need to get these details provided on notice. My memory of it was that the vessel was destroyed before AFMA subsequently reviewed the information. At the time of the apprehension and after AFMA had approved the apprehension, the master of the Customs vessel noticed that the vessel was taking water, that it was not safe for the fishers to stay on it, and that on that basis it would not have been safe to tow to port. On occasions like that the vessel is authorised to be destroyed.

Senator LUDWIG—So who authorised the vessel to be destroyed?

Mr Marshall—That was authorised by a Customs officer.

Senator LUDWIG—On what basis? That was not by AFMA; that was by the Customs officers independently of AFMA?

Mr Marshall—Customs legislation provides many reasons why a vessel can be destroyed, and one of those reasons is the seaworthiness of the vessel. We can have a look at the actual decision that was taken and that will detail on what basis the vessel was destroyed.

Mr Hurrell—That decision was taken by me as the delegate of the chief executive officer, based on the information provided to me at the time by the CO of the vessel.

Senator LUDWIG—Is that Customs officer on land or at sea?

Mr Hurrell—The Customs officer on board the Customs vessel—the commanding officer—makes an assessment. That is provided to the operations centre here in Canberra. If a recommendation to destroy it is considered appropriate, it is considered by a delegate of the chief executive officer and a decision is made under the Customs legislation to authorise destruction.

Senator LUDWIG—Has there been a subsequent investigation into the incident?

Mr Marshall—There certainly has not been an investigation as such. We reviewed the circumstances of the case and, having reviewed them, we have made sure that officers of both Navy patrol boats and Customs boats are aware of the particular circumstance in that area and that they make a clear decision about whether the fish on board the vessel are sedentary species or swimming species.

Senator LUDWIG—Did the original information from the Customs vessel, when it intercepted the vessel, provide a description of the type of fish—type 3—that were on board, which would have then alerted the AFMA people as to whether the fish was a ‘swimmer’—to use your expression—or a sedentary type?

Mr Marshall—Yes, there was sufficient information at the time.

Senator LUDWIG—Of what I have described?

Mr Marshall—Yes.

Senator LUDWIG—It seems to me, though, that there should have been an investigation, Minister. These matters are obviously in your hands, or Mr Carmody’s hands, but it seems to be quite an unusual circumstance—there has been a failing in procedures, information was there and a boat has been sunk unlawfully. I know you say compensation has been paid—

Senator Johnston—Let us not overstate the situation. The boat was sunk in circumstances where it was unseaworthy.

Senator LUDWIG—What is unclear is why it became unseaworthy. You might be able to provide some evidence about that as well.

Senator Johnston—It was apprehended, an assessment was made and the assessment upon review was altered in the interim. Relying on the first assessment, the boat was destroyed in circumstances where it could not be towed because it was taking water. I am interested to know what you would be inquiring into. I think the facts speak for themselves.

Senator LUDWIG—I disagree, quite frankly. There seems to be this systemic failure that is involved.

Senator Johnston—I absolutely disagree with that.

Senator LUDWIG—The information was available to AFMA to act to provide sufficient information to Customs to intercept the vessel. They sight the vessel and the information then says that it is a vessel within an area. Customs should have already known that they were in an area that was in dispute and perhaps even acted a bit more cautiously. There was a range of circumstances, I would have thought, that would have alerted you to looking at all of the circumstances to ensure that you were satisfied that all the procedures were followed and, if there were procedural deficiencies, that there was a report that could remedy those so that it does not happen again. That is the usual thing I would have expected rather than simply saying, ‘Oh well, it was a mistake,’ and move on.

Senator Johnston—Funny you should say that! All of those things have happened. When the file came to my office, I did exactly what you have envisaged. I am satisfied that Customs are now more aware of the need to be more specific in the description of the fish and that

AFMA need to be more circumspect in their initial appraisal of the situation. All of those matters have been put on the table, analysed and digested by Customs. But, at the end of the day, the circumstances and the facts are as depicted. There is nothing more to investigate. Compensation has been paid. The aggrieved party appears satisfied with that. Everybody has been repatriated. There is nothing to investigate, other than to bring the people back from Indonesia, sit them down and take sworn evidence. If that is what you require, I would defer to the fact that we have resolved this in an equitable, efficient and proper manner.

Senator LUDWIG—An inquiry was done but it was an internal inquiry. Is that right?

Ms Grant—I can confirm that Customs did undertake a review with AFMA of the circumstances of that particular case. We have adjusted our procedures accordingly to ensure that our vessels do not repeat an apprehension incorrectly, as occurred in this particular case.

Senator LUDWIG—That is helpful. We could say, Minister, there are many forms that an inquiry might take. You have indicated one form. That is not necessarily the only form.

Senator Johnston—That is right.

Senator LUDWIG—Mine was a general question of whether you inquired into the incident. Your original answer was no.

Senator Johnston—When you say inquiry, we carried out a review of the practice with AFMA. In the way that I anticipate an inquiry to be, you take evidence at an inquiry seeking to apportion some form of blame. I do not think that is appropriate in these circumstances.

Senator LUDWIG—I was not going to a royal commission; you might have been assuming that that is what you wanted. I would have thought—

Senator Johnston—What do you understand by an inquiry?

Senator LUDWIG—You might get your turn to ask a question one day.

CHAIR—I am sure it was a rhetorical question, and it is not likely to be very soon.

Senator LUDWIG—There has been a review conducted, then. Are you able to tell me the area where the interception took place? I did not ask originally because it is in dispute whether it is well known or whether it then becomes public and people can go and fish.

Rear Adm. Goldrick—I do not have a chart immediately available, but we can provide you with a chart or a map with an indication of where the incident occurred and the area concerned.

Senator LUDWIG—Provided that does not compromise any operational requirements, it would be helpful to understand that.

Rear Adm. Goldrick—There is not a problem with that.

Senator LUDWIG—When the decision was taken to destroy the vessel, was it under Customs control at that point?

Ms Grant—Yes, it was.

Senator LUDWIG—How does it shift from AFMA to Customs? I am unsure of that mechanism.

Ms Grant—AFMA is the client and, when we notify them of the suspected breach in Australia's waters, we seek their guidance as to whether, as a client, they wish a response or otherwise. Once they ask for the response—and in this particular case a Customs vessel was making that response—the operational aspects are under the control of Customs through the border protection command. When the CO of the vessel then assesses the situation—and in that particular case they determined the vessel to be unseaworthy—it is purely in Customs control at that point to make those assessments and seek approval from the Customs delegate to deal with the vessel in the most appropriate fashion.

Senator LUDWIG—Was it on tow at that point?

Ms Grant—No.

Senator LUDWIG—Was it boarded, was it tied up or—I do not know the expression you use—was it thrown a line and made fast?

Rear Adm. Goldrick—It had been boarded, but I do not believe it was attached to the *Triton* in any way. But I understand it was taking on water and becoming of increasing concern to the commanding officer of the *Triton* as to its seaworthiness and safety.

Senator LUDWIG—Was any assessment made or any investigation conducted to determine whether it was the *Triton* itself, by being close to a type 3 boat, that was causing the water to be taken onboard? Type 3 boats are not big boats, from my recollection.

Rear Adm. Goldrick—I am not aware of any investigation, but I must admit I cannot be—

Mr Carmody—It would have been approached by tender, wouldn't it?

Rear Adm. Goldrick—Yes, it would have been approached by tender. The *Triton* stays well clear of fishing vessels in that situation; it is approached by tender. I will also point out that the fragility and the lack of seaworthiness of many of these wooden fishing vessels is well known. For example, they are very difficult to tow. Indeed, many of them have to be destroyed on the spot because a judgement is formed by the commanding officer of the unit concerned that the vessel would simply fall apart during the tow.

Senator LUDWIG—Was there any evidence seized from the boat?

Rear Adm. Goldrick—Yes, there was.

Senator LUDWIG—How was that secured?

Mr Hurrell—The normal arrangement is that, once the vessel has been boarded, the catch is identified as best it can. That information, as has been described previously, is forwarded back to the central operations area here in Canberra, and then the catch is secured. From that point on, we would take our direction about the catch from the Australian Fisheries Management Authority—whether they want us to retain the whole catch onboard, get rid of the catch or one of a number of other options. We take our guidance from them. In this particular case, the catch was secured. Because of the condition of the type 3 vessel, the crew were taken onboard the Customs vessel and the catch was still secured onboard the type 3 vessel. Subsequently, the catch went when the vessel was destroyed.

Senator LUDWIG—I am unsure of that. When you say that the catch was taken onboard—

Mr Hurrell—No. The crew were taken onboard.

Senator LUDWIG—The catch was secured?

Mr Hurrell—The catch was secured at that point in time, yes.

Senator LUDWIG—When you say secured, what does that mean exactly?

Mr Hurrell—That means that we make sure that no-one can dispose of it before a decision is made.

Senator LUDWIG—I see. Do you take a sample or pictures of it?

Mr Hurrell—Yes.

Senator LUDWIG—Are they available?

Mr Hurrell—I am sure they probably are somewhere in the system and we can get those for you. As a matter of course we do as much evidentiary collection as we can on the spot on behalf of the Fisheries Management Authority.

Senator LUDWIG—Was the boat subsequently sunk or was it destroyed? I am not sure on that point. Did it sink of its own volition or was it Customs that effected the destruction?

Mr Hurrell—Customs effected the destruction.

Senator LUDWIG—How do they do that?

Mr Hurrell—Normally by setting fire to it and making sure that it burns down to below the waterline. If we can move it to a specified area we do that, but sometimes that is not operationally possible. Guidance is sought from operational headquarters back here to identify the best location. We clearly do not want to be burning a vessel to the waterline and then having the debris from it fouling fishing grounds in shallow water, so we attempt to get it to a location where it can be properly disposed of. As I say, that is not always possible but that is the guideline under which we generally operate.

Senator LUDWIG—Was compensation paid for the catch?

Mr Hurrell—No. Compensation was paid for the destruction of the vessel. It was an act of grace payment in that, arguably, we had dealt with a safety of life at sea situation in any event. Given the circumstances surrounding this matter and the increasingly good relationship with Indonesian authorities over illegal fishing, we thought that it would show that from the Australian side we were operating in good faith. We do not compensate for the loss of catch or the loss of the wages of the crew et cetera.

Senator LUDWIG—Why not? It seems to be that the catch was available to the crew until you happened along.

Mr Hurrell—The legislation simply says that compensation may be paid. There was a mutual agreement about the amount that was paid with master of the vessel, operating as agent for the owners back in Indonesia, who was represented by legal counsel in the Northern Territory while these negotiations were made. A settlement was agreed, he accepted that settlement and was returned to Indonesia.

Senator LUDWIG—So no compensation was paid for the catch and no reimbursement to the crew for their expenses or loss of wages was made by Customs?

Mr Hurrell—No, not in specific terms.

Senator LUDWIG—Was that given consideration?

Mr Hurrell—It was given consideration but our legal advice was that we were not required to do that. I think in the circumstances—given the size of the vessel, the catch that was on board et cetera—it was a reasonably generous settlement in terms of the boat that was actually destroyed.

Senator LUDWIG—Was there an independent assessment that arrived at that figure?

Mr Hurrell—It was an assessment that was the subject of negotiation between the representative of the owners back in Indonesia, the master of the vessel and his legal representative in Darwin, us and the Fisheries Management Authority.

Senator LUDWIG—Was any other evidence seized?

Mr Hurrell—No. The decision had been made that there was not sufficient evidence—there was no evidence in fact. When AFMA reassessed the fish represent as we call it, which is the fisheries report, there was no evidence that there had been sedentary species taken in this particular area, therefore there was no offence.

Senator LUDWIG—Was consideration given to compensation for other personal effects or equipment on board the boat?

Mr Hurrell—The personal effects are always removed with the fishers before the vessel is destroyed. Any personal effects and equipment—for example, specialised equipment such as a GPS or something like that—would be taken on board the Customs vessel with the crew.

Senator LUDWIG—Do you know whether it was or not?

Mr Hurrell—I do not know, but I can find out for you.

Senator LUDWIG—Are there other actions or matters pending as a consequence of this?

Mr Hurrell—No, there are not.

Senator LUDWIG—Was the decision to compensate initiated by Customs or was it initiated by the crew or the owner of the vessel?

Mr Hurrell—The owner made a claim. The owner was provided with a letter from Customs, as is a matter of course in all these circumstances where vessels are destroyed under the Customs Act, which said they have a right to seek compensation. Customs has the right to accept or refuse a claim depending on the circumstances. As a consequence of receiving that notification, the master, acting on behalf of the owner, made a claim for compensation and then there was a series of negotiations about the quantum of that compensation.

Senator LUDWIG—It is back to you, Mr Brocklehurst, on that matter that, unfortunately, has taken some time to come back to. I managed to find the reference. Did that help?

Mr Brocklehurst—Yes, it did. The amount of funding that was provided, as outlined on page 327 of Budget Paper No. 2, did not include depreciation. The depreciation funding that was provided to Customs as part of that initiative was \$2½ million in 2007-08 and \$4 million in 2008-09.

Senator LUDWIG—Thank you very much. There was a report—and I think this matter was raised today with the Australian Federal Police—of crates that were washed ashore in Queensland. Minister, you seem to know more about it than I do.

Senator Johnston—I think Mr Carmody knows all about it.

Mr Carmody—We know about it. We are investigating that. Mr Hurrell can provide the information that you require.

Senator LUDWIG—Why are you investigating it?

Mr Hurrell—We are investigating it in conjunction with the Defence Force. The crates appear to be marked in a way that suggests to us that they could have been defence items. We referred the matter to the Australian Federal Police and provided them with the details. They were happy for us to continue to work with the defence department on trying to determine the exact origin of the items. What we do know is that they appear to have been ashore for some little time in an area where a lot of flotsam and jetsam does drift ashore on that particular coastline. They certainly appear to have contained some sort of military ordnance at some point in time. We were not able to determine the markings on them due to their having been in the water for a while. We sent them off to the appropriate specialists at Defence, who are still examining the matter at this stage. What we do know is that they are not of ADF origin. That is all we know at this stage.

Senator LUDWIG—What date were they discovered?

Mr Carmody—It was 12 April 2007. One of our ACVs was nearby and so it came in to examine them.

Senator LUDWIG—How big were the crates?

Mr Hurrell—There were four crates. I do not have the exact dimensions, but each was akin to an ammunition box it seemed to us at first glance.

Senator LUDWIG—When did Customs undertake the joint investigation with the Defence Force? Was that a formal request by the Defence Force?

Mr Carmody—Sorry?

Senator LUDWIG—When did Customs undertake the investigation?

Mr Carmody—That followed the fact that once we detected the boxes—they were empty crates—and I am not sure of the exact time but—

Mr Hurrell—As soon as the vessel got back to Thursday Island—we had contacted Defence—we handed them over to Defence to have a look at them for us to try to determine their origin and what they might have contained. As I have said, that is still ongoing with defence authorities.

Senator LUDWIG—Was the matter referred to the Australian Federal Police for their interest?

Mr Hurrell—We advised the Australian Federal Police through its central office here in Canberra so that they were aware of it. They did not wish to proceed with it any further, as I

understand it. They are awaiting advice from us as to what the defence department can tell us about the actual containers.

Senator LUDWIG—Have Queensland Police been advised?

Mr Hurrell—Queensland Police have not been involved—other than having been advised as a matter of courtesy.

Senator LUDWIG—Were the containers found below the high-water mark?

Mr Hurrell—They were above the high-water mark.

Mr Carmody—As Mr Hurrell has said, there is clear evidence that they had been floating around for some time in an area where that is not uncommon.

Senator LUDWIG—Maybe I can come back to that—or take it up with Defence. An answer to question No. 106, with respect to what was then CMS04, on 13 February 2007, indicated that the SIM was not separated from the tender itself, but during contract negotiations the supplier was asked to retender for a SIM that more closely satisfied customers requirements. Who was given the opportunity to retender?

Rear Adm. Goldrick—Surveillance Australia was asked to retender for the information management system as part of its whole contract.

Senator LUDWIG—Is that SAPL?

Rear Adm. Goldrick—Yes, indeed.

Senator LUDWIG—It was not put out for an open tender? SAPL was asked to retender for that part of the contract? I am trying to understand this. That answer said that the SIM was not separated from the tender itself, but during contract negotiations the supplier was asked to retender for the SIM. Is that SAPL? Who is that supplier of the SIM?

Rear Adm. Goldrick—That is SAPL.

Senator LUDWIG—SAPL was asked to retender for a SIM that more closely satisfied Customs requirements? I am struggling to understand what happened.

Rear Adm. Goldrick—The preferred option that Surveillance Australia, SAPL, put forward was a high-risk system—and it was unacceptably high risk to Customs. It appeared to meet the specifications in terms of the promised performance and the promised specifications of the system, but the assessment of the assessment group was that it was high risk because a lot of the elements of that system had yet to be developed and there were issues as to the capacity and the time that it would take to develop the full system.

Senator LUDWIG—That is why you would not go out and retender?

Mr Carmody—My understanding is that that was part of the original tendering process; it was part of what was put forward as part of CMS04. That total process was moving forward and the decision was taken that we wanted to continue with the total outcome from the tender. However, for the purpose of making sure that we got the primary surveillance capability as soon as possible, recognising that we had some concerns about the final solution for the SIM, we said that we would sign up for the general surveillance but that we wanted to continue to

talk to them about the detail of SIM. So negotiations continued on, given what the rear admiral has said, to try to mitigate the risks with the original components.

Senator LUDWIG—Was it separated then from the contract?

Rear Adm. Goldrick—It became a contract change proposal which was required to effectively complete the contract. So it was not completely separated.

Mr Carmody—It was not separated as such.

Rear Adm. Goldrick—But there is a separate contract change proposal which was developed and signed on 23 December last year, which was well after the signing of the main contract.

Senator LUDWIG—So it was not a variation of the term of the contract?

Mr Carmody—I do not know about the technical description, but it was part of the total contract. As we said, we were satisfied about going ahead but we were not satisfied with some elements of that, and so we progressed in a two-stage way. That involved a contract variation.

Senator LUDWIG—In answer to part (b) of that question on notice—which was: was the original contract revised down—you said no. Why was it not revised down if it was separated out and subject to a separate negotiation?

Mr Carmody—I am not quite sure what ‘revised down’ means, to be clear. I know we have answered it, but I am not sure what revised down means. I suspect you were talking about contract price or something, were you?

Senator LUDWIG—Yes, I can help you with that. We sometimes put things out there wildly and see what comes back.

Mr Carmody—We could say that our answer was put out in a similar way. I think the answer to your question is—and, again, we will make sure of this—that there was a component of the price built into the contract. That remained in the contract. Part of the reason why there was a contract variation was that when we got to the final solution there was some addition to the amount included in the contract.

Rear Adm. Goldrick—Yes, there was.

Mr Carmody—So I think that is why the contract was not revised down at the time—it included a component for the SIM.

Senator LUDWIG—I used the words ‘contract revised down’ specifically—because you have a price for a contract, you have tendered for a contract and when there is a variation to the contract you would expect that it would be varied either up or down as a consequence of the variation. In this instance it appears that there was a variation to a contract because part of it—that is, the SIM—was unsuitable and therefore you wanted to enter separate negotiations for that SIM to be supplied in a different way or in a different format or type. Therefore you removed that from the contract.

Mr Carmody—No, we left it in the contract and the price, which was at that stage the expected price of the SIM, was left in the contract.

Senator LUDWIG—I see.

Mr Carmody—In fact I think the terms of the contract were: this is what will be provided at this price. But as we went through the negotiations that led to a contract variation because there was a variation to the price.

Senator LUDWIG—Which meant there would be a later supply of the SIM than what was in the original contract?

Mr Carmody—Yes.

Senator LUDWIG—So was the price revised up? Did you pay more for the variation?

Mr Carmody—Yes, we did.

Senator LUDWIG—What was the total price of the contract at the initial tender stage and how much was it then revised upwards by?

Rear Adm. Goldrick—I think we have actually provided that information before but we can provide it again.

Senator LUDWIG—It fits now in a better framework of understanding, so if you do not mind that would be helpful.

Rear Adm. Goldrick—Certainly.

Senator Johnston—I would like to make the comment that the SIM is integrated into the surveillance methodology. This is the information handling software. It was not suitable in those circumstances, given that it is such an integral part of the overall contract, to try to hive it off and re-tender it out. The risk mitigation was to avoid problems with it. The answer to those questions you have just asked will be provided on notice. But this was not a situation where you could say, 'Let's go and get some other person to provide this,' because the actual contractor was designing the management system for the data it generated. So there had to be an interoperable, integrated capacity.

Mr Carmody—The variation was \$4.4 million per annum over the life of the contract, which we believe is the extra component.

Senator LUDWIG—In terms of consultants, Customs was engaged to provide services under contract for a range of purposes, including legal probity and so on. The expected cost of that service will be approximately \$700,000. Is that one of the costs that are reported in your annual report?

Mr Carmody—Mr Brocklehurst tells me that we report consultancies on our website.

Senator LUDWIG—What heading or consultant would that be listed under so that we can identify it?

Mr Brocklehurst—They are all listed by name of consultancy.

Mr Carmody—We will provide the detail for you, Senator.

Senator LUDWIG—It is a question of whether it was an all-up contractual term or whether it was on an hourly basis. If it was on an hourly basis, how many hours were you billed for?

Mr Carmody—If that detail is not on our website we will provide it.

Senator LUDWIG—Were there any other consultancies associated with that project?

Mr Marshall—It depends on what you mean by consultancies. We did have a number of people involved in the contract—as the answer says—including legal probity, technical, financial and strategic advice. For instance, DSTO were involved as what we would regard as consultants:

Mr Carmody—That is the Defence Science and Technology Organisation.

Senator LUDWIG—I have not managed to get to the defence committee often enough to follow the acronyms. Thank you very much.

Rear Adm. Goldrick—I think they will be very hurt, Senator.

CHAIR—I am sure they will be, Admiral.

Senator LUDWIG—They are the prime consultants and there are a range of minor consultancies as well. Would they all be reported on the website if they were above the \$10,000 limit?

Mr Carmody—We would meet the requirements for reporting.

Senator LUDWIG—I am sure you would do that. Who is developing the SIM or surveillance information management system? This goes back to some of the comments you made earlier, Minister. You indicated that it was an integral part of the overall program. Who is developing the overall program?

Rear Adm. Goldrick—Surveillance Australia have subcontracted to Galileo Avionica, which is an Italian company and a subsidiary of Finmeccanica Company. They are developing it in close consultation, and Customs are also closely involved with the design and the requirements work. So it is a very close cooperation between Surveillance Australia and Galileo, with Customs being available to ensure that the development is meeting their needs.

Senator LUDWIG—You might need to step me through this briefly. The overall project is contracted to whom?

Rear Adm. Goldrick—The overall contractor is Surveillance Australia for the fixed-wing part of the Sentinel project.

Senator LUDWIG—Who supplied that part which is interoperable with the remaining part of the contract—that is, the SIM?

Rear Adm. Goldrick—Galileo Avionica.

Senator LUDWIG—Are they the prime contractor—

Rear Adm. Goldrick—No, they are a subcontractor to Surveillance Australia. They are not a prime contractor to us. The formal relationship is with Surveillance Australia, who are required to provide a SIM as part of the capability that they are providing to us for surveillance.

Senator LUDWIG—That is what I thought. What I could not understand, Minister, were your comments about its interoperability being integral to the system, I would have expected it to be part of Galileo, and that would have made it difficult to retender that segment. But it seems that is provided by a separate company. I am still unsure why that is.

Mr Marshall—If Customs had accepted the SIM that was initially provided by Surveillance Australia, that SIM would have been provided to Surveillance Australia by a third party. This is no different, from our perspective; it is just a different subcontractor that is working for Surveillance Australia and providing the SIM.

Senator LUDWIG—But I think that is the point I am trying to establish, or perhaps the question I am trying to ask. If Galileo have a range of subcontractors and it is a SIM that can fit into a preferred contractual relationship they have with a third party to provide that overall project, including SIM A, you can then say that SIM A is not satisfactory as part of that overall contract. Because it is a third party still, you can say, ‘That should be contracted out or retendered.’ As I understand it, you have gone back to Galileo and said—

Mr Carmody—No, it has been with SAPL. SAPL have been the main—

Senator Johnston—There is not privity between Galileo and the Commonwealth. Do you understand that?

Senator LUDWIG—Yes.

Mr Carmody—The original contract and agreement was with SAPL to provide the aerial surveillance and the SIM. Then, as we said, there were concerns about the part of that contract that went to the SIM and that led to the contract variation as we had further negotiations with them.

Senator LUDWIG—The actual SIM, though, is provided by a third party?

Rear Adm. Goldrick—Yes, to Surveillance Australia.

Senator LUDWIG—Yes.

Rear Adm. Goldrick—But it is like the radar. Raytheon will be providing the 2022 radar to Surveillance Australia and are required to meet Surveillance Australia’s needs, and Surveillance Australia is required to meet our needs.

Senator Johnston—So there is a whole host of systems that have to be integrated, of which the SIM is part.

Senator LUDWIG—Yes. I think it was your comments that led me astray, Minister. I thought I had it right until you helped. My apology. There is one other matter. Did the Defence Force indicate how long they would take to come back to you about the four crates that were found?

Mr Carmody—We do not have an indication at the moment.

Senator LUDWIG—They were discovered by an ACV.

Mr Carmody—I think there was actually a charter helicopter—

Senator LUDWIG—Yes, sorry. I thought that was what you said.

Rear Adm. Goldrick—No, there was an ACV in the locality, which conducted the investigation. The crew went ashore, as I understand it, and conducted the investigation.

Senator LUDWIG—But didn’t I ask how it was discovered? How was it discovered?

Mr Carmody—A helicopter charter pilot accompanied by a *Courier-Mail* staffer on assignment discovered it.

Senator LUDWIG—When did they discover it?

Mr Carmody—On 12 April 2007.

Senator LUDWIG—At what time?

Mr Carmody—I don't know!

Senator Johnston—What were they wearing?

Mr Carmody—I am told it was at 17.45.

Rear Adm. Goldrick—That is 5.45 pm.

Senator LUDWIG—Who has been tasked with discovering what was in the boxes—or what could have been in the boxes?

Mr Carmody—The ACV was nearby and went in and recovered the boxes. As I said, they were empty. There was evidence they had been floating for some time in an area where that is not uncommon. Then we went to Defence for them to help us determine the exact nature of the contents. To date they have been able to confirm that it is not ADF equipment, but I do not believe we have confirmation as to the exact, expected result.

Senator LUDWIG—With regard to the Coastwatch flights—and I am looking particularly at question on notice 57—can you take me through the practice of overprogramming?

Mr Marshall—Overprogramming means different things to different people. The way that we deal with our flight program is that we are aware that for a variety of reasons a contractor will not be able to provide flights on every occasion, so we deliberately plan more flights than we need in the period so that at the end of a particular period we aim to come out with the number of flights that we originally wanted. So, for instance, if we want 100 flights in a month, we might plan 108, with the expectation that eight of those will be cancelled because of unserviceabilities or crew illness reasons.

Senator LUDWIG—I have only had this for a short time so I have not been able to examine it in detail. It was one of the late questions so I will perhaps ask you about that later, Mr Carmody. Do you practise overprogramming in every instance? I am trying to understand the prevalence of it. If you do so many flights, how many times do you overprogram?

Mr Marshall—We have a forward plan, a monthly program in advance that we provide to the contractor, and in every one of those monthly plans we will have planned more flights than we absolutely need and in fact more flights than we can afford to pay. At the end of the month we invariably find that the 108 per cent that we have planned has turned out to be the 100 per cent that we wanted. That is done on a monthly basis.

Senator LUDWIG—Is it defined anywhere or is it in a procedural manual? You seem to use it and it seems to mean all things to all people, but in this instance it has a specific purpose.

Mr Marshall—I think the practice would be used for a variety of reasons and for a variety of purposes. The plain facts are that there will be aircraft unserviceabilities and there will be

crew illnesses, so if we just plan to 100 per cent we would never meet the target that we have set ourselves.

Senator LUDWIG—What do you plan for? Is there a statement that demonstrates what you plan for in the sense of: ‘This is what I plan for. To achieve X, I program,’—or in this instance you say overprogram—‘for Y, and the difference between them is what I achieve,’ in other words, the actual. It is like a budget: you forecast a budget and then you find out at the end of the period, or a little bit before the end of the period, how well you have gone. So you have those two figures. In this instance we have the actual flight figures—or you make those available—but we do not know what you have planned for or overprogrammed for.

Mr Marshall—We always know what we plan for.

Senator LUDWIG—And I am trying to find that out.

Mr Marshall—Admiral Goldrick mentioned before the risk assessment methodology that we use. We get together with other agencies and we work out where the high threat areas are and where we should be flying and all of those come up with risk scores. So all of the flying that we program is against those high risk scores. Some people, even within our organisation, do not like the word ‘overprogramming’ because they maintain that all of the flights that they plan are meaningful flights—and indeed they are meaningful flights. But the simple fact is that you cannot guarantee that you will get 100 per cent of the flights that you plan.

Senator LUDWIG—I understand the concept. It is as clear as mud to me; I understand that. What I am trying to now ascertain is what you plan for, what you overprogram for. It must be documented somewhere that this is the practice you will do. It is a practice, I assume, that you will do X, or Y, or Z.

Rear Adm. Goldrick—Yes.

Senator LUDWIG—Do you then keep a statistical record of what you are programmed or overprogrammed for and what the actual was?

Rear Adm. Goldrick—What we do is that we keep a record of the surveillance coverage achieved, as well as our flying against the risk scores. We have targets for surveillance coverage each month, and that is what we want to achieve—at least that. We have the overall target for the year of millions of square miles of surveillance coverage. We also report back to the agencies in terms of how we have flown against the risk areas. Each agency has the opportunity, if they feel that they are not being covered properly, to represent within the planning process.

Senator LUDWIG—All right. I still come back to the question: is there a document or a statistical graph that demonstrates what you overprogram for, what you target and what you realise? I will use those three.

Rear Adm. Goldrick—I do not think it is expressed that way, is it?

Mr Marshall—No. We have not got a document, but we have got the basic program so that we will always know what we have planned for and we will know at the end of the month what we have achieved.

Senator LUDWIG—How do you know how effective the overprogramming is? At some point you have to make an assessment of how much you overprogram for to realise your target. I assume someone has got to make an assessment rather than a stab in the dark. They then have to say, ‘We are going to overprogram for X to achieve Y.’

Mr Marshall—We have calculated over a long period of time that 108 per cent is about the right target for us to achieve 100 per cent.

Senator LUDWIG—That is helpful.

Rear Adm. Goldrick—I think that could be described as informed professional judgement, and there is not much more we can say than that.

Senator LUDWIG—I appreciate the explanation. Thank you. Part (g)(ii) of question on notice 57 asks if the practice is documented. Do you document that 108 anywhere? In other words, does everyone just accept that 108 is the norm for overprogramming?

Mr Marshall—Yes, that is the case.

Senator LUDWIG—Is that within Customs or within this area?

Mr Marshall—Within Customs, within the other organisations that we deal with and within Surveillance Australia Pty Ltd. But as the year goes on, if we find that we are falling short of a target then we can vary that 108 either upwards or downwards. If we find that we are above the contract requirements, we can do the same sort of calculation.

Senator LUDWIG—Do you have a percentage number of those flights that are cancelled or not undertaken?

Rear Adm. Goldrick—It is not done as a percentage. It is actually numbers.

Mr Carmody—It is on the last page under ‘Fixed wing flights cancelled or aborted—July 2006 to February 2007’. There are flight numbers and percentages, if that is what you are looking for.

Senator LUDWIG—If you look between July 2006 and February 2007, it seems that it is well above the eight per cent. It looks like it is about 28 per cent. How do you make that up? If that percentage is cancelled and your buffer is eight per cent, does that mean you fall below during that period by 20 per cent?

Mr Marshall—The ‘72 per cent flight occurred’ means the flight occurred in accordance with the original plan. There will be several instances where we will have planned a flight but it is retasked for a number of reasons. That will not appear in that 72 per cent. I have to say also that this period, July 2006 to February 2007, was a period in which the contractor was experiencing extreme difficulties with maintaining crews because of pressures put on by the industry—an industry-wide shortage of pilots, for instance. So this period would have been the time in which there was the highest number of flights lost through crew unavailability.

Senator LUDWIG—During that period, then, it is clear that you did not meet the expected 100 per cent of flights that were targeted for?

Mr Marshall—That is right.

Senator LUDWIG—You only met 72 per cent?

Rear Adm. Goldrick—Yes. I might note that that table does not include the Dornier aircraft, which were coming into service in that period and which have provided us with a supplementary capability and made up part of that deficiency. The footnote notes that it does not include that. They are actually the Surveillance Australia figures rather than the overall figures.

Senator LUDWIG—What occurs if you add the overall figures to it?

Mr Carmody—As Mr Marshall explained, there was a period of particular pressures. I think the best answer we can provide is in terms of the total surveillance coverage over the period, which I think we might have gone through at the last estimates when we did explain that there were these issues. Part of the response was to look to the Australian Maritime Safety Authority's Dornier and other issues we were dealing with, and also to concentrate our flights in the highest risk areas. Our surveillance coverage was increased over the previous year but it was not as high as we had forecast. We can provide those total surveillance coverage figures for you.

Senator LUDWIG—Could you look at the answer to question 57(h): 'Are Coastwatch clients aware of the practice of overprogramming?' Are they? In other words, do all your clients understand what goes on?

Mr Marshall—Yes, they all understand exactly the way that we operate. We meet regularly. We have a planning advisory working group where all of the clients are together and they help fashion the program for the coming month. So they are acutely aware of what we do.

Senator LUDWIG—And they are aware of the way the priority level of flights works?

Mr Marshall—Yes, they are.

Rear Adm. Goldrick—Yes, and they contribute to it. Because of the risk process, they are contributing. They score areas for risk based on their responsibilities.

Mr Marshall—Senator, could I take us back to one of your earlier questions, which I have now reconsidered? The table that you were looking at, which is the answer to (e), is a representation of the reasons for the cancellation of the flights that were cancelled.

Senator LUDWIG—You have 'flight occurred'.

Mr Marshall—That would have been that the flight was retasked for a particular reason.

Senator LUDWIG—Okay, yes.

Rear Adm. Goldrick—In other words, the table actually shows the total of the fixed-wing flights which were cancelled or aborted. It does not say that 72.01 per cent of the flights occurred. What it is saying is that of the total flights conducted by Coastwatch, which was a much larger number than that—3,223—

Mr Carmody—Perhaps we need to provide you with an explanation on notice of what the term 'flight occurred' means. I do not think it means that that is the total of the flights that occurred. I think it is a technical description of something that changed from the original 'flight' and is under 'cancelled' or 'aborted'. We will provide you as quickly as possible a full explanation of that term.

Senator LUDWIG—Perhaps if we had got the question a bit earlier I might have been able to go through it in greater detail and clarify some of those points with you so that we do not lead ourselves into error in the transcript.

Senator Johnston—I apologise to you for that because that is my problem. Being a new minister, I had to go through all of the detail that we are wading through now before I could sign off on the question.

Senator LUDWIG—I am sorry you gave me that answer, Minister. Rear Admiral Goldrick, you also mention the unavailability of crew due to labour market pressures. When we look at that, can we have a look at whether or not that meant that you did not meet your target, if we were to use that phrase as at least that is an understanding that I can appreciate.

Rear Adm. Goldrick—We had to revise down the surveillance target because we had the expectation that we would be able to achieve additional flying. We were not able to achieve that additional flying. Because of bringing the Dorniers into use for surveillance and also because of focusing particularly on the use of the higher capability Dash aircraft, with their increased surveillance capability, rather than on the smaller aircraft which are primarily visual, we were able to achieve the surveillance coverage required but not the additional coverage that we had intended.

Mr Carmody—I think I indicated before, Senator, that we are happy to provide the surveillance coverage in the priority areas, demonstrating this year's surveillance coverage with last year's surveillance coverage.

Senator LUDWIG—All right, and then I will put a couple of questions on notice, because I will try to finish these and let you go before we go over the dinner break as well. There is another area I want to have a look at, if you can provide the information. One of the difficulties is the turnaround time, as we may not see it until 5 November, which is the date of the next time that we come back. So I am hopeful that we can get a response a bit earlier in respect of some of the questions. The area I want to look at concerns more of an all-agencies response for each output that you have or whatever the structure is. Are you still structured in outputs?

Mr Carmody—Outcomes and outputs, yes.

Senator LUDWIG—Will you provide the underspends against the 2006-07 budget, including the additional estimates and bill No. 5 and bill No. 6 funding, and indicate whether the underspent amounts will lapse at the end of the financial year or be rephased or in some instances reallocated across the forward estimates? Also indicate the revised funding profile that might occur. One agency indicated that they returned the money at the end, which was a certain arrangement that they had for the original funding. I am trying to understand this in terms of your outputs. Could I have those figures at the earliest opportunity this week?

Mr Brocklehurst—I am sure we can provide that information. Customs' current expectation as per the portfolio budget statements is that we will come in on budget this year, having handed some money back that additional estimates associates with the IFF program, as was mentioned before.

Senator LUDWIG—How much was handed back?

Mr Brocklehurst—In total there was about \$20 million handed back, the majority of which related to the IFF program.

Mr Carmody—It is under current processing. Remember, Senator, how I explained before that you keep the fix but there were not the fishermen coming through in some of those processing charges. It brings a tear to an old public servant's eye.

Senator LUDWIG—Yes, and \$20 million you say! In terms of the portfolio, a broader question, of course, is: how much will be spent on the advertising campaign—if any—that is likely to be conducted between now and the end of the year?

Mr Cornall—Who are you directing that question to?

Senator LUDWIG—To Customs. I will come to you, Mr Cornall, eventually.

Mr Brocklehurst—There are no advertising campaigns that Customs does.

Senator LUDWIG—I did not think there were. When you say you will be on budget, does that mean there are no underspends, or are you going to have a look at that in a little more detail?

Mr Brocklehurst—There is still over a month to go, but at this stage we expect to come in pretty much on budget.

Senator LUDWIG—Perhaps you could have a look at that and come back to me later.

Mr Carmody—On the total position?

Senator LUDWIG—Yes, of all the outputs and whether there are any underspends.

Mr Carmody—The total position, as Mr Brocklehurst said, is that we expect to be pretty much on budget, but then there are the individual components of course.

Senator CROSSIN—There are three areas that I want to ask Customs about. The first is in terms of illegal fishing boats or people. Can you tell me when your responsibility stops after you have seized a vessel?

Mr Hurrell—It is probably easier if I just go through the whole process.

Senator CROSSIN—No, do not start at the beginning.

Mr Hurrell—No, not right at the beginning.

CHAIR—Mr Hurrell, we are seeking a very brief overview.

Senator CROSSIN—You have towed the boat into Darwin harbour. At what stage do the fishing people get off that boat and when does your responsibility for them stop?

Mr Hurrell—We take the fishing people off the vessel that we have apprehended or off our vessel if we have destroyed their vessel at sea. In most ports we then process those fisher persons through a health check to make sure that they are fit to fly. We then move them as quickly as possible from centres around the north of Australia to Darwin. The centres are located in Broome, Gove, Weipa and Horn Island. We do the initial processing. We move them to Darwin, and then we hand them over to the department of immigration in Darwin. They go into the detention facility at that point. In Darwin itself, we take them straight off the vessel and straight to Immigration.

Senator CROSSIN—If people are going to be held indefinitely or if minors are going to be held, that is a matter for Immigration. Is that correct?

Mr Hurrell—That is correct. We cannot separate the minors on the boats, obviously, but they are under close supervision at that time. If, for some reason, there is a delay in one of the reception centres that I have described around the coast, other than the one in Darwin, we aim to minimise that time, and we have been successful thus far. But, if there are minors, we would separate them at that point.

Senator CROSSIN—A new reception centre is being built at Gove. Is that correct?

Mr Hurrell—That is correct.

Senator CROSSIN—It will not be a detention centre at Gove.

Mr Hurrell—No, it is not.

Senator CROSSIN—It will be like a holding or processing facility?

Mr Hurrell—It is a holding and processing facility. As quickly as we can get people through the health checks, we fly them out—subject, of course, to aircraft being able to fly in the weather conditions.

Senator CROSSIN—From memory, do you know where that facility in Gove will be situated?

Mr Hurrell—I cannot give you the precise location. I know that it is very close to the current Customs facility in Gove. I cannot give you an address.

Senator CROSSIN—That is fine. I know where that is. I notice in your annual report that you have around 145 full-time people, but it does not tell me where they are located. How many Customs officials do have located in Gove?

Mr Carmody—We will look for that.

Senator CROSSIN—Okay. I will ask you some other questions. I want to know what happens with the import of asbestos into this country. I am aware that, if a company knowingly imports a product that has asbestos in it, they must seek an exemption from the Australian Safety and Compensation Council. Once they have done that—and I understand only seven have ever been granted—how do you get to know that asbestos is coming into this country? Do they inform you of that?

Ms Pitman—The issue of asbestos is one that, as you are aware, encompasses a very wide variety of products. The example that we have had recently with Alcan in Gove is a relatively recent prohibition on chrysotile in situ asbestos. How we deal with asbestos has to vary according to the nature of the product that is being entered. Where we can identify a very narrow class of goods, we will ask the importer to tell us on importation. In the case of Alcan at Gove, the preassembled module, which is a very large piece of equipment, is part of a very broad category of goods, and to ask every importer of an item within that category about asbestos has a potential to hold up trade across Australia. In that case, the information about asbestos has come to us from a source that directly advised us that asbestos had been discovered.

Senator CROSSIN—My understanding is that back in 2004 all the states, the ACT, the Northern Territory and the Commonwealth agreed to ban the import and export of asbestos or asbestos-containing products. Am I wrong in believing that no asbestos is allowed to be imported into this country, unless companies get an exemption from the Australian Safety and Compensation Council?

Ms Pitman—There are a range of conditions under which permission may be given for asbestos in product to be imported into Australia.

Senator CROSSIN—Exemptions?

Ms Pitman—Those permissions to import include a number of different authorities. So it is possible for chrysotile, for example, to be imported as a hazardous waste and for an authority of a state or territory to allow the proposed use of that asbestos.

Senator CROSSIN—Yes, I am aware of that. In other words, if you want to do it, you apply to whatever the jurisdiction is. You still have to apply. People still have to know that you want to import it.

Ms Pitman—That is right. There are a number of other authorities who can permit asbestos to be brought into Australia.

Senator CROSSIN—I am aware of that. But, essentially, you cannot bring it in without anyone knowing that you are going to bring it in. Someone somewhere has to give you approval to do that. Is that correct?

Ms Pitman—In order to bring asbestos into Australia lawfully, you must have permission to bring it in. That is correct.

Senator CROSSIN—Take me through the process of what happened once the asbestos was found in the gaskets in Gove? At what stage were Customs alerted to that.

Mr Mann—We got a phone call on our Customs hotline around 27 February 2007. We followed up that report and the caller provided some further documentation, which detailed an instant where a worker at Alcan noticed red fibrous material in the gasket of a piece of machinery. That material had been tested and found to contain asbestos fibres. As it turned out, we now believe it was white and not red asbestos but, nevertheless, it was asbestos. The machinery in which the gaskets were found is known as a pre-assembled module—a very large piece of machinery. The gaskets in question were around 15 centimetres in diameter and were identified in three locations in this large piece of machinery. On 2 March 2007, Customs contacted Alcan by telephone and was advised that in September 2006 inspectors operating on behalf of Alcan had travelled to Vietnam as part of normal protocols for pre-inspection of equipment.

Senator CROSSIN—What date was that?

Mr Mann—They travelled to Vietnam in September 2006. At that time, inspectors identified what they described as ‘suspect gasket material’. They requested material datasheets from the supplier but these were not provided prior to the exportation of the PAM. On arrival in Gove, we were advised that, them having had a report of these suspect gaskets, the material was observed and an instant investigation report was created. At that time, Alcan

contacted the Department of Primary Industry in the Northern Territory and also advised their own staff.

Senator CROSSIN—Why would they contact the Department of Primary Industry?

Mr Mann—My understanding is that it was thought that that might be the appropriate authority to bring this to the attention of.

Senator CROSSIN—That is not correct though, is it?

Mr Mann—In subsequent conversations they should certainly have notified Australian Customs as well.

Senator CROSSIN—But that is not the Northern Territory authorising body, either.

Mr Mann—In the Northern Territory, it would have been the authority in the state or territory for the occupational health and safety laws.

Senator CROSSIN—Yes, NT Worksafe, that is correct.

Mr Mann—Yes. We were advised that when the machinery arrived in Gove the gaskets were identified as suspicious. They were tested positive and were removed by licensed contractors. They have provided us with information outlining the details known to date surrounding the importation of the gaskets, and in their letter they notified us that they had unknowingly imported materials containing asbestos. They say that their investigations have established that the processes for specification, purchase and issue of gaskets for the PAM construction are in line with Alcan procedures and do not allow for the use of gaskets containing asbestos. When we inquired further for someone to explain how it occurred in this example, one possible explanation given was that the asbestos-related gaskets were used during the hydrostatic testing stage offshore and they would normally have been replaced before the export to Australia had occurred. They have advised us that they forwarded photos and descriptions of the items to the overseas supplier so that future shipments do not contain such items. We are continuing our investigations with Alcan at this point in time.

Senator CROSSIN—When these PAMs come off the wharf in Gove, are Customs there to check them at the initial point of offload—not just now but even when it first happened?

Mr Mann—These regulations came in, I believe, in July 2006. Since this importation that involved the suspect gaskets there have been 10 importations. Given the complexity of trying to search the PAMs at this stage, we put the company on notice that we want to see the outcome of their own investigations into the placement of any suspect gaskets, so they are putting in place arrangements to ensure that no further importations have asbestos in any gaskets. We are continuing to liaise with them to find out what, if any, problems they have had with importation since the one that was found. Alcan have advised that they have undertaken investigations of gaskets and the results of those inspections were that, of 80 gaskets out of many thousands, 68 later did test positive for asbestos.

Senator CROSSIN—They are roughly the figures I have as well. So you are not at the wharf when these PAMs are offloaded? You do not check them when they are offloaded?

Mr Mann—No.

Senator CROSSIN—Who does an inspection to verify what Alcan are saying?

Mr Mann—In this case we have a product that has only one importer in Australia, and we believe that we can work with Alcan in this case to make sure they have appropriate controls in place. Customs officers would not be able themselves to test for asbestos; we would need to refer that for analysis, and that is why we are working closely to ensure the company itself has a proper monitoring regime in place.

Senator CROSSIN—Have you made any contact with the Northern Territory appropriate authority and are you working with them in relation to this?

Mr Mann—Yes, we have written to the heads of workplace safety authorities in all states to advise them of this particular problem, and normally in asbestos related matters we bring that matter to the attention of other importers from a similar supplier; in this case the supplier is only supplying to Alcan in Australia.

Senator CROSSIN—Is Northern Territory WorkSafe involved in your investigation with Alcan?

Ms Pitman—We have certainly contacted them.

Senator CROSSIN—I asked whether they are involved with you in investigating this particular situation with Alcan.

Mr Mann—The process is that we have informed them of what has been detected and they have their own jurisdiction in terms of any follow-up inquiries that they may have. Certainly, from a Customs perspective we are looking to ensure that there are controls in place to stop any further importation and the safe removal of any product with asbestos in it that has been imported.

Senator CROSSIN—Who are you relying on to tell you that asbestos is in those gaskets? Is it the company or the Northern Territory authority?

Ms Pitman—The company has given us a set of revised procedures that it is asking us to consider. As part of those procedures one of the things that would be important is independent certification, whether that be by NT WorkSafe or by a suitably qualified contractor. In considering their procedures we would be looking for independent confirmation of the presence or absence of asbestos.

Senator CROSSIN—Ms Pitman, are you talking about revised procedures for future imports?

Ms Pitman—That is correct.

Senator CROSSIN—What about the ones that have currently come through? Who has tested those and told you it is asbestos?

Ms Pitman—At this stage our advice is from Alcan.

Senator CROSSIN—You are not seeking independent advice about that?

Mr Mann—We just need to check whether the testing of the gaskets was undertaken by Alcan themselves or whether that was put out to an independent authority.

Senator CROSSIN—Have you sought to search the Alcan company records or have you sought a complete detailed analysis of any accident investigation reports from them?

Mr Mann—We have sought from Alcan an explanation of what has transpired and what shipments of similar materials have been made before and after this particular one, and we are continuing our investigations at this time. We have not concluded our investigations.

Senator CROSSIN—Mr Mann, I actually asked whether you have any copies of Alcan investigation reports yourself. That is, have you actually searched or seized or do you intend to obtain documents from Alcan rather than relying on them writing a report for you? I have in front of me Alcan investigation report No. GOV07020044, which says: ‘On 7 February on inspection of boiler 7 soot blower it was noticed that there was red compressed fibre gasket on the poppet valve flanges. A sample was sent offsite for analysis and was found to contain asbestos fibres. This problem was first raised on inspections carried out in Vietnam when MSDSs were requested for this material but was ignored. The material of concern looks very similar to the old ringed clinger.’ I put this to you: my understanding is that Alcan in Vietnam inspected these gaskets and knew they had asbestos in them.

Mr Mann—As I said earlier, at the time—September 2006—the inspectors did identify suspect gasket material but did not undertake testing at that time. That is as I understand it.

Senator CROSSIN—I have just read you evidence that proves contrary to that.

Mr Carmody—As Mr Mann has said, we are continuing our investigations and we would be most happy to receive a copy of that document, which would assist us in our investigations.

Senator CROSSIN—My understanding is that you would have received a copy of this document. I am more than happy to provide it to you but I do believe that a more intensive investigation needs to occur at your end.

Mr Mann—Was that report numbered GOV07020044?

Senator CROSSIN—Yes.

Mr Mann—Yes, we do have that.

Mr Carmody—We will take that into account in our investigations. There are five officers in Gove, and if there is a need we would fly in officers to deal with any extra workload from foreign fishing.

CHAIR—Senator Crossin, are you seeking to table that document?

Senator CROSSIN—I do not need to table it; they have a copy of it.

Mr Carmody—Yes, we have a copy of it.

Senator CROSSIN—Actually, the very day after you were appointed to the portfolio, Minister Johnston, I sent you a letter about this. I think I have been updated, so hang onto this letter and send me a response when you are a bit further down your investigations.

Senator Johnston—I think I have sent you a response, haven't I?

Senator CROSSIN—As of yesterday I do not have it.

Senator Johnston—I have it here. It is dated 10 May.

Senator CROSSIN—That is okay. Do not read it. I look forward to the next step in the saga. I have one last question. Mr Carmody, can you please advise me whether, when people

arrive back into this country and have gone through Immigration and then head down to the Customs area, it is normal practice for your officers to ask—I understand they are probably being courteous—‘Where have you been?’ Is it a practice that you would ask people, ‘What were you there for?’ If someone said to me, ‘Where have you been?’ and I answered that I had been to Vietnam and then if they asked, ‘Why were you there?’ am I obliged to answer? Am I obliged to tell you what I have been doing there?

Mr Carmody—That may well be a question that we are entitled to ask, yes.

Senator CROSSIN—Am I obliged to give an answer?

Mr Carmody—It is my understanding that you are.

Senator CROSSIN—So I need to say I have been there on a holiday or at a conference or digging for oysters?

Mr Carmody—That is right.

Senator CROSSIN—So I need to tell you.

Mr Carmody—Yes.

Senator CROSSIN—I cannot say that I am not answering or that I do not want to tell you or that it is none of your business.

Mr Carmody—It is our business; that is why we ask it and why the law provides an expectation that people will answer.

Senator CROSSIN—So you do have the right to ask people what they have been doing in another country when they return from overseas?

Mr Carmody—Yes, because that may go to a range of risk factors that we are examining.

Senator Johnston—I strongly suggest that you answer, Senator Crossin.

Senator CROSSIN—People have filled that out in their declaration form, have they not?

Mr Carmody—On occasion there would be supplementary questions, I imagine, that our officers want to pursue.

Senator CROSSIN—So, if constituents telephone my office about that, I need to say to them that they are obliged to answer?

Mr Carmody—Yes. We are entitled to ask questions.

Senator CROSSIN—And they are obliged to answer?

Mr Carmody—That is correct.

Ms Dorrington—I can provide you with the legislative reference if you like. I do not have it with me at the moment.

Senator CROSSIN—I am just clarifying it so I have an answer for people.

CHAIR—I think that question has been answered.

Senator CROSSIN—I am assuming that people need to say where they have come from. But I have had people contact my office concerned as to why Customs would want to know what they have been doing in a country.

CHAIR—We will now break for dinner. My proposal is to conclude the rest of today's proceedings today. If they are not concluded today then those questions will be put on notice because tomorrow morning we will be starting at nine o'clock with the Federal Court of Australia. I thank the Customs officers for their time.

Proceedings suspended from 6.55 pm to 8.01 pm

Australian Security Intelligence Organisation

CHAIR—We will resume our hearing with the Australian Security Intelligence Organisation. I welcome Mr Paul O'Sullivan. I understand Mr O'Sullivan has an opening statement.

Mr O'Sullivan—Mr Chairman, Australia continues to face a challenging and dynamic security environment. We continue to be a terrorist target and the threats of attack are likely to be with us for many years. An attack in Australia remains feasible and could well occur. Future attacks overseas are almost certain, whether directed against Australians or involving Australians in some way, and I might say also that other threats persist, including from espionage and acts of foreign interference.

A snapshot of the continuing and pervasive nature of the global terrorist threat is illustrated by the following events since the end of February 2007 when I last came to meet with your committee. On 26 February, al-Qaeda's deputy leader, Ayman al-Zawahiri, again called on Muslims to confront 'crusader forces'—and that includes Australians in Iraq, in Afghanistan and in Somalia. Between 27 February and 8 May, there were 10 significant attacks in six countries, excluding Iraq. They were the Philippines, Sri Lanka, Pakistan, Morocco, Algeria and Nigeria. These attacks resulted in the deaths of 79 individuals, with another 286 wounded. One Australian was among eight who were kidnapped in the Delta region of Nigeria on 2 May. Fortunately, he was released unharmed. And other planned terrorist operations were disrupted in this period.

It is clear that the security situation in Australia, in our region and in other parts of the world will remain complex and demanding for some time. There are extremist groups in a number of places around the world who are intent on conducting attacks on Australian interests. Individuals in Australia, or linked to Australia, have been tried and convicted on terrorism-related charges. Where others are known to have links to terrorism, ASIO has responsibility to investigate and assess any threats and to issue current advice to the relevant authorities, and we must focus on potential sources of new threats, including areas which previously have not attracted significant attention. All this must be done in an environment of increasing technological sophistication. It is ASIO's responsibility to investigate matters which are relevant to security, to formulate assessments which remain subject to review and revision in the light of new information or experience, and to provide the best advice that it can at a particular point in time. The national counterterrorism plan states:

Australia relies upon a strong intelligence-led prevention and preparedness regime to support Australia's counter-terrorism strategy.

Within that framework, the focus of ASIO's investigations is directed at the prevention of harm to Australia, to Australians and to Australian interests wherever they may be. The

resources available to ASIO to meet this responsibility continue to grow in line with the decisions by the government in October 2005.

Senators may have noticed the extensive public recruitment campaign that ASIO continues to undertake. The fact that ASIO is growing and is seeking to recruit a range of people for a variety of jobs periodically attracts media attention so, with the committee's indulgence, I would like to place some of the facts on the record. ASIO today has more than 1,300 staff, and our recruitment efforts are well on track. ASIO has boosted staffing levels across a range of job families, including intelligence officers and intelligence analysts, specialised linguists and translators, surveillance, information technology and other technical specialists, as well as a range of other staff across the full range of ASIO's functions. Recruitment of additional staff in these categories will continue out to 2010-11. As you know, ASIO does not make available publicly a breakdown of the number of staff in each particular job category or job family for reasons of national security. However, I can say that the additional staff that ASIO has recruited, including from a range of cultural, linguistic, professional and educational backgrounds, continue to enhance ASIO's investigative and other capabilities. ASIO will continue to seek additional staff with specialised skills, including in foreign languages, as part of our ongoing recruitment efforts. In a tight and competitive employment market continuing to attract high-calibre staff will be challenging, but we have a clear strategy in place to ensure that we recruit the right people at the right time so that the organisation grows while it continues to meet its critical business priorities.

The Parliamentary Joint Committee on Intelligence and Security was provided with a comprehensive classified submission that addressed staffing and other resourcing matters as part of its current review of administration and expenditure. An unclassified version of that submission is available on that committee's website and also on ASIO's website. Thank you, Mr Chairman.

CHAIR—Thank you, Mr O'Sullivan. Are you happy to table those opening remarks?

Mr O'Sullivan—Yes, I am happy to table that statement.

CHAIR—We will now have questions for ASIO.

Senator LUDWIG—I might just go to the issue that you raised in terms of staff employed by ASIO. You indicated there were about 1,300. Does that include part-time staff or secondees?

Mr O'Sullivan—There are two possible ways of counting staff: one is to count heads, the number of people; the other way to count staff is to count what we call full-time equivalents. That means, for instance, if there is job sharing, part-timing or other arrangements, that second category of counting allows you to comprehend that distinction. So the 1,300 broadly refers to the number of people.

Senator LUDWIG—I was wondering if you could update the committee in terms of perhaps full-time equivalents but, more importantly, the number of part-time and non-ongoing staff and how that mix is then created for ASIO, including the number of secondees from other agencies, from other police forces in Australia and if there are others from other departments such as Defence. Are you able to provide those numbers?

Mr O'Sullivan—Can I take that question on consideration. It is not that I am reluctant to advise the committee of the details. I have to consider, however, whether the public presentation of such information could compromise security. If you will allow me to consider that matter, I will get back to the committee.

Senator LUDWIG—Certainly. I think the committee understands those types of issues that you have raised. We usually preface our remarks with that and we would expect you to take it on notice if you wanted to consider it in any depth before providing the information. If the information has to be then modified as a consequence, you could modify it and then note that it has been, if it can be presented.

Mr O'Sullivan—Thank you, Senator.

Senator LUDWIG—This is a similar question in that sense: in terms of staffing in various sub-output levels such as the critical infrastructure area, are you able to say how many staff are in that area, be it as full-time equivalents or heads, as the case may be. There is the critical infrastructure and protection unit; there is the business liaison unit as well—there is a range of units that can be identified from the portfolio budget statement. The business liaison unit provides business security reports based on sector specific information that are, as I understand it, unclassified and disseminated directly to a wide business audience. Are you able to say which sectors you provide those reports to?

Mr O'Sullivan—I can get you some detail, but the broad objective of those sector-specific assessments and reports is to help business and the owners of critical infrastructure to understand the risks that they face. The content of the specific reports is related to the degree of perceived risk. But as to your question, it is not exactly that they are unclassified. They are placed on what I might call a 'trusted network environment' where businesspeople who are interested express that interest to us and, where that seems legitimate and sensible, it is taken to the next stage which means that they are given access to the reports online.

Senator LUDWIG—Are you able to say which business sectors you have communicated with in the last couple of years?

Mr O'Sullivan—I do not think I have with me a precise list to answer your question but I will take it on notice and get it to you.

Senator LUDWIG—We have seen the creation of the Australian security identification card and the maritime security identification card regime. The development of that has taken some time, but I think we have also discussed at previous estimates the workload involved in—perhaps my words—vetting applicants for ASICs and MSICs in terms of the workload of ASIO. Are you able to provide an update of the work that currently involves ASIO in doing the relevant checks for both ASIC and MSIC cards, how long it takes for them to be processed and then the number that have—do you use the word—'failed' the security check?

Mr O'Sullivan—On the particular point of ASICs, in the current financial year—that is, in the period from 1 July 2006 to 30 April 2007—there were 21,423 such checks for ASICs for pilots and trainee pilots. In the case of the MSICs, in the same current period from 1 July 2006 to 30 April 2007, there were 52,612 such checks. The median time, if I understand correctly, for the processing of such checks was seven days. So that is the total numbers of

those checks. I do not have information on the fourth part of your question which was the rejection rates.

Senator LUDWIG—I was wondering if you could take the numbers of rejection rates on notice. There was an article—I will not go into any detail—in the *Weekend Australian* on 19 May which indicated that 28 workers failed port security tests. That could be for either you, the Australian Federal Police or for another reason outside of those. I was trying to understand whether it was ASIO, and then it dawned on me I should also ask about the rejection rate that exists. You do process a significant amount. It might be helpful to understand the rejection rate—I suspect it is a low percentage.

Mr O'Sullivan—As you say correctly, ASIO is not the issuing authority. There are a number of processes associated with the checking, not just ASIO processes.

Senator LUDWIG—I wonder if you could take that on notice. Included in that answer was that the median time has remained static around seven days. Are there some that have gone outside a month or a three-month or six-month period?

Mr O'Sullivan—As of 30 April, ASIO had a small number of ASIC requests older than one week—I do not know what smaller means but I can find out, Senator—and no MSIC requests older than one week.

Senator LUDWIG—In terms of the role of the Inspector-General of Intelligence and Security, and this is a broader question about the role within the intelligence community, do you provide information for your growing number of employees about the role of the inspector-general? Do you provide details when they apply for a job and when they become employed by ASIO about the role of the inspector-general or provide news updates or information to employees about that role?

Mr O'Sullivan—Part of the induction processes into ASIO generally is to understand how it fits into the broader framework of government, and then into the framework of the Australian intelligence community, and then into the framework of the oversight mechanisms. The inspector-general is a very important part of that oversight mechanism, so in that sense, yes, people are briefed about his role.

Senator LUDWIG—How do you do that—is it at the first interview process or at the time of induction?

Mr O'Sullivan—If I understand correctly, it is part of the training programs for people, who are put through various training cycles as they come into the organisation. Precisely where it occurs in that process I am not sure.

Senator LUDWIG—If you are able to say the type of information that is provided, providing it does not—and it should not, I suspect—provide a security concern, then it would be helpful to the committee to understand the nature of the information you provide to your staff about the role of IGIS. Is that then followed up for longer term existing staff?

Mr O'Sullivan—I would have to check precisely what formalised refresher arrangements are, but in fact my hunch is that most continuing or ongoing staff who have been in the organisation for beyond a short period would be well aware of the IGIS's role because he is extremely active, as you may know, in ranging across the whole organisation and every aspect

of its function and requires constant responses from just about every part of the organisation. It is hard to imagine anyone could be a part of ASIO and not be conscious of his role.

Senator LUDWIG—No, even I think I know Mr Carnell. It would be helpful, though, to understand the training you provide. It perhaps might even be a refresher provision and then how that is undertaken, whether it is a newsletter or a circular to existing staff, or whether you provide a polite reminder, may be one way of putting it, reminder that there is an inspector-general and they are there to help.

On another area, I asked a question on 15 February 2005 to Commissioner Keelty during the estimates hearing at the time and I did not put it to you at that time, which I probably should have. Commissioner Keelty, as I understand it, did not answer that question directly, or I could not discover an answer to it, but subsequently it seems it is still relevant and so I will try again—except now I will put it to you as well. The question is whether you were aware, or ASIO was aware, of any of the interviews of Mr Habib by nations other than the US and Pakistan and whether the AFP or, in this instance, ASIO had received any reports about these interviews and if ASIO had made any inquiries about these interviews and reports. We know now of course what we did not perhaps know in any great detail back then about what the US was doing in terms of rendition and the nature of rendition. I am not alleging that that was the case, but, more broadly, what was going on in the intelligence community?

Mr O'Sullivan—On the first point that you raised, it would have been Mr Richardson, my predecessor, who you would have asked at that stage.

Senator LUDWIG—That is why I broadened it to ASIO.

Mr O'Sullivan—As to the substance of your question, as you are probably aware or may be aware, Mr Habib is suing the Commonwealth on a number of grounds and has made allegations concerning his treatment or his alleged treatment, and it would be imprudent of me to get into that discussion at this stage.

Senator LUDWIG—I see. That is helpful. At some point when that ceases we might come back to it again, which means it is going to be a long tale, I guess. I might pause there.

Senator BOB BROWN—I have a couple of questions at this stage: firstly, what surveillance does ASIO keep on the availability of guns in Australia?

Mr O'Sullivan—Our mandate is to monitor threats to Australia that are spelt out in our act, so we have no mandate to monitor guns per se. I could just hypothesise that it would only be if we were carrying out our functions relating to an aspect of security that we are mandated to carry out under the act and we became aware of such an issue—in that circumstance we would have some knowledge. But if it were the case, we would presumably pass it on to the police.

Senator BOB BROWN—There are some 300,000 handguns available in Australia. They include quite a large number of up to 0.38 calibre 10-round revolvers—that is, repeat-fire handguns—and there have been quite a lot of loss of these out of the licensed owners' control into criminal hands. Indeed, it was one of these handguns that was used by Cho Seung-Hui to commit the recent massacre at Virginia Tech. I wondered if that had heightened ASIO's

concern about the potential for the use of such weapons in acts of terrorism or like behaviour in Australia.

Mr O'Sullivan—As I say, the issue that you are positing would depend upon a nexus to terrorism, for instance. We have no mandate to broadly consider criminal behaviour such as the theft of guns, illegal possession of firearms and so on. It is only where there is a nexus to a mandated ASIO function and in which case, as I say, we would no doubt be cooperating with the law enforcement authorities.

Senator BOB BROWN—You mentioned terrorists in your introduction. The point I am making is that terrorists would find available in Australia handguns of the variety I have described which can obviously be used to carry out a terrorist action. I am wondering if you have done an assessment of that potential, the ease with which these guns are available in Australia, and whether you have had concern about the availability or possession of these weapons by people under surveillance or under your watch, or have been drawn to your attention and caused you concern.

Mr O'Sullivan—It is a little bit hard to come at that question because in some respects it is hypothetical. But allowing for that, what would be of concern to us and what we would then take other action about would be if we saw people who were of security concern—that is, they came within the mandated purview for ASIO—who were in possession of firearms or who were seeking firearms or other weapons. If we saw that as an aspect of a terrorist inquiry, that would be a matter for concern, yes.

Senator BOB BROWN—Do you report to government on materials or weapons that are available or are becoming available—for example, various forms of explosives—in Australia that have the potential to be misused by terrorists? Do you make reports or observations to government on those matters?

Mr O'Sullivan—We certainly do report to the relevant community, whether it be formally to the government and then it is distributed more widely, about terrorist modus operandi and the sort of behaviour patterns that we can identify.

Senator BOB BROWN—You have said there is the potential for people to carry out terrorist acts in Australia. The availability of weapons or materials which can create terrifying circumstances is obviously going to make it easier or harder for those people to behave in that fashion. Do you keep a watch on the availability of explosives or weapons? Do you speak to government about the increased ability to manufacture explosives that may be dangerous and may easily be obtained by people who are considering terrorism?

Mr O'Sullivan—The dilemma we face is that the basic chemical ingredients of explosives are now very widely disseminated. It is quite possible to misuse basic industrial chemicals in ways that are suiting terrorist purposes. For instance, as you are well aware, the government has introduced a process of registration and checking for possession of ammonium nitrate, which is a widespread chemical used in agriculture, because it can also be easily dual used as an ingredient in manufacturing explosives. And similarly, as you know, the attacks in London nearly two years ago were carried out by people who were able to download from the internet and acquire those chemical ingredients fairly readily in our modern society. The problem with monitoring is that there has to be some reasonable balance between the threat posed by the

industrial chemical, if you like—or the basic ingredient—and the degree of its use in the broad society.

Senator BOB BROWN—Did ASIO have input to the government's decision and parliament's decision to be more restrictive about the availability of ammonium nitrate?

Mr O'Sullivan—I cannot recall off the top of my head and I may not have been in ASIO at that point. But I imagine that we would have advised the Attorney in the ordinary course of events if we saw a terrorist connection to such chemicals.

Senator BOB BROWN—Even the terrorist potential from the availability of such material.

Mr O'Sullivan—Yes, perhaps potential too, but I cannot say that because I probably was not in ASIO at the point that advice would have been provided.

Senator BOB BROWN—It would be a logical thing to do though, would it not?

Mr O'Sullivan—It may have been. I am not sure whether it was ASIO directly to the minister or whether it was ASIO through other interdepartmental processes where that advice was formulated for the government.

Senator BOB BROWN—Just recently there was the theft of a large amount of such materials in Tasmania, and somebody has been arraigned over that. Do you keep a watch on such matters?

Mr O'Sullivan—I cannot respond directly on particular matters of that kind, because it gets too close to the question of operations, methods and sources. But stepping slightly back, if we see activity or behaviour by individuals of concern that gets into the areas you are positing—which is to say, the acquisition and accumulation of materials or weapons that could be used for terrorist purposes—then that is certainly a matter of concern to us.

Senator BOB BROWN—There are two sides of this coin, and one is I am sure you are watching people who may want to get weapons or explosives and move very quickly if they are obtaining such things. But what about the other side, which is the availability of such items on the market. If somebody is thinking terrorism and is not under your surveillance then it becomes readily available to them when, with a little bit of regulation, it would not be. That is why I asked the question about ammonium nitrate earlier. Surely ASIO does become concerned when such potentially destructive weapons or materials are available and expresses that concern to the authorities—to the minister or to the government?

Mr O'Sullivan—In a broad sense that is true, but then the question is the nature of the availability, the degree of penetration through the society and the consequences of whatever regulatory regime you are positing. It is a matter then for the government to consider on balance where that degree of risk, as it were, coincides with the degree of intrusiveness of regulations and how those balances are worked out. But if you are asking as a matter of concern to look at what is the modus operandi of terrorists, the answer surely is yes.

Senator BOB BROWN—In Tasmania, it was Forestry Tasmania that had stored these potentially explosive materials, which were in this case stolen, but it is not the first time that it has happened. Is ASIO in a position to influence some sort of message or warning to such an

authority that there is concern that there have been repeated thefts of materials which are dangerous if they fall into the wrong hands?

Mr O'Sullivan—As I say, I would prefer not to get into a discussion of a particular case. But, on the general point, if we saw a pattern of theft or a pattern of behaviour which pointed towards intent to conduct terrorist activity, we would certainly be in direct contact with all the appropriate and relevant authorities, both state and federal.

Senator BOB BROWN—What if it was a pattern of failure to adequately prevent people from getting explosives?

CHAIR—Order! Senator, I appreciate your line of questioning, but Mr O'Sullivan, in my view, has answered the same or a very similar question at least three times, probably more. Perhaps you can move on to either a different topic or reword your question so that it is entirely different to the previous question.

Senator BOB BROWN—If you let Mr O'Sullivan answer that question, I will ask one more question and I will leave it at that.

Mr O'Sullivan—It is very hard to answer a hypothetical question about what we would do when things did not happen. You are positing a series of negative possibilities, and it is pretty hard to give an operational answer, as it were, to a hypothetical question. I just repeat my point that, within the strict limits imposed by the act, we look at behaviour patterns. If it were the case that there was a pattern of behaviour which suggested terrorists were intent on acquiring particular weapons or ingredients to manufacture weapons, we would obviously act promptly on that information at a variety of levels.

Senator BOB BROWN—My last question comes back to the Virginia Tech massacre and the availability of such weapons in Australia. Has that not raised your interest or concern; and, if so, what action have you taken?

Mr O'Sullivan—Terrible though that incident was, I do not think anybody in the United States or elsewhere has characterised it as a terrorist event. Unless there was information that suggested that was the case or it came within other elements of the threats to national security which are defined in the ASIO Act, we would need to have a link to the mandate that we follow. If there is no such mandate, then it rests within the Criminal Code and would be dealt with by law enforcement authorities.

Senator BOB BROWN—Yes, I know that. But the point I am getting at—and I will leave it if you do not want to respond to it—is that a terrorist in Australia would not have too much difficulty getting such a handgun and then it would become a terrorist act if 33 people were shot in some part of Australia. Does that not concern ASIO?

Mr O'Sullivan—The balance in the society generally that makes goods available and restricts or regulates goods is, of course, an interest to us because we have to look at where those patterns are leading and, when we see behaviour that suggests a pattern of behaviour intent on acquiring weapons for terrorist purposes, we would certainly act. But I have to repeat: if it is a hypothetical possibility then we have to be quite careful about the advice of a security intelligence organisation as distinct from a police organisation or law enforcement organisation. Unless there were some linkage to the purposes for which ASIO exists, not just a

hypothetical possibility, we would need to see some behavioural or real-world evidence of linkages, or evidence that comes to ASIO in one form or another which suggests that there may be an intent to acquire the weapon for those purposes. Then we would act; otherwise it is a matter for the police.

CHAIR—Thank you, Mr O’Sullivan.

Senator NETTLE—I want to ask you about the case of Scott Parkin and the security assessment there. I want to go back to some comments that you made to this committee in October 2005, when Senator Brown was asking you about the adverse security assessment for Mr Parkin. At that time, you said to us, and I will quote from the *Hansard*:

It related to his behaviour subsequent to his arrival in Australia.

I just want to check whether or not you stand by that statement.

Mr O’Sullivan—You may be aware that Mr Parkin is suing me in the Federal Court alleging that I erred in my decisions, so it is very difficult for me now to canvass that matter.

CHAIR—Thank you, Mr O’Sullivan. That is an important point, and I hope Senator Nettle could bear that in mind when she is asking questions.

Senator NETTLE—All I am doing is checking that what you have told this Senate two years ago is accurate.

CHAIR—Senator Nettle I will just draw your attention to the fact that Mr O’Sullivan has answered your first question and has to be extremely careful in terms of any response that may impact on litigation that is currently at foot.

Senator NETTLE—I am not asking about the litigation. I am asking about statements made to this committee, and if Mr O’Sullivan stands by those statements.

Mr O’Sullivan—I am sorry. I cannot debate that question with you because that is a core question that will be determined, I suppose, as the litigation proceeds.

CHAIR—I do not think it is up to Mr O’Sullivan to advise us or the public what may or may not be before the court. Senator Nettle, it is quite clear that that may or may not be a matter before the court. I would ask you not to proceed with that line of questioning. Perhaps you could think of another question or we will move to a different topic.

Senator NETTLE—I want to make sure that what is on the record here for us and the evidence that we receive are accurate. That is why I am asking the questions.

Senator PAYNE—Chair, Mr O’Sullivan has made his position perfectly clear.

Senator BOB BROWN—No, he has not.

Senator PAYNE—That is a matter for you, Senator Brown. I think Mr O’Sullivan has made his position perfectly clear.

Senator BOB BROWN—I am saying it is a matter—I tend to disagree with you.

Senator Johnston—If it is on the record, then it speaks for itself.

CHAIR—Thank you, Minister. I would ask the committee to bear in mind the responses given by Mr O’Sullivan, and the views that I have expressed, and I would ask the committee to proceed to the next topic.

Senator NETTLE—Perhaps I could ask whether Mr O’Sullivan wanted to change in any way the evidence that he has given to this committee in relation to Scott Parkin, or change it?

Senator Johnston—Yes, that question goes to matters on the record which will be advisory and influential in any court proceeding. I really think it is completely inappropriate, having been given a warning that Mr Parkin has instituted proceedings against Mr O’Sullivan, for the learned senator to persist in asking questions which bear upon that matter.

CHAIR—Thank you, Minister. Senator, that is the third time you have asked pretty much the same question. What is on the public record is on the public record, and I would ask, and rule, that we bypass this matter, and that we proceed to the next topic.

Senator NETTLE—My intention is making sure that the committee has not been misled.

CHAIR—I understand what your intentions are, Senator Nettle, as you have expressed them, but that is my ruling. Are there any other questions for ASIO, Mr O’Sullivan?

Senator BOB BROWN—Have you drawn up any report or fed into any report on climate change?

Mr O’Sullivan—No, we have not. Once again, the broad answer comes back to the point I was just making in response to your earlier questions, which is that, if it were the case that there were effects of climate change which then bore on the threats to national security for which ASIO is responsible to the government for protective advice, it could be that we would then feed into such advice, but we have not yet done so.

Senator BOB BROWN—The Office of National Assessments said in the committee last night that it had been involved in drawing up a number of papers on climate change. ASIO did not have a part in ONA’s climate change work?

Mr O’Sullivan—No. I am not aware that we did. I cannot easily imagine how we would have. You would have to get into a hypothetical scenario where the effects of climate change were of a kind which then bore on the matters specified in part IV of the ASIO Act, where it is spelt out what are the threats to Australia’s national security against which the organisation is set up and for which it is given the mandate to provide advice to the government so that it can protect Australia and Australian interests. The only way I can imagine we would get into such a debate is if you had a scenario that spelt out some effects which bore on those particular matters and I am not aware that is the case. In fact, I am fairly confident it is not the case.

Senator BOB BROWN—Have you read the Pentagon consultant’s report on the impact of climate change?

Mr O’Sullivan—I do not recall that I have.

Senator BOB BROWN—Would you see if you or any of your officers have read that report and if there has been any reaction to it?

Mr O’Sullivan—I am not reluctant to cooperate with the committee but to go around 1,300 people asking them whether they have read a report which does not bear on the operational work of the organisation is getting into a very long fishing expedition, if I may say so, Senator. We take our mandate from the work that comes from the threats to security, and those threats are spelt out. Mostly it is counterterrorism but there is also counterespionage and

other things that are spelt out in the act. Unless there was some purpose or reason to think there was a link to such a report, I would not think that there was any professional reason why people in ASIO should be giving attention to that matter.

Senator BOB BROWN—I was asking the question because the Pentagon report takes the view that climate change brings the threat of quite massive security difficulties for the United States and for other countries. I am just quizzical that you may not be aware of that, although that report has been extant now for two or three years, and may not have reflected on the impact that report implies for Australia in terms of future security.

Mr O'Sullivan—That could be true, but then you are using the concept of security differently from the way the concept is defined in the act.

Senator BOB BROWN—I am using it in the same sense in which the Pentagon was using it as it related to the United States.

Mr O'Sullivan—I do not know how I could respond to that.

CHAIR—I think Mr O'Sullivan has answered the question. Do you have any further questions because we have a busy schedule tonight?

Senator NETTLE—I wanted to ask whether ASIO staff are involved in exchanges with similar overseas organisations like the CIA, for example, in the way that other agencies do? Do you have a program like that?

Mr O'Sullivan—I think it is inappropriate for me to answer on the public record that sort of question. It goes too closely to the issue of how we liaise and with whom we liaise.

Senator NETTLE—I do not need to ask the question specific to the United States; I am happy to ask the question whether you have any bilateral relationships with other similar intelligence organisations in other countries with which you do exchanges.

Mr O'Sullivan—The broad doctrine is that we go where the work takes us. What that means is that our mandate of giving advice to the government to protect Australia and Australian interests wherever they are located is the task. How we conduct that task, the ways in which we organise ourselves, is a matter that we do not discuss in public.

Senator Johnston—For good reason.

Senator NETTLE—Yes, but ASIO is a body that is accountable to the public, and this is an opportunity and an avenue for that accountability. The operations of ASIO—we all understand there are limitations—is something that the public should understand. I did not think it was that big a question to say: do you interact with people in a similar way to a whole lot of other government departments?

Senator Johnston—It is that big a question, and there is oversight by the parliament through a joint standing committee.

Senator NETTLE—Which—

Senator Johnston—You are not a member.

Senator NETTLE—minor parties such as the Greens are prevented from participating in.

Senator Johnston—I am sorry, but the parliament has oversight. If you are not in that committee, I am sorry, that is just the way the cookie crumbles.

Senator BOB BROWN—This is a parliamentary oversight committee as well, Senator.

Senator Johnston—Not when it breaches national security.

Senator LUDWIG—There has not been a breach of national security. I think that is a bit extreme.

Senator BOB BROWN—No breach of national security. That is very silly.

CHAIR—I think we will pursue further general questions of the Attorney-General's Department if there are no further questions for ASIO.

Senator BOB BROWN—I do have a further question.

Senator LUDWIG—I have plenty of questions that I am sure I can ask.

CHAIR—All right.

Senator BOB BROWN—I wonder if you could tell the committee whether in the last several years you have had under surveillance any member of parliament or any member of the federal judiciary in Australia?

Mr O'Sullivan—It is obvious that I cannot answer that question.

CHAIR—Senator, I would ask you to rephrase your questions in such a way that Mr O'Sullivan can answer them. He clearly cannot answer that question.

Senator BOB BROWN—Let me limit the question to members of parliament and put it this way: under what circumstances would you maintain surveillance on a member of the federal parliament?

CHAIR—That is a hypothetical question, and it is not appropriate. I rule it out of order. Senator Brown, do you have another question?

Senator BOB BROWN—Yes. Is there any member of the federal parliament who has been or is under surveillance by ASIO?

Senator Johnston—You are not going to get an answer to that either.

Mr O'Sullivan—ASIO targets behaviour patterns where we see threats to Australia's security and Australia's interests that are defined in the act we operate under. We adhere very strictly and we have very good internal and external monitoring arrangements to make sure that we do comply completely and legally with the provisions that parliament has passed in respect of this organisation. That is the work we do. So the answer in respect of any particular person in the country is exactly the same. We do not target groups and we do not target particular individuals, except in that respect.

Senator BOB BROWN—But I am asking, and it is very easy for you to say no to this, if there is any member of the federal parliament who presents a threat to security such that they are under your surveillance.

Mr O'Sullivan—Senator, it is not easy for me to answer that question for reasons that I thought were quite straightforward; that is, if you are going to have a security intelligence

organisation and you think there are serious threats to this country, its interests and its people, then you set up mechanisms that allow that work to be carried out discreetly and in secret. And that has to be the case. You cannot have one without the other. So if you want such an organisation, then you must want proper mechanisms to allow it to do its work. Part of that mechanism of secrecy or that discretion involves not saying what we do or how we do our work.

Senator BOB BROWN—Yes, but when it comes to members of parliament, there is a very particular need for any working member of parliament to know that they are free of surveillance unless there is good reason for it. I do not know of any member of parliament who presents any threat whatever to the security of Australia. In fact, it is my experience that they are all working for the security of this country. But it is important—it is a very direct question I am asking you—that we not have that question mark that ASIO or intelligence agencies are putting members of parliament under surveillance. The reason I ask that is that there would need to be an extremely potent reason for that to happen and I am surprised you are not saying no to the question I asked.

Mr O’Sullivan—I have no further comment on your observation, Senator.

Senator NETTLE—What about the minister: are you able to answer that question?

Senator Johnston—No.

Senator NETTLE—You are not able to answer whether any member of parliament is a threat to national security?

Senator Johnston—No, because I am not the minister directly in charge of ASIO. Whilst I represent the minister, I do not have direct oversight of the agency. Secondly, it is a hypothetical question—

Senator BOB BROWN—No, it is a direct question I asked.

Senator Johnston—No, it is not.

Senator BOB BROWN—Yes, it is.

Senator NETTLE—Is any federal member of parliament a threat to national security? That is the question.

Senator Johnston—How on earth would I know that?

Senator BOB BROWN—I have another question to ask—

CHAIR—I think we will need to move on very shortly if you cannot word your questions so that there is at least a possibility of Mr O’Sullivan being able to answer them.

Senator BOB BROWN—I just want to ask: if a member of parliament comes under surveillance from ASIO, in all such cases is the minister, the Attorney-General, informed and kept briefed on the matter?

Mr O’Sullivan—That is a hypothetical and speculative question.

CHAIR—It is a hypothetical question.

Senator BOB BROWN—We do not know that is the case.

CHAIR—That is a hypothetical question.

Senator BOB BROWN—No, it is not necessarily so.

CHAIR—You will have to reword the question, Senator. It is hypothetical.

Senator BOB BROWN—Okay.

Senator NETTLE—We do not know if it is hypothetical or not because we do not have an answer.

Senator BOB BROWN—Let me ask this question: has ASIO communicated with the Attorney-General about any member of parliament?

Mr O’Sullivan—For the reasons I have already explained, I cannot answer the substance of your question. On the procedural point of your question now, the advice that I give to the Attorney about any particular matter is confidential and it should properly remain so.

Senator BOB BROWN—I am very concerned that this matter seems to be off limits, because there has to be a division between the elected parliament and the overview by the Attorney-General of ASIO. What I would expect is that there is some failsafe mechanism so that members of parliament cannot be surveilled for matters other than an obvious and clear threat to national security. It moves into the area of hypothetical only because I cannot get an answer to the first question which is whether or not members of parliament are being surveilled. I would have expected the answer to that to be no.

CHAIR—Senator, is that a question? I appreciate your comments—and it is a hypothetical comment, in my view—but you need to word it as a question otherwise we will need to move on. I notice that Senator Ludwig is keen to ask some questions.

Senator BOB BROWN—I am keen to get an answer to the process underway here. I have simply asked whether the Attorney-General has been contacted by ASIO about any member of parliament. I cannot get an answer to that question so I have nowhere else to go on the matter. But it does concern me greatly.

CHAIR—Okay, thank you. Are there further questions to ASIO?

Senator LUDWIG—The role that IGIS plays in terms of some of the very issues we are canvassing: could individuals complain about your behaviour if they wanted to? Where would they go? Do you have a complaints process?

Mr O’Sullivan—Yes, the IGIS is the obvious one. As you know, he has a very full authority that is analogous to a sort of in-house royal commissioner. He is fully able to receive complaints, and does so, and does investigate them.

Senator LUDWIG—But you have your internal complaints process as well?

Mr O’Sullivan—That is right. We have a system inside the organisation for people who have complaints about what you might call the administration of the organisation as distinct from the substance. Yes, there is such a process.

Senator LUDWIG—If they have complaints or concerns not about the administration but about other matters, where would they go?

Mr O'Sullivan—It would depend on the nature of what those concerns were as to where they went. They could come to me directly or they could go to a line manager. It would depend on the nature of the complaint.

Senator LUDWIG—So there are avenues that are available both within ASIO and to IGIS, if they have concerns.

Mr O'Sullivan—I might just say that we are one of the very few organisations which publishes an unclassified annual report, and in that unclassified annual report to parliament we include the details of the numbers of complaints.

Senator LUDWIG—Thank you. We will see if we can explore this matter which was a press release by Dr Brendan Nelson—you can have a copy if you want; it is quite simple and I am sure you would recall it—in which he indicated:

This will be led by the Defence Security Authority, with assistance from Defence's Inspector-General. The audit will be overseen by a board that will include a representative from the Australian Security Intelligence Organisation. The Australian National Audit Office will have observer status.

The initial focus of the audit is the security arrangements that apply to the 66mm light anti-armour weapon. A report from that initial phase will be completed by the end of January 2007. The second phase will be completed in the first half of 2007...

Are you able to provide an update as to where that audit is at—or at least confirm the status of ASIO's involvement, if that is accurate—and whether you are able to comment on both phases of the ADF audit process?

Mr O'Sullivan—I cannot comment on the ADF process, that is really a matter for them, but I can confirm the accuracy of that press release that we are participating in the board that oversees that process, yes.

Senator LUDWIG—Are you able to then say what role you play in overseeing that audit?

Mr O'Sullivan—If I understand correctly, it is really trying to bring to that audit a more precise understanding of what the requirements of security are and how they might be affected by discrepancies that the audit throws up.

Senator LUDWIG—It seems to be that the initial focus of this audit is the security arrangements that apply—so that would be that which currently apply to the 66-millimetre light anti-armour weapon, as I understood it. Once that is completed, the second phase will examine all security aspects of the policies and practices that apply to the management of weapons, munitions and explosives across Defence is a much bigger brief.

Mr O'Sullivan—Yes, I think the contribution that ASIO is able to make is simply to help to ensure that the Defence authorities carrying out that audit understand the domestic security implications.

Senator LUDWIG—Are you able to say whether the role that ASIO plays is any broader than that to the extent that it may involve the coordinating action between ASIO and ADF in overseeing any of that work?

Mr O'Sullivan—I think not, no.

Senator LUDWIG—Do you have a copy of the report available to the committee?

Mr O'Sullivan—I do not, sorry.

Senator LUDWIG—Does that come through you, Mr Cornall?

Mr Cornall—No.

Senator LUDWIG—It was worth a stab. The other matter that was raised yesterday was in that multicultural context. It talked about a national action plan on relationships that exist between Muslims and Australians in Australia. Although, I do not think the national action plan has not been made public yet, Mr Cornall?

Mr Cornall—Not that I am aware of; I will check if that is wrong.

Senator LUDWIG—I was hoping they might have released it, but they had not at that point. Had your organisation been consulted, if you are able to say, in respect of it?

Mr O'Sullivan—I am not aware that we would have been, although the role that ASIO has in those respects is, once again, contributory or the community contacts which ASIO carries out to do its work—

Senator LUDWIG—To that extent I was not intimating any further than that.

Mr O'Sullivan—That activity supports the broad themes and objectives of the plan, but I do not think we helped formulate the plan.

Senator LUDWIG—No. It was a question of whether you had been consulted about the plan more than anything else, but I am happy for you to take that on notice.

Mr O'Sullivan—I would have to check the degree of consultation.

Senator LUDWIG—I am happy for you to take that on notice, thank you. In terms of the security arrangements for APEC, would you have been involved in the discussions, the negotiations or the planning for that?

Mr O'Sullivan—Yes.

Senator LUDWIG—Are you able to say more broadly what that involved entailed?

Mr O'Sullivan—I cannot go into details for the reasons we have debated previously. I have said on the public record previously that the complexity of the whole APEC series of meetings is a very challenging issue. It is a very challenging security matter, and we are devoting considerable resources to try and make sure that those series of meetings—not just the leaders meeting in September but the very large number of meetings—goes off without a hitch.

Senator LUDWIG—If there are overseas requests to carry firearms, would you be involved in the decision-making process?

Mr O'Sullivan—No.

Senator LUDWIG—In terms of the use of technology to jam phones or those sorts of matters, would that be a matter that you would be consulted about? It would I imagine more broadly—and please do not comment if I have got this wrong—also have national security implications if you jam phones at a particular time. It might be helpful in preventing A but it also might have knock-on effects.

Mr O'Sullivan—I do not think I can usefully comment on that.

Senator LUDWIG—In terms of the protocol that might occur between heads of state and the personal security staff that might accompany them, is that something that ASIO would get involved in?

Mr O'Sullivan—We may have some marginal involvement, but my understanding is that PSEC is the coordinator of that matter.

Senator LUDWIG—I was going to ask them similar questions shortly, but I thought while I have got you here I would take the opportunity of seeing if I could progress it any further. Thank you, I do not have any further questions.

Senator NETTLE—Can you tell us how many liaison officers ASIO has?

Mr O'Sullivan—I would like to take that on notice. The reason for doing so is that I would like to check what material we have put into the public domain. I just cannot remember off the top of my head. We try in the unclassified annual report, which we table for parliament, to genuinely make that as serious a statement of the legitimate activities that we undertake and outline, where we can, the details. I cannot remember off the top of my head whether that has been put into the public domain.

Senator NETTLE—In the annual report it says that as at 30 June 2006, ASIO had 268 approved liaison relationships in 113 countries. Does that help you at all with working out what you can tell us?

Mr O'Sullivan—Since you already knew that, I assume that that will be of great comfort to you.

Senator NETTLE—But that does not tell me how many liaison officers ASIO has.

Mr O'Sullivan—What I am getting at is: we have to carefully think about the implications for the officers and their security as well as the confidence that others have in us and our ability to protect those other relationships and be careful about the amount of detail we can properly release. What you are quoting back to me now is a judgment that I would have had to make about whether that material was legitimate to be putting into the public domain, and you can infer correctly that I have not put other material into the public domain. I suppose behind your question is the implication about what those judgments were and the balances that I strike in trying to put material into the public domain through the unclassified annual report. It is a difficult judgment and it evolves over time. But the facts that you quote shows that we take quite seriously the point I made before about going where the work takes us, where we see threats to Australia and Australian interests.

Senator NETTLE—Does that mean that you have 268 liaison officers; is that what it means; am I reading it—

Mr O'Sullivan—There is no direct connection between personnel disposition and the number of national linkages we may have. It is because there are different organisations in each country. Australia has, as you know, three defence intelligence organisations and three non-defence intelligence organisations, so a total of six in this country. There are many other countries that have analogous structures so that the number of countries involved would be

much less than the number you quote and the number of people we have to conduct those directly would be much less.

Senator NETTLE—Sorry; the number of countries is much less than the—it says in here, ‘113 countries’ and ‘268 liaison officers’.

CHAIR—Can I please interrupt for one moment. Senator Nettle, Mr O’Sullivan has indicated he is happy to take that on notice and he has tried to explain the security concerns that he has in terms of answering the question reasonably comprehensively. He has agreed to take it on notice.

Senator NETTLE—I am just making sure that I understand what he has said. I have read out this section, and he just said to me that the number of countries is less than the number of countries there. It says in here that there are 113 countries, so I am just checking that I have got it right.

Mr O’Sullivan—The facts that you quote bear on precisely the point I was making: that the number of countries with whom we have relationships is less than the number of organisations, and that is because most countries have more than one intelligence organisation.

Senator NETTLE—That was not what I understood you to have said, but all right. You talked about the work on APEC. Are you able to tell us how many staff are involved in that?

Mr O’Sullivan—No.

Senator NETTLE—What about another one. Are you able to tell us how many staff were involved in the Melbourne Commonwealth Games?

Mr O’Sullivan—No, and for the same reason: that the issue about the number of officers we deploy and where we deploy them goes to the heart of the resources that we have and how we conduct ourselves, and that is not a matter that I can put into the public domain.

Senator NETTLE—The Commonwealth Games are over, though. I mean, they are not coming up in the same way that APEC is.

Mr O’Sullivan—It is not available for me to describe what organisational resources we have and how we dispose of them. For reasons I have explained, that is a matter that has to be kept within the organisation.

Senator NETTLE—Can you give us any indication of what proportion of office staff you have in the ASIO building, compared to field staff? Can you give us something like that?

Mr O’Sullivan—I do not have that breakdown in my mind but I would have to think about the same point. Can I take that on notice and I will have a think about that question? It may be possible to give you that, especially when we get to the annual report writing time. I will consider that question.

Senator NETTLE—Where is the complaints section in the annual report? Do you know off the top of your head?

Mr O’Sullivan—I do not have a copy with me, but I believe there are statistics. If they are not there, it is material that has been provided to the PJC. I just cannot remember.

Senator NETTLE—Are you able to tell me how many complaints you have currently got on foot that ASIO is working on?

Mr O'Sullivan—I cannot say on foot at the moment, but in the last reporting period, which would have been last year, I believe there were six, five of which were resolved internally by discussions with the people raising the issues. One resulted in a grievance process.

Senator NETTLE—Are they internal complaints by ASIO staff?

Mr O'Sullivan—Yes.

Senator NETTLE—Do you have an external figure?

Mr O'Sullivan—That would be a matter for the IGIS. I think his annual report covers that mark.

Senator NETTLE—Thank you.

CHAIR—Thank you, Mr O'Sullivan, for being here today. We appreciate that. We will move on to general questions to the Attorney-General's Department. Mr Cornall is here. Then we will move to outcome 2, Coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

Senator BOB BROWN—I want to ask about guns again, and in particular handguns. I refer to the report released by the National Coalition for Gun Control last December, which was prepared by Professor Warner and Simon Sherwood from the Faculty of Law at the University of Tasmania, called *Firearms legislation in Australia a decade after the nationwide agreement*, which is, of course, a decade and a bit after the Port Arthur massacre. From that, I would like to ask what steps the government has taken in the last year to ensure the compliance of states and territories with the National Firearms Agreement 1996, as amended.

Mr Harris—The control of firearms in Australia is obviously a matter for the states and territories. They control the possession, purchase, acquisition and disposal of all firearms. They register all firearms. At the Commonwealth level, we control the border and the importation of firearms.

Senator BOB BROWN—I am referring here to the national firearms agreement.

Mr Harris—Yes. Each state and territory is responsible individually for enforcing that national firearms agreement.

Senator BOB BROWN—And so is the Australian government.

Mr Harris—We do so at the border.

Senator BOB BROWN—I am asking what steps the Australian government has taken—because it obviously had quite a deal of leverage on the states as well to ensure that they have complied with the agreement as amended.

Mr Harris—We do not see it as our role to ensure that the states and territories comply with an agreement that they have endorsed. They have legislation in place that reflects the agreement. To monitor every single piece of legislation on firearms in Australia would be quite a task for the department. We do not monitor that on a day-to-day basis, on a yearly basis. We have clear faith in the states and territories to enforce the national firearms

agreement within their own legislation—and I have to say that they do so. Firearms nationally, both at the Commonwealth level and in the states and territories, are clearly a matter of significant concern and, if anything, the states and territories continue to strengthen their legislation.

Senator BOB BROWN—How many hand guns are available in Australia?

Mr Harris—I would not be able to answer that.

Senator BOB BROWN—Could you take that on notice?

Mr Harris—I could try and take it on notice. As I say, the states and territories control registration of all firearms. We do not have access to that information directly. We would have to go through each state and territory for the information.

Senator BOB BROWN—Is it of the order of 300,000?

Mr Harris—I would not know.

Senator BOB BROWN—You do not know?

Mr Harris—No.

Senator BOB BROWN—Really. Are you satisfied that the Commonwealth authorities have done all they reasonably can to stop or to ensure that the states and territories do not water down or do not fail to comply with the national agreement signed by the Commonwealth?

Mr Harris—We have no reason to believe that they are watering down the legislation. As I say, if anything, states and territories continue to monitor their own legislation and strengthen it.

Senator BOB BROWN—Are you aware that some states and territories have permits for minors, people under the age of 18, to get access to guns?

Mr Harris—In some jurisdictions there is provision for people under the age of 18 to access firearms for sport shooting purposes. I understand they are very restrictive in the way in which they are issued. The manner in which they are considered and the manner in which they might be issued will differ between jurisdictions.

Senator BOB BROWN—Are there any other purposes?

Mr Harris—I am not aware of any other purpose.

Senator BOB BROWN—The Warner report that I referred to earlier identifies concerns with the ability of shooters, including minors, to identify themselves as recreational shooters and that the sufficiency of the regulatory system to ensure that ‘recreational hunting’ is in fact a genuine reason for obtaining a firearms licence is under question. The authors of the report state that ‘proof of permission from a landowner would appear to be an almost negligible threshold requirement for a person to obtain a firearms licence’. Given that, what is the department doing to ensure that loopholes like that in the agreement are not left open?

Mr Harris—I am certainly not aware of any loophole within the agreement or within the legislation of each state and territory. In order to acquire a licence for a hand gun or a firearm a person needs to be able to prove that they have a genuine need for such a licence. They need

to pass a 'fit and proper person' criterion in the state and territory. They need to prove their identity to the state or territory. They have to pass an appropriate safety training course. They have to satisfy appropriate firearms storage requirements and, in most jurisdictions generally, you have to be over the age of 18. Those requirements are in all legislation around the country.

Senator BOB BROWN—In which jurisdictions don't you have to be over the age of 18?

Mr Harris—As I say, in some jurisdictions, I understand that you may get access to a firearm for sport shooting purposes only.

Senator BOB BROWN—Which are those?

Mr Harris—I would have to take that on notice.

Senator BOB BROWN—Thank you. Then for a person to hold a gun, you judge it sufficient that the person can show they have permission from a landowner to shoot?

Mr Cornall—It is not up to us to express an opinion about the sufficiency of the legislation. That is what the legislation is; that is what the agreement is. That is what governments have endorsed.

Senator BOB BROWN—You are saying that the agreement allows for the evidence that a landowner gives the right to shoot to permit a person to hold a gun?

Mr Cornall—No. You asked Mr Harris to express an opinion about the sufficiency of the legislation and I am saying that it is not our role to do that. What he has said to you is what the legislation requires and what should be implemented before a person is given a licence to own a gun.

Senator BOB BROWN—Yes, and what I am saying is that the legislation requires that they should have a good reason—

Mr Cornall—And we agree with that.

Senator BOB BROWN—and in some states the simple ability to show that a landowner is going to let you shoot is sufficient requirement. I am questioning that. It seems to me that, under that availability, almost anybody could get a gun.

Mr Harris—As I just indicated, it does not just come down to whether or not a landowner might have given someone permission to use a firearm on their land. It comes down to much more than that. You do have some stringent criteria that you do need to meet in each jurisdiction, and the state and territory police are responsible for administering that.

Senator BOB BROWN—I am talking about the sufficient reason to hold a gun, not the other qualifications that are involved.

Senator Johnston—You cannot look at the qualification in isolation because, if you have someone authorising you to use a firearm on their property and your personal record and antecedents are such that you will not get the gun, you are not going to get the gun or the licence.

Senator BOB BROWN—I understand that, but most citizens are not ruled out by that personal reason or 'antecedent'—I think you said the word was.

Senator Johnston—But there is also the quality of the firearm and the reason the firearm is needed. These are all reasons that are not viewed in isolation; they are viewed in the totality of the application in each of the state legislations.

Senator BOB BROWN—But the point I am making is that the reason for it is that you have permission from a landowner to shoot and I am querying that that is sufficient reason for a person to hold a gun. We are talking about lethal weapons here, you know.

Mr Cornall—It is a level of application at an operational level, which is really done by the state authorising authorities rather than by the Commonwealth government.

Senator BOB BROWN—Let me put it generally: is the department and the government satisfied that it has done all it reasonably can to prevent a massacre in Australia by somebody using a repeat-shot hand gun?

Mr Cornall—As you know, the government has been extremely concerned about guns in the community and, during the course of the last 10 years, it has had a very significant campaign to buy back long arms and a very significant campaign to buy back hand guns. It has introduced strict controls on the sorts of guns that are available in the community, often against considerable opposition from gun owners. It has paid a considerable amount of compensation to gun owners and to gun shop proprietors as a result of the effect that that has had on their business. The government has also pushed both police and the Australian Crime Commission to take the issue of illegal guns in the community very seriously. So I think the government does have a very solid record in terms of its very clear concern about guns and doing something demonstrable about it.

Senator BOB BROWN—It is not possible to get your hands on a .38 calibre 10-shot semiautomatic long rifle under current laws without really exceptional reasons, but it is possible to get your hands on such weapons when they are hand guns. This is my great concern. I introduced legislation to the Tasmanian parliament in 1987 to prevent semiautomatics from being available and I only wish, given history, that that legislation had passed. I am aware that we now do have national prohibitions on semiautomatic long guns being used but I am very alarmed that short guns—that is revolvers, repeat-shot, up to 10 cartridges in the revolver, up to .38 calibre—are available in our community. I just ask you this—and I asked earlier of ASIO: are the variety of hand guns used by Cho Seung-Hui to commit the Virginia Tech massacre, which killed 33 people, legally available in Australia?

Mr Cornall—I do not know the answer.

Mr Harris—My understanding is that they are not. I could correct myself later if that is not the case. I understand that the barrel length of one of the hand guns was too short and with the second-hand gun, the shot capacity was too great.

Senator BOB BROWN—Yes, but even if we take those two things—let us take the barrel of the second-hand gun and put it together with the magazine capacity of the first—Mr Harris, is it not true that equally lethal weapons, hand guns with repeat shot, are available in Australia on the market?

Mr Harris—Hand guns to a calibre not in excess of .38 are available with a barrel length of 120 millimetres for semiautomatic and 100 millimetres for revolvers, or single shot hand

guns and those with a shot capacity of 10 rounds are available for sport shooting purposes. Again, you need to meet all of the criteria for access to a licence to be able to possess those firearms and there is further stringency around new licence holders such a probationary period when you are not allowed to hold a hand gun for a six-month period and then graduated access to hand guns at various calibre levels. There are minimum participation rates in each state and territory for you to undertake sport shooting event. If you do not meet those minimum participation rates the state or territory can remove the licence from you and remove the firearms. If there is an AVO or DVO issued against someone, again the licence would be removed. There are a number of constraints around persons' access to those sorts of firearms.

Senator BOB BROWN—Nevertheless, there are some hundreds of thousands of hand guns available and an increasing number of effectively semiautomatic hand guns available. That is true, isn't it?

Mr Harris—As I say, there are a number of hand guns in the marketplace for genuine sport shooting purposes.

Senator BOB BROWN—You would be aware that some thousands of those have been mislaid or stolen in recent years, wouldn't you?

Mr Harris—It is clear that a number of hand guns are available on the black market. Whether or not they have become available in recent years or have been in circulation for quite a number of years is unclear. What is clear is that theft of firearms has decreased over the last few years. The Australian Institute of Criminology has undertaken some research in this area and has indicated that firearms theft has reduced from approximately 4,000 per year in the late 1990s to 1,470 in 2004-05. The vast majority of the firearms that are being stolen are long arms; a small proportion of those are hand guns. But thefts are on the decline, which means fewer firearms going from the legitimate marketplace into the black market through theft at the very least.

Senator BOB BROWN—Do you know how many illegal hand guns there are in Australia?

Mr Cornall—By definition, you could not answer that question. It is not possible to calculate it.

Senator BOB BROWN—It is possible to have an estimate on that. Do you have an estimate on that?

Mr Cornall—I do not.

Mr Harris—It is not possible to estimate. Firearms could have been around for the last 20, 30 or 40 years and it is impossible to estimate how many firearms could be out there.

CHAIR—Mr Cornall, you had a response?

Mr Cornall—I was only going to add that my recollection of reading the Australian Institute of Criminology statistics is that gun offences are significantly down since the gun buybacks as well. Mr Harris may be able to confirm that, but if he cannot I will correct that if that is wrong.

Senator BOB BROWN—Mr Cornall, are you there referring to gun offences committed with hand guns?

Mr Cornall—I recall reports by the AIC dealing with gun offences and I would have to go back and check the reports.

Senator BOB BROWN—We are all aware that gun offences and—happily—deaths have fallen as a result of the national agreement to reduce firearms and to buy them back after the Port Arthur massacre, but I am particularly concerned tonight about the increasing number of hand guns there are in the country and the failure to have similar restrictions on semiautomatic hand guns that apply to semiautomatic long guns. Last year on the 10th anniversary of the Port Arthur shootings in Tasmania, the Prime Minister said that he was prepared to examine further restrictions on the availability of hand guns in Australia. Can you tell the committee what steps the government has taken since that time to restrict the availability of hand guns in Australia?

Mr Harris—No further steps have been taken to restrict hand guns in Australia.

Senator BOB BROWN—Do you know if any moves are afoot to further restrict hand guns in Australia?

Mr Harris—There are no moves afoot that I am aware of.

Senator BOB BROWN—So the Prime Minister said he was prepared to look at it but nothing has happened in the last 12 months.

Mr Cornall—Mr Harris has answered that question as best he can.

Senator BOB BROWN—Yes, he has, and I thank him for that.

Mr Cornall—But I think there are a couple of other points to make. Guns are not illegal in this community. There may be a lot of people who think they should be but they are not. So the question is: how do we regulate them and what guns are permitted and what guns are not? That is the issue. You clearly have strong views about that. All we can do is explain to you what the present regulatory structure is and where the lines are drawn.

Senator BOB BROWN—My view is not, by the way, that they should or can be eliminated, but it is that hand guns ought to be restricted in the same way as long guns.

Mr Cornall—You have made that point, but we cannot do anything further than acknowledge that that is the view that you are expressing here tonight. Earlier in your comments with ASIO you also kept moving between explosive materials and guns in relation to terrorism. I just wanted to say in response that I am not aware of terrorists using guns in any of the reported terrorist acts that I have read about over the last few years. The weapon of choice for terrorists appears to be improvised explosive devices, and that seems to be a common pattern all over the world. So while criminal acts like the Virginia Tech massacre are obviously hugely distressing circumstances in a community, there is nothing that I am aware of that says that terrorists are trying to use guns for terrorist activities.

Senator BOB BROWN—So you do not classify the very large number of gun deaths amongst civilians in Iraq at the moment as terrorist acts?

Mr Cornall—I am not talking about Iraq; I am talking about here in Australia and in all the other places where we have had what are generally regarded as terrorist acts such as the Madrid bombings, the London bombings, the World Trade Centre attack and so forth.

Senator BOB BROWN—Yes, but there is no geographical boundary on what is classified as terrorism. I am saying that in Iraq guns have a terrible death toll and that is from what other commentators refer to as terrorist acts. I am just taking the point with you there that I do not agree that terrorists are not interested in guns, would not use them, or have not used them.

Mr Cornall—All of the television reports that I have seen about Iraq seem to be related to improvised explosive devices.

Senator BOB BROWN—We are watching different channels, sadly. Is it possible to tell the committee how much GST—and perhaps I should have gone to the tax office for this one—the Australian government gets from the import of firearms into the country? Is it possible to tell the committee how many firearms, both long and short and both single shot and multiple shot, are imported into the country each year and what their value is?

Mr Cornall—I think that if anyone could answer that it would probably be Customs. I wonder whether you might put the question on notice to Customs and see whether they are able to answer it.

Senator BOB BROWN—You do not have an interest in how many guns are coming into the country?

Mr Cornall—We are not responsible for control at the border; Customs does that.

Senator BOB BROWN—I am aware of that, but you are responsible for knowing, I would have thought, the number of guns that are extant in the country and how many are coming into the country.

Mr Cornall—You asked a much more detailed question than that. I am simply saying that I think that Customs may be the agency best placed to answer it.

Senator BOB BROWN—Do you know how many guns are coming into the country?

Mr Cornall—I do not personally know, but I assume if we wanted to find out we could—but we would ask Customs, presumably.

Senator BOB BROWN—Could you take that question on notice?

Mr Cornall—Certainly. We will take it on notice.

CHAIR—Order! Mr Cornall has answered the question a couple of times reasonably specifically, I think, Senator, and I would ask you to respect that answer.

Senator BOB BROWN—I have placed that question on notice, Chair. Thank you very much.

Senator LUDWIG—While we are on the topic of hand guns, I turn to the hand gun buyback: I think that matter was originally denied, then it was agreed, and then there was a plan that it was open for certain businesses to be able to be compensated. I think there was an announcement on 22 December 2005 by the Attorney-General's Department, the Criminal Justice Division, regarding the new compensation for unviable business policy under the

Council of Australian Governments hand gun reforms. This followed the tragic shooting at Monash University in 2002 when COAG agreed to reform hand gun laws. Then by 2005 eligibility for compensation was allowed and claims had to be in by no later than 30 April 2006. Are you able to say how many claims have been received?

Mr Harris—Eleven claims were received by the department. Of those, I can advise that five claims have shown that their businesses became unviable as a result of the reforms. One claimant is continuing to provide documentation to the department and its consultants, and five claimants have been unable to demonstrate unviability under the compensation model.

Senator LUDWIG—Have any been compensated to date?

Mr Harris—Only one, a test case for the compensation for unviable business. That was led by the dealers association and was put forward as a particularly exceptional case where significant losses were incurred.

Senator LUDWIG—Are you able to explain the circumstances? You have used the words ‘test case’. Did they make an application and complete the relevant material and then provide that material to the department and then—I do not know—you assessed it at that point? Can you explain the process that was undertaken for the test case?

Mr Harris—It was a fairly long process. This matter goes back a number of years. The dealers association and dealers around the country believe that they were due compensation because of losses due to the hand gun buyback and the reforms that COAG implemented. At the time states and territories and the Commonwealth, through COAG, decided that no compensation would be provided to businesses. Dealers put forward one particular case where they thought there was a very strong argument to show that the business had been made unviable due to the hand gun reforms. We undertook to look at that particular case to try to find out whether or not it had been proven to be unviable and that could then form the basis for possible compensation to other people in the future. It was assessed under the same model.

Senator LUDWIG—The question though is: did it fall under the model of being an application submitted after 22 December 2005 with the accompanying paper warfare that goes with that, or was it done before that date?

Mr Harris—It was done before that date.

Senator LUDWIG—Are the details of the compensation package and who it was paid to on the public record?

Mr Harris—I do not think it is public. I would have to take that on notice as to whether or not we could release that information at this time.

Senator LUDWIG—That would be helpful—whether the compensation was paid, how it was assessed, and when it was paid—and then, if a criterion was involved in determining that, what that criterion was, if that information is available. In terms of the remaining ones paid, you have indicated that five—if I understood you correctly—have been accepted. What happens at this point? You say that one lot of compensation has been paid but that that is a test case. This matter is now closed in the sense that you had, as I understood it, to put in an application by no later than April 2006 and therefore no more can be put on the record. So we

have 11, with five unable to provide the relevant data. Do they still have an extension of time to provide any more data or have they been refused?

Mr Harris—At this point they have been told that it has not been proven that they are unviable and that is the end of it unless they can find some further information. The process has undertaken a significant degree of consultation with each claimant and, at this time, some of those claimants are not able to provide enough documentation to show they are unviable.

Senator LUDWIG—Do you advise them in writing that they have not been able to provide sufficient evidence to demonstrate that they are unviable in terms of the criteria?

Mr Harris—Each claimant has been advised.

Senator LUDWIG—That is of the five—

Mr Harris—All claimants have been advised of their position at this stage.

Senator LUDWIG—Of the five that have been accepted, have they been advised when compensation is likely to be paid, or the amount?

Mr Harris—No, not the amount. The next stage in the process is to value stock, plant and equipment, which forms part of the compensation package. We are hoping to have that finalised by the end of June. It is dependent on a number of factors including each of the claimants providing a manifest of their stock, plant and equipment for us to value.

Senator LUDWIG—Have they received that advice to provide that manifest?

Mr Harris—I believe so.

Senator LUDWIG—Can you check on that and if there is anything you have left out could you let the committee know, please? Is there an upper limit? Is there a limit in terms of the compensation that can be paid?

Mr Harris—No, there is no upper limit.

Senator LUDWIG—Who does the assessing?

Mr Harris—The Attorney-General's Department engages a consultant to assess each claimant against the model.

Senator LUDWIG—Can you say who the consultant is?

Mr Harris—It is Acumen Alliance.

Senator LUDWIG—Is it a contract for them to undertake that work?

Mr Harris—It is.

Senator LUDWIG—What is the duration and cost of the contract?

Mr Harris—I would have to take that on notice.

Senator LUDWIG—If you would not mind, thank you. If someone wants to complain about the way the program has been managed, is there a dispute settlement process included in the overall process? For argument sake, if they wanted to dispute your finding or your final position, or they thought they did not have to provide additional information, or in providing that information they might have thought it was sufficient, is there an appellant mechanism?

Mr Harris—There is no appellant mechanism under the model. We would be open to reconsidering any new material.

Mr Cornall—I would imagine too that this would be a matter that would fall within the normal capacity to lodge a complaint with the Ombudsman if there was a feeling we had not done the job correctly.

Senator LUDWIG—Yes, I was thinking whether the Ombudsman might be the appropriate place to go if someone wanted to complain. How long have the five who have so far been unable to demonstrate a case that can be accepted past the first step been waiting? Is there a time limit in which it remains open for them to demonstrate that they might meet the model criteria?

Mr Harris—There is no time limit specified. They have been advised recently that they have been found to still be a viable business, or that they have not provided enough documentation. We await any response from them. At this stage though, we regard the matter as closed until we hear otherwise.

Senator LUDWIG—I understand it is closed, so there are no new businesses or existing businesses that can enrol in the scheme. One thing that struck me was that there does not seem to be a cut-off point or a refusal point.

Mr Harris—Claimants have been denied, but if they have new information for us which indicates that they are an unviable business, we would certainly consider that again. At this point in time the indication is that they are either a viable business or they have not provided enough documentation to be assessed against the model. That information is with each claimant. One would expect them to come back to the department fairly quickly if they thought that they were deserving of compensation.

Senator LUDWIG—Was information provided to the 11 gun dealers about how long the process would take, or a model or a sketch of what the expectation was, given that it cut off in April 2006?

Mr Harris—I do not believe that there was, but I might just take that on notice.

Senator LUDWIG—In advising the five that their claim was—and I am happy to use your phrase—‘at least not accepted at this time’, did you outline why? In other words, in correspondence back to the five did you outline where the deficiencies in their information might be or how they might be able to overcome those deficiencies?

Mr Harris—Only in very general terms.

Senator LUDWIG—That was not part of the model?

Mr Harris—No.

Senator LUDWIG—Mr Cornall, this is a question to all outputs. It is a case of trying to establish, for both outputs 1 and 2 of the Attorney-General’s Department, the appropriation or outcome, in each output as appropriately described, of the unspent funds against the 2006-07 budget, including the 2006-07 additional estimates and bills 5 and 6, which is funding requests, and to indicate whether these unspent amounts will lapse at the end of the financial year, be rephased or be reallocated across the forward estimates—we have now discovered a

new one, which is where the money goes back to consolidated revenue; I cannot remember the phrase exactly, but I am sure you recall it—and to indicate the revised funding profile. Do you have that information? Is it available within a short period of time? I am happy for you to take that on notice.

Mr Cornall—Taking it on notice will be the only way to answer it comprehensively.

Senator LUDWIG—We could perhaps do it in two parts, then, if it requires a comprehensive answer. Let us look at the 10 biggest underspends or something, appropriately described against the 2006-07 budget, including the 2006-07 additional estimates and bills 5 and 6 funding requests. That should not take you too long.

Mr Cornall—No, but are you expecting us to do it now?

Senator LUDWIG—We are here tomorrow—all day, I hear.

Ms Bickford—Perhaps what we can point you to at this point is page 74 of our portfolio budget statements where we are estimating a surplus of \$13.1 million for 2006-07.

Senator LUDWIG—Will that be a surplus across all, 1 and 2?

Ms Bickford—That is right; that is at the total level.

Senator LUDWIG—So there will be some that go down and some that go up.

Ms Bickford—That is right.

Senator LUDWIG—I was trying to establish whether you could highlight, in the interim—and you will provide a fuller answer—maybe the 10 more notable ones, where they might go up and down to give you that surplus.

Ms Bickford—It is probably not quite that straightforward. We can certainly tell you the areas. For example, we would have an overall underspend in our employee expenditure and an underspend in our depreciation expenditure against our original budget. But to provide you that information at an output level will take some time to go through, given that we have something like 14 or 15 outputs.

Mr Cornall—As was mentioned earlier, we are still a month or so from the end of the year. We are working on projections to the end of the year, but they are only projections at this stage. Part of the difficulty with this is that some of our money is simply departmental funds. Over budgets and under budgets are really just how we have established our projections for expenditures for the year. Other funds are given to us for specific purposes and have to be accounted against those purposes. And other funds are administered funds and have to be accounted separately again. It depends which category the funds fall into as to what occurs to them at the end of the year if they are not spent—whether they have got to be rephased or whether we have got permission to spend them in the following year. As we have discussed before, we might, for example, in one of our programs make significant commitments to spend money which is allocated in this financial year, but not have actually spent it this year because the services may not be provided until the following year. So that will actually appear in our accounts as an underspend or a surplus this year, and then when we spend it next year it will appear as a deficit. I am not trying to avoid your question, I am just trying to say it is actually a complicated question to answer in the way you have put it.

Ms Bickford—Perhaps we could also, though, point you to page 37 of our portfolio budget statements which shows you administered funds that were originally budgeted in 2006-07 that have been moved already to 2007-08. That gives you some examples of where funds have moved from 2006-07 to 2007-08.

Senator LUDWIG—All right. It is a question, though, for each output and the underspends for individual measures or programs, not the aggregate amount. Perhaps you could have a look at it between now and tomorrow and see whether or not it is possible to provide at least some points.

Ms Bickford—Yes.

Senator LUDWIG—I do not expect a detailed response.

Mr Cornall—As Ms Bickford has said, in a lot of areas the underspend is in staff areas where we have not recruited, for the whole year, staff to meet the allocation that we had for that year, and so there is an underspend on staffing allocations in a number of areas in the department.

Senator LUDWIG—Yes, but it seems to me you could tell us where those areas are.

Mr Cornall—We will do our best.

Senator LUDWIG—What service might not be implemented this year but then carried over to next year? ‘Carryover’ is my term. I am sure you use ‘rephased’ or you might even use ‘carryover’. We will see how we go. We will obviously be here tomorrow night at this time too.

CHAIR—On that particular point, we are scheduled for tomorrow night, after the dinner break.

Senator LUDWIG—Yes, I did not want to disappoint anybody. The other area is the types of expenditure on the media campaign. In terms of the name, is it output or program—and the total amount? But also for the purposes of particular campaigns that you might be pursuing, can you give me additional information which is a breakdown of the campaign, including the market and other research production media purchasing—whether it be for television or radio, or a combination of newspaper, mail-out, the net website or any other placement? I would like to know not only the total amount but also whether you can provide an additional break-up. On what dates were the individual campaigns which were referred to the ministerial committee on government communication for approval, and on what dates the necessary approvals were then granted?

Mr Cornall—I do have some information prepared in anticipation of that question. I have a chart. I think the simplest thing is if I hand you this chart. It does not answer every question you just asked, but it does go some of the way to doing that.

Senator LUDWIG—What makes it a little bit more difficult in this round, Mr Cornall, is that the analysis of the questions that have been answered by various departments, including your own, have not been as good as is been in the past.

Mr Cornall—By this department? You have just asked a question.

Senator LUDWIG—I mean in answering questions on notice. That is why it is helpful to have this media buy available, but that is why I am also seeking answers during this estimate round. Unfortunately there was a range of answers that came in very late, including from your department. Although yours was certainly not the worst. I could name the worst, but I will save us from that. The additional information I was trying to establish is the purpose. I think that is in the campaign chart you provided. That seems clear from the name. The total figure is provided and how that money will then be allocated between the estimated budget breakdown of campaign costs, including market and other research, creative production costs, production media purchasing, and the communication media—television and radio placement, newspaper, website and others—and the dates of the five individual campaigns which were referred to the ministerial committee on government communication for approval, and on what dates the necessary approvals were granted. None of them have been completed?

Mr Cornall—The footnote in the bottom right hand corner points out that media buys for 2007-08 and onwards for all campaigns are yet to be approved by the ministerial committee on government communication. So that partly answers your question.

Senator LUDWIG—Have they been submitted?

Mr Finlayson—At this stage, from suggested schedules, media buys have not been before the committee.

Senator LUDWIG—Are any of them currently in the process of a campaign? None of them have started? I am looking at the chart.

Mr Finlayson—Do you mean the campaigns in 2006-07?

Senator LUDWIG—Yes.

Mr Finlayson—There has been advertising. If you are referring to advertising in this current financial year for those three listed in the section down the bottom of the page—that is, the National Security Campaign, the Family Law Campaign and the Bushfires Campaign—the figures you see there are the actual media placement costs.

Mr Cornall—In the bottom left hand corner.

Senator LUDWIG—I see. Of those, the National Security Campaign, the Family Law Campaign and the Bushfires Campaign have been through the ministerial committee on government communication.

Mr Finlayson—Yes.

Senator LUDWIG—Can you provide the date that they went there and the date they were approved?

Mr Finlayson—Do you mean when the media schedule was approved?

Senator LUDWIG—You will have to help me with this.

Mr Finlayson—In the process of MCGC approvals, you would often need to go to the committee on a number of occasions through the stages of development for a campaign. If you are mean the date that the actual media placement schedule was signed off, we can do that.

Senator LUDWIG—I have got, ‘approvals granted’. If we gross it up to that point—

Mr Finlayson—We can certainly give you the dates that the media schedules were approved by the ministerial committee.

Senator LUDWIG—For the media buys for 2007-08 onwards, on the right hand side it says, ‘all campaigns have yet to be approved.’ Have they been submitted?

Mr Finlayson—None of the scheduled media requests have been before a committee meeting.

Senator LUDWIG—For 2007-08?

Mr Finlayson—That is right. In some cases, those campaigns are still in a developmental stage—that is, a communication strategy is still being developed—so we are not at the stage of an advertising placement schedule being prepared. In other cases, a proposed placement schedule has been prepared but has not been before the committee.

Senator LUDWIG—In terms of the campaigns currently in process—that is, the national security, family law and bushfires—are they from earlier years?

Mr Finlayson—The national security campaign has been running in one form or another since 2002, and has run this year, and we expect to expend, as it says there, \$5 million in media placement in this fiscal year. The last burst of advertising in this financial year is starting, in fact, this weekend. It will be a three-week burst. For the family law campaign, advertising has been running throughout the financial year, and the same applies to the bushfires campaign.

Senator LUDWIG—Are you able to say the identified purpose of each of the campaigns that are currently on foot and what market research, opinion polling or evaluation has been undertaken of the effectiveness of each campaign?

Mr Finlayson—Certainly, it is standard practice in any significant government campaign to undertake benchmarking research, tracking research, and then research at the end of the campaign period. It is also standard practice to focus group test the various advertisements and other products that are part of the campaign, and for each of those that research would have been undertaken.

Senator LUDWIG—Can you have a look at that, and if you are able to provide what that is that would be helpful to the committee.

Mr Finlayson—The government practice is that campaign research is not normally made available during the developmental stage or through the actual running of a campaign. Decisions are made at the end of the campaign on the release of research.

Senator LUDWIG—What do you do when you strike one like the national security one that has been ongoing since 2002 and has still got a way to go, because it also looks like it has been funded out to 2008-09?

Mr Cornall—That was one of the announcements in this year’s budget, that \$20 million.

Senator LUDWIG—Does that mean that if you keep announcing the same program it never gets evaluated? Surely it would be more sensible to have—

Mr Finlayson—It is evaluated on an ongoing basis. We do tracking research so that we can judge the effectiveness within the target audiences of that particular campaign.

Senator LUDWIG—But you will not make that available, that information?

Mr Finlayson—It is normally not available. We could take that on notice.

Senator LUDWIG—As I understood your answer, if it has been concluded then you can at some point—

Mr Finlayson—Normally, at the conclusion of a campaign a decision is made about the release or otherwise of research.

Senator LUDWIG—I understand how you could then take that on notice, given that it has been such a long-running campaign but it would then still depend on those circumstances that would inform you as to whether you would or would not release the information.

Mr Finlayson—Decisions on that are normally taken by the relevant minister.

Senator LUDWIG—Yes. It looks like all we can do is ask you to take it on notice and ask for a consideration of that. Are you able to say for each of the campaigns on foot who the successful tenderer is for the advertising and the market research?

Mr Finlayson—Yes, we can give you that. The advertising agency for the family law campaign is Gatecrasher Advertising. The current advertising agency for the national security campaign is Publicist Mojo. For the bushfires campaign it is probably best that I take that on notice. There has been no advertising agency appointed for the personal properties securities campaign. We are still in the process of putting together a strategy for that campaign.

Senator LUDWIG—Yes, I understand it is early days for that one.

Mr Cornall—I do not think it actually answers the question you have just asked, but there is quite a lot of information about the agencies used for various aspects of the advertising on pages 266 and 267 of last year's annual report.

Senator LUDWIG—I know some of the information is provided there, but not to the level of detail I am now seeking.

Mr Cornall—Mr Finlayson is looking to see if he can find it.

Mr Finlayson—I may need to take that on notice. The advertisements that are running in this financial year for that campaign were actually developed prior to this year. I just do not have that company name with me.

Senator LUDWIG—Thank you. Are you able to outline the tender process, including the number of tenders received? I depart for a moment: with the additional moneys for the national security public information campaign does that get retendered or does that go to the existing campaign?

Mr Finlayson—As we said, that campaign has been running in one form or another since 2002. The advertising agency I mentioned previously was appointed approximately 12 months ago to this campaign. The process for any major government campaign is we work in consultation with the Government Communications Unit within the Department of the Prime Minister and Cabinet.

Senator LUDWIG—So it hasn't been retendered?

Mr Finlayson—It was 12 months or so back. We went through a shortlist of companies, the names of which were supplied by the Government Communications Unit. Those companies tendered with creative concepts. Those concepts were put to testing and, based on that testing, the ministerial committee made a decision as to which company was appointed to the account. The company that is currently there working will be the one which will be having input to and developing the creative for 2007-08 and 2008-09.

Senator LUDWIG—What about the tender process for the bushfire awareness campaign? It might be a bit early for the personal property securities campaign, but the anti-money laundering and the—

Mr Finlayson—The same process is undertaken for each major government campaign.

Senator LUDWIG—For each of those campaigns it is the same tender process? So the department itself does not do a tender process; it is the—

Mr Finlayson—We go through the normal process that is overseen by the Government Communications Unit within the Department of the Prime Minister and Cabinet, and the ministerial committee makes the final decision. The department then contracts with that agency.

Senator LUDWIG—So you would then put, for example, the anti-money laundering and counterterrorist financing campaign out to tender in a normal competitive tender process?

Mr Finlayson—It would be a selective tender process. The Government Communications Unit maintains a list of advertising agencies that are available to be considered for government work and they put forward a selection of companies who would then be part of that tender process.

Senator LUDWIG—Is that list available?

Mr Finlayson—That is something you would need to put to the Government Communications Unit.

Senator LUDWIG—So you indicate that you have a requirement for a campaign and they provide a list—it may not be a full list; it may be a short list—of the relevant agencies that you could enter a selective tender process with?

Mr Finlayson—That is correct.

Mr Cornall—I think we are missing one point here. This is not selective tender in quite the normal way; this is actually a creative tender process, isn't it? Don't they have to come up with a creative idea—

Mr Finlayson—That is right.

Mr Cornall—which is what is being selected by the committee as well as the cost of it? It is not as if you just say: 'We want to run a campaign. Let's have three quotes.' They have to come up with the creative idea that the committee feels is the best way to convey the message.

Senator LUDWIG—I did not realise that. I am not particularly creative when it comes to spending money, I am told by my wife. I just happen to spend it. So how is that then done?

Mr Finlayson—The selection of companies that are put forward by the Government Communications Unit are briefed on the campaign. There is a campaign brief provided to each of them. They then have the opportunity to go away and develop their ideas about what the advertisement should look like. Once they come back, those creative concepts are put through a focus-testing process. That testing helps inform the decision about which of them will be appointed.

Senator LUDWIG—Who makes the decision at that point? Do you rely on the focus testing?

Mr Finlayson—Normally the relevant department will have a panel, which will include a representative of the Government Communications Unit. That panel will short-list down to probably two but possibly three companies who would then go and present to the ministerial committee. That committee selects one of those agencies.

Senator LUDWIG—Thanks very much. I might also provide an example. This was a question from Senator McLucas at budget estimates last year to the Department of Health and Ageing about the 10 largest underspending programs and the 10 largest overspending programs. It might help inform the level of detail that we seek.

Mr Cornall—Health and Ageing does have some very significant programs that are clearly identified as programs. We are not quite in the same happy situation, but we will endeavour to do our best.

Senator LUDWIG—I accept that. It just may help you in some way. I have helpful staff who have said, ‘Here is a way forward.’

Mr Finlayson—Going back to your question about the agency responsible for the bushfire campaign, it is an agency called BMF Advertising.

Senator LUDWIG—Thank you very much. Could we ask about the security arrangements for APEC at this point?

Mr Cornall—We can do that now.

CHAIR—Senator Ludwig, I will just indicate that I had an indication earlier that Senator Evans was hoping to ask a question on this. Are you both doing it or just him?

Senator LUDWIG—I think you can assume it is going to me at this hour.

CHAIR—That is fine. I just thought I would alert to that in case—

Senator LUDWIG—Unless we know where he is, but he is probably being entertained at another committee. As I understand it, there are going to be complex security arrangements in place, and I think we all understand the need for that. What I am trying to establish is a couple of key issues as to who will be responsible in a lead way—the lead agency—to ensure security at APEC?

Mr Cornall—The lead agency for security in New South Wales is the New South Wales Police Force. The relationship between the Commonwealth, the New South Wales government and the police force is coordinated by the APEC task force, which is based in the Department of the Prime Minister and Cabinet. Ed Tyrie, the former head of the Protective Security Coordination Centre has been seconded from the Attorney-General’s Department to

head up security arrangements in the task force. That then goes back to the Protective Security Coordination Centre to make a lot of that happen, and that is where Mr Studdert comes in.

Senator LUDWIG—Does that—

Mr Cornall—Sorry, Senator, could I just add that the Commonwealth is providing something in the order of \$78 million supplementation to the New South Wales police for the extra demands that the APEC activities are placing on them.

Senator LUDWIG—Is that a one-off payment or do they have to acquit for it and then receive an amount?

Mr Studdert—They send us an invoice, in simple terms.

Senator LUDWIG—Regarding the role the Attorney-General's Department will play, if the New South Wales Police Force are the lead agency, do you then act as liaison for the federal agencies—ASIO, AFP and others?

Mr Studdert—We coordinate the efforts of the Commonwealth agencies. The role of the PSCC is to coordinate Commonwealth agencies and between the Commonwealth and state and territory jurisdictions, and this is an example of that.

Senator LUDWIG—For matters where leaders might be accompanied, if it is a border security issue and it has to come through the border and security personnel request to be armed, is that a question that comes to the PSCC or does it go to Customs?

Mr Cornall—It goes to the Attorney-General. The Australian policy is that foreign security officers should not carry guns in this country, that we are responsible for the security of all diplomats and high office holders. The starting point is that no guns or other equipment of that type will be permitted. However, the policy necessarily has to have the capacity to be varied on a case by case basis in exceptional circumstances.

Senator LUDWIG—Are you able to say whether there has been a request and the policy was varied for APEC?

Mr Cornall—No, the policy remains the same.

Senator LUDWIG—Has there been a separate request and a relaxation of the policy for APEC?

Mr Cornall—I think it is not appropriate for us to answer detailed questions about applications by foreign security services and responses to them, but what I could do is take the matter on notice and see if the Attorney is prepared for us to answer those questions for you.

Senator LUDWIG—Thank you for that, because it is of concern more broadly in the community and broadly with this committee, I suspect. There is a policy and it has been a longstanding policy—

Mr Cornall—It has.

Senator LUDWIG—and, quite frankly, it is a good policy.

Mr Cornall—It is.

Senator LUDWIG—So where there is a potential for that to be relaxed, it does create a concern—at least within my mind and, I suspect, in the mind of the committee.

Mr Cornall—I stress that any relaxation would be an exceptional circumstance. It is a policy that has been very strongly adhered to by the Australian government over many years.

Senator LUDWIG—Governments from all sides of politics have realised the benefit of that policy. It would concern me greatly if that was relaxed. There have been some stories about phone jamming. I am not too sure how that technology works, although I suspect that it exists. Can the department confirm whether that technology is likely to be used?

Mr Cornall—My instructions are that it will not be.

Senator LUDWIG—You may not be able to answer this, but is this technology available in Australia? That is probably a security issue, and I cannot ask it and you cannot answer it.

Mr Cornall—The technology is available, generally speaking. Its usage would be prohibited by the Radiocommunications Act, which is administered by the Australian Communications and Media Authority. Realistically, questions about it are best directed to them.

Senator LUDWIG—I see. I might put some on notice for them as well. Thank you. Is the security planning for motorcades and road closures and traffic management a matter for the Attorney-General's—

Mr Studdert—The New South Wales Police.

Senator LUDWIG—Is there a part of that security planning which is not for APEC? It might include dignitaries visiting Australia if they come before the relevant start date or if they stay after the conclusion date.

Mr Studdert—There are some guest of government visits proposed on either side of APEC. There will be a transition from APEC security to normal guest of government security in relation to those additional visits.

Senator LUDWIG—So the policy about armed security guards would also apply?

Mr Studdert—The same policy applies universally.

Senator LUDWIG—Perhaps you could also take on notice whether there is any consideration given—albeit in exceptional circumstances—for a relaxation of that policy for those visits. That also includes whether there have been any requests and whether they have been denied. That might help me to understand this. This might be a matter that I have to ask ACMA: do existing security guards or security personnel detailed from overseas have the capability of bringing in their own technology to jam mobile phones or the like? That would be an offence in Australia, though, if they did not have—

Mr Cornall—That is my understanding. You are not permitted to do so under the Radio Communications Act. That is my very sketchy understanding of it.

Senator LUDWIG—I should direct them to ACMA to be sure.

Mr Cornall—That would be safer.

Senator LUDWIG—Thank you.

Senator NETTLE—Going through the budget allocation, on page 48 of the portfolio budget statement there is \$38,722,000 for APEC security.

Mr Studdert—What is the question?

Senator NETTLE—There is the \$38,722,000 in this one and the \$44 million in the previous one, and—having looked at the old PBS—there is another \$13 million there, which I total up to be \$95 million. I have then added in from the Defence portfolio budget statement that they have \$11 million in APEC Operation Deluge, which adds up to \$107 million. Have I missed any other parts?

Mr Studdert—Are you talking about for security for APEC?

Senator NETTLE—Yes.

Mr Studdert—I can summarise for you the security costs for APEC. A total of \$169.1 million has been allocated to APEC for security. The government allocated \$0.8 million in the budget of 2004; \$75.1 million in the budget of 2005; additional funding of \$22.7 million in the 2005 additional estimates; \$68.2 million was allocated in the budget of 2006; and an additional \$2.3 million was allocated in the budget of 2007 for tier 1 security. Tier 1 security is venue based security.

Senator NETTLE—What was the figure for 2005?

Mr Studdert—That was \$75.1 million in the budget of 2005 and \$22.7 million in the additional estimates of 2005.

Senator NETTLE—Could you read that out one more time so I can check I wrote it all down correctly.

Mr Studdert—A total of \$169.1 million: \$0.8 million in the budget of 2004; \$75.1 million in the budget of 2005; \$22.7 million in the 2005 additional estimates; \$68.2 million in the budget of 2006 and \$2.3 million in the budget of 2007.

Senator NETTLE—Can you give us an idea of how that is going to be spent?

Mr Studdert—In broad terms it is going to be spent on security, but some of the money is allocated to the New South Wales police for their marine area command, traffic, dignitary protection, dog squad, mounted police, aviation support, State Surveillance Branch, intelligence and advance technical sections.

Senator NETTLE—Is that what you gave Senator Ludwig before as a \$78 million supplementation to the New South Wales police?

Mr Studdert—That is the supplementation to the New South Wales police.

Senator NETTLE—That is what that is made up of. What else can you tell me about other ways that that \$169 million going to be spent?

Mr Studdert—That money goes obviously to Australian government agencies primarily, and it is for security support. So it is about staffing, about the hours used for it, and it is about tasking to agencies such as the Australian Federal Police for example. It is supplementary funding for the provision of security to APEC by the agencies that exist in the Commonwealth government.

Senator NETTLE—Can you tell me what agencies?

Mr Studdert—Defence, AFP, ASIO, Customs and the Attorney-General's Department.

Senator NETTLE—Can you give a breakdown of how much to each of those agencies?

Mr Studdert—The Attorney-General's Department, \$32.4 million; Attorney-General's Department portfolio agencies, \$10.2 million; other federal security agencies, Defence and DOTARS, \$20.8 million. That is the breakdown I have.

Senator NETTLE—Who was the \$10.2 million for?

Mr Studdert—ASIO, AFP and Customs—A-G's portfolio agencies.

Senator NETTLE—Yes. The \$20.8 million was Defence and what other one?

Mr Studdert—DOTARS—Department of Transport and Regional Services.

Senator NETTLE—Is any of that for private security?

Mr Studdert—You mean Chubb or private security guards? That comes under tier 1 security, and funding for that would go directly to the APEC task force in the Department of the Prime Minister and Cabinet.

Senator NETTLE—Can you explain tier 1 security again?

Mr Studdert—For planning responsibilities for a special event like APEC, we split it into three tiers. Tier 1 is called venue security, which in this case is primarily the responsibility of the task force. It consists of things like access control, accreditation and venue security measures. Tier 2 is the state or territory jurisdictional overlay, which in this instance is the responsibility of New South Wales Police. It involves things like venue search, dignitary protection and those sorts of jurisdictional based issues. Tier 3 is the national Commonwealth overlay, and that is the responsibility of the Australian government. It is coordinated primarily by the Protective Security Coordination Centre and it includes things like airspace management, border control, intelligence and national counterterrorism response arrangements.

Senator NETTLE—Is tier 1 the \$2.3 million from 2006-07? Is there anything additional for tier 1?

Mr Studdert—Yes. That was the additional \$2.3 million allocated in the 2006-07 budget.

Senator NETTLE—Is that the total for tier 1?

Mr Studdert—I cannot give you a figure for that. I do not have that figure. But there would have been an allocation of resources before that as part of the allocation to the task force.

Senator NETTLE—Could you take that on notice?

Mr Studdert—It would be better to go to PM&C about that, because it went to them directly.

Senator NETTLE—So tier 2 will be the \$78 million and the rest will be tier 3?

Mr Studdert—Yes.

Senator NETTLE—Was any consideration given to holding APEC in Canberra rather than in Sydney?

Mr Studdert—I do not know the answer to that.

Senator NETTLE—Who would know the answer to that?

Mr Cornall—PM&C.

Senator NETTLE—There were some media reports about the Attorney-General supporting an extension of police powers in New South Wales and removing the right to bail for people who might be protesting at APEC. Is that correct? Can anyone give me any information about that?

Mr Cornall—I think this is New South Wales legislation that you are talking about.

Senator NETTLE—That is how it reads to me.

Mr Cornall—Let me see what we can say about it. Sorry, all I have here are some details of the New South Wales legislation. Are you saying the Attorney has commented on it?

Senator NETTLE—Yes. The Attorney said he supported the additional powers that would be given to allow police to detain people without bail.

Mr Cornall—I do not think it actually says that. I think what it says is that there is a presumption against bail, which means you would have to establish that there is a good reason to get bail—rather than the reverse, which is the more normal presumption. If there is an actual quote, then that is what the Attorney said it and that is what he thinks.

Senator NETTLE—Is there a danger that any legislation for setting up a system where there is detention without trial could breach our international obligations?

Mr Cornall—No. It is not detention without trial; it is detention in relation to a possible offence. What is being done with this legislation is that you will not get bail unless you can establish a good reason for it. But presumably that is only for a very limited period of time. I would imagine it is for the duration of the APEC meeting, which is only two days.

Senator NETTLE—Could you outline the details of the legislation, which you said that you have?

Mr Cornall—I can table this document. It is the only information I have about it, other than what has been in the press.

Senator NETTLE—Thank you. I want to ask about the phone jamming. You were saying your advice was that that was not going to take place. Is that advice from within your department, or is that advice from ACMA?

Mr Cornall—That is advice that is in my brief and I am not sure of the origin of it. Officers in our department have made inquiries and that is our understanding from those inquiries of other departments.

Senator NETTLE—So it is from other departments; that is what I was getting at. With the exemption for private security guards being armed—

Mr Cornall—Hang on—private security?

Senator NETTLE—Sorry, not private—foreign armed security guards. Was the last time there was an exemption to that when President Bush came to visit?

Mr Cornall—I am not sure what comments have been made publicly about these exemptions and I will have to take that on notice.

Senator NETTLE—I had some other questions that I wanted to ask which I flagged this morning. They go to David Hicks and the conditions of his detention.

Mr Cornall—Yes, we will get Mr Geoff McDonald to come to the table.

CHAIR—Are we proceeding down that line? We have done outcomes 2.1 and 2.2, so are we going to outcome 2.3, which is David Hicks?

Senator LUDWIG—I think we are still in ‘general’.

CHAIR—Yes, I think we are still in ‘general’, but we have jumped to outcome 2.1 and I think we have touched on outcome 2.2, but David Hicks is outcome 2.3. Are there any questions in outcome 2.2?

Senator LUDWIG—I have a couple in the ‘Intellectual property crime—investigation and prosecution’ are, but I am not sure where that falls.

Mr Cornall—We would be keen to answer questions about Mr Hicks. If there are questions that need to be answered, we would prefer to answer them.

CHAIR—I am just trying to go through the program, as we have got the program.

Mr Cornall—I understand that.

CHAIR—I am trying to do that to the best of my ability. Senator Ludwig, you have some questions in outcome 2.2, did you say?

Senator LUDWIG—If that is the Budget Paper No. 2, page 88—but I will only be brief in respect of those.

CHAIR—We will deal with those and then we will go to outcome 2.3, which is David Hicks.

Senator LUDWIG—On page 88 of Budget Paper No. 2, under ‘Intellectual property crime—investigation and prosecution’, it details the money that will be provided to the Australian Federal Police and the Office of the Director of Public Prosecutions over two years to investigate and prosecute serious intellectual property crime. Is there a performance measure as to how that will be achieved?

Mr Cornall—Ms Lynch tells me that that is presently being developed.

Senator LUDWIG—So the performance measures are currently being developed. What form will that take? Is there a model that you would normally adopt? How will you assess the success or otherwise of that program?

Ms Lynch—There is an IDC that has been working for some time on intellectual property enforcement. One of the issues that that IDC is currently looking at is the way in which the success of the funding initiative might be measured—no definitive decisions have been made—in terms of things like the number of investigations taken on, the number of reports provided to the AFP that the AFP then takes up and investigates, and the number of

prosecutions. So there are a range of issues on intellectual property enforcement that we are looking at, that are being discussed at the IDC, which comprises AFP, Attorney-General's, Customs, IP Australia and the DPP. I think that is the full list; they are the main people on it.

Senator LUDWIG—That would also reflect upon how the CCPM would operate with the Australian Federal Police—that is, their case categorisation and prioritisation model—to allow matters to go through; it acts as a way of determining the priority of cases that are otherwise accepted.

Ms Lynch—I think some of those questions might be better answered by the AFP, but certainly one of the issues that come up from time to time is how the AFP prioritise matters that are put to them for possible investigation.

Senator LUDWIG—They use a CCPM. I will reverse the question: how do you intend to get around it to get them to do intellectual property crime? Depending on the nature of it, what do you want to target? Are you grappling with that issue as well as performance measures?

Ms Lynch—I am not sure that I would say that we are grappling with that particular issue—

Senator LUDWIG—Maybe you should be. I am sorry; that was gratuitous. I apologise.

Ms Lynch—There are a number of issues. The additional resources to the AFP means that there will be more resources to investigate high-level intellectual property crime, but the issue of how you measure how successful the program is extends beyond simply the number of prosecutions there might be at the end of the two-year period.

Senator LUDWIG—Yes. It is the nature of the prosecution and how effective it has been in reducing intellectual property crime and a range of other criteria that need to be met. Is there a way of determining how much money is for coalface law enforcement versus running costs? Is that broken up?

Ms Lynch—I think that I have only got the high-level figures. Some of those questions might be more for the AFP, because the money goes to the AFP and the DPP.

Senator LUDWIG—And point 7 in capital funding will also go to the AFP.

Ms Lynch—There is certainly no money coming to anyone other than the AFP or the DPP under the proposal.

Senator LUDWIG—The funding is not ongoing. Has a decision been made as to why it would not be ongoing?

Ms Lynch—Some of the exercise in determining how we might measure the success of the program is because it is a two-year program and it will be subject to review of its effectiveness in combating and enforcing IP crime.

Senator LUDWIG—When will the IDG complete its work? I am referring to the interdepartmental group to determine the performance measures. I am sorry; it is an IDC.

Ms Lynch—An ongoing IDC has been meeting for some years in relation to intellectual property crime enforcement. We are currently considering those matters. Given that it is a

two-year program, the issues of how we might measure its effectiveness are very much at the forefront of the IDC discussions at the moment.

Senator LUDWIG—So, I should come back in a short while and see how you are all going and whether you have developed a model. Can you bear that in mind? Thank you.

CHAIR—We will move to Outcome 2.3 and David Hicks.

Senator LUDWIG—Is there a figure for the total cost expended by government for the transportation of Mr Hicks? Is there a figure for the costs of his legal assistance and a breakdown of other administrative costs that might have been borne by the department?

Mr G McDonald—Yes. The cost of the charter was \$526,187. There were also costs incurred in transporting accompanying parties to the United States and Guantanamo Bay. These amounted to just over \$23,000. That figure included costs for AFP officers, corrections officers, a medical practitioner and, of course, the lawyer, Mr McLeod. Also, we had to get a short charter flight for Mr McLeod and the Consul-General to go to Guantanamo Bay—that is what makes up that additional amount. The policy is not to give out exact figures for legal assistance money, though it has been mentioned previously that it is in excess of \$300,000 for the whole period.

Senator LUDWIG—Did the transportation include the costs of wages for the supervising officers? I think you had an amount there for that.

Mr G McDonald—South Australian Correctional Services covered the costs of the supervising correction officers' wages, so I have not included their wages in that. We paid the cost of the flights, not the wages.

Senator LUDWIG—And the AFP would have then met their costs?

Mr G McDonald—Yes, they met their own costs.

Senator LUDWIG—Who made the decision, or how was the decision arrived at, for the hire of the luxury jet? Was that booked through or by the Attorney-General's Department?

Mr G McDonald—Yes, it was. The basis for the decision all came down to what was going to be the best outcome on security, safety and efficiency grounds. Essentially we looked at various alternatives, and this approach was considered to be the best. We had adopted the same approach previously. When we brought Mr Habib back we went through the same sort of process and came to the same conclusion.

Senator LUDWIG—Was any consideration given to an alternative transport such as the Australian Air Force or a jet, or even a more modest charter jet than the one chosen? If the photos are accurate then they do portray quite a luxury jet.

Mr G McDonald—Yes. We could not transit through United States territory, which meant that the use of commercial aircraft was extremely impractical. There were also other problems with using commercial aircraft, including the exposure of Mr Hicks at various transit points and the like. There were security issues with that, of course. Military aircraft were not available for this purpose. Clearly those aircraft need to be available for other contingencies. This was really the best approach that we could take.

As for the appearance of the aircraft, it all comes down to the technical capacity of that aircraft; and the technical capacity of the aircraft was that it could fly a very long distance. We had to refuel halfway across the Pacific and then take him directly to Adelaide, so that aircraft was chosen for its technical capacity.

Senator LUDWIG—Is the sentence of the military commission a suspended sentence?

Mr G McDonald —Yes. The sentence was for a seven-year period in total, suspended back to serving nine months in prison.

Senator LUDWIG—What are the Attorney-General's powers in relation to the administration of that sentence?

Mr G McDonald —If the prisoner, once released, were to breach the conditions of his sentence then he could be returned into custody.

Senator LUDWIG—And the conditions are—

Mr G McDonald —The conditions include a requirement that he not communicate with the media for a 12-month period after the sentence.

Senator LUDWIG—How would that be enforceable? I think Mr Ruddock said it was probably unenforceable.

Mr G McDonald—The enforcement of that particular one in the transfer conditions is one where the Attorney has some discretion where there is a constitutional issue. So consequently the Attorney has expressed his view. There is a limitation there. That, of course, was made very clear to the US as part of the prisoner transfer arrangements.

Senator LUDWIG—Does Mr Ruddock retain the power as Attorney-General to grant remissions under the agreement with the US?

Mr G McDonald—No.

Senator LUDWIG—Is that outside the agreement between Australia and the US, or the regulations made?

Mr G McDonald—That is right.

Senator LUDWIG—So there is no power to grant or exercise, with regard to a federal prisoner, those types of powers.

Mr G McDonald—No.

Senator LUDWIG—Does he retain the power, as an Attorney-General, to grant amnesty?

Mr G McDonald—No, he does not.

Senator LUDWIG—What is the difference then between a federal prisoner and the conditions imposed upon Mr Hicks? How do they differ?

Mr G McDonald—A prisoner transfer arrangement is about reflecting, as closely as possible, the sentence in the country from which the person has been transferred in accordance with the arrangement. So the arrangement follows fairly closely the sentence of the US tribunal. With federal prisoners, it will depend on what the court has ordered. The

court under the Crimes Act has quite a few different options, the most common of which is parole conditions.

Senator LUDWIG—So does the Attorney-General have any role to play in parole conditions?

Mr G McDonald—Yes, that is the case.

Senator LUDWIG—What would they be? Has that been articulated?

Mr G McDonald—They can vary in different ways. They can include reporting conditions, counselling—issues like that.

Senator LUDWIG—Does the Attorney-General have any responsibility for monitoring the terms and conditions of the suspension?

Mr G McDonald—The suspension is something which the United States is responsible for monitoring. Clearly if there was a condition breach, particularly a breach of the condition that that person not commit terrorism offences, that would be something that would come to the notice of our authorities, most likely.

Senator LUDWIG—Separately, I suspect.

Dr Heriot—I just want to clarify that Mr Hicks is serving a suspended sentence. There is no parole.

Mr G McDonald—I do not think I said that.

Dr Heriot—No, I just wanted to clarify.

Senator LUDWIG—Thank you. With regard to the conditions that are required to maintain the suspended sentence, what conditions would then see, in the view of the Attorney-General, Mr Hicks returned to jail?

Mr G McDonald—Clearly the one I mentioned—the condition not to commit further offences. The other one relates to cooperation with authorities. That was another condition. They are the main ones.

Senator LUDWIG—I do have a couple of other questions, but I want to give Senator Nettle the opportunity of asking a few.

Senator NETTLE—Who owns the aircraft that he returned on?

Mr G McDonald—The company that we used was called Adagold. The owner of the aircraft? I would have to take that on notice.

Mr Cornall—We may not know. I signed a contract with Adagold, which is a company that has provided services to the Australian government over a period of time. It contracted to provide the plane and it provided the plane. I do not know that it actually owned the plane, but it provided the plane.

Senator NETTLE—Do they provide CIA planes as well, do you know?

Mr Cornall—I have no idea. Adagold is an Australian based company.

Senator NETTLE—Is David Hicks shackled while he is in his cell in Adelaide?

Mr Cornall—I don't imagine so.

Mr G McDonald—There is nothing here to suggest he is.

Mr Harris—No, that would not be the case. He would be subject to exactly the same conditions as any other prisoner in division G at Yatala prison, but shackles would not be one of the conditions, as I understand it.

Senator NETTLE—Not in the cell. What about when he is exercising?

Mr Harris—I could not comment on that. I don't know. It is a matter for the state corrective services as to how they manage each prisoner in the custodial environment. The Commonwealth certainly has no involvement at all in the arrangements that are put in place, but Mr Hicks is being held in exactly the same situation as any other prisoner in that division.

Senator NETTLE—Are you able to find that out for us, please?

Mr Harris—Yes, we could.

Senator NETTLE—Thank you. I am also interested to know whether he is shackled during visits as well. That is the other part of that question. Is he allowed to have contact visits?

Mr Harris—He will be allowed to have contact visits. It is a graduated process, as I understand it, in South Australia. As he moves through the assessment process, the corrective services in South Australia will determine what contact visits he is allowed, how frequent they may be and with whom.

Senator NETTLE—But not yet?

Mr Harris—As I understand it, he has had one contact visit, I think with his lawyer, either today or yesterday. I could envisage that, as long as he progresses well through the assessment process in the first week, he would probably get access to his family some time in that week.

Senator NETTLE—That is the crucial question. When does he get to give his dad a hug?

Mr Harris—That is a matter for South Australian corrections.

Senator NETTLE—Mr McDonald, you talked about him being returned to custody. To custody where?

Mr G McDonald—Here, in Australia.

Senator NETTLE—What is the legal basis of that?

Mr Harris—It is the direction issued by the Attorney-General under the International Transfer of Prisoners Act. The direction sets out the terms of enforcement of the sentence in Australia. That direction makes it clear that, if the sentence is vacated by the US authorities, the Attorney will also vacate the sentence if it is consistent with the Constitution. At that point, the prisoner would be liable to be returned before a judicial officer for determination of the sentence he would have to serve in Australia.

Senator NETTLE—It is my understanding that the regulations under the International Transfer of Prisoners Act normally relate to treaties, like with Cambodia and others. Is the one specific to the military commissions a treaty?

Mr Harris—It is a less than treaty arrangement.

Senator NETTLE—Can you describe it? What is its status? It is less than a treaty. What is it?

Mr Harris—It is not binding at international law, but it is an arrangement between the two countries to give effect to our undertakings to transfer Australian citizens who are sentenced to a period of imprisonment by a military commission to Australia in accordance with that arrangement.

Senator NETTLE—Is there any reliance on the dual criminality requirement?

Mr Harris—No, not within the arrangement.

Senator NETTLE—Given High Court decisions about involuntary detention only being able to occur when it is ordered by a court, how confident are you about the legality of the ongoing detention of Mr Hicks?

Mr Cornall—I do not think that is a correct statement of the law. My recollection of the relevant High Court decision in this area is that the court would assess the fairness of the process in another tribunal and, if it were satisfied about that, then the sentence would be enforceable in Australia.

Senator NETTLE—So how confident are you that the sentence is enforceable in Australia?

Mr Cornall—I think it is clearly enforceable in Australia unless a court rules to the contrary.

Senator NETTLE—Have you sought legal advice on that?

Mr Cornall—No, I have not.

Senator NETTLE—I am asking the question because every second day when I turn on the radio there is another lawyer talking about the legality of Mr Hicks's detention.

Mr Cornall—I am also conscious that Mr McLeod said that Mr Hicks simply wants to serve his time here in Australia and then get out of jail and get on with his life and be left alone, so I think that the prospect of a challenge authorised by Mr Hicks is remote.

Senator NETTLE—Yes, but it is fair enough to understand the process and whether it is illegal or not.

Mr Cornall—I think I have answered that question.

Dr Heriot—We should also note that the ITP process is application driven and also consent based, so Mr Hicks has in fact consented to the terms of his transfer and the terms of the sentence as served in Australia.

Senator NETTLE—You said the arrangement about the military commission is not binding under international law; what is its status under Australian law?

Mr Harris—It is in force under Australian law under the ITP Act. Regulations have been made which encompass the entire arrangement.

Mr Cornall—We should add that these arrangements for ITP agreements between countries are quite common—it is not as if there is anything unusual about this; we have these arrangements with a number of countries. One of their advantages is that they can be put in

place very quickly, but they are still subject to parliamentary scrutiny in the sense that regulations can be disallowed.

Senator NETTLE—I would like to ask a question about Mr Hicks telling his story. Is there anything to prevent a journalist visiting him and interviewing him?

Mr Cornall—There is nothing wrong with Mr Hicks telling his story; that has been made very clear by the Attorney-General. The only issue is whether he can profit from telling his story about a criminal activity, and that is what the Attorney has made very clear.

Senator NETTLE—The amendment to the Proceeds of Crime Act that was made in 2004 related to the old military commissions that were deemed to be illegal under the US Supreme Court. It is a different set of military commissions you are talking about. I do not understand how the argument is that it is all legal and all in place and he cannot profit, when the military commissions in the legislation are the old military commissions.

Mr Cornall—I am not sure of the technical answer to that question but I am confident that the Attorney said that, if there were any need to change the law to make sure that this was the outcome, the changes would be made. That is my recollection.

Dr Heriot—We are advised that the military commission sentence and offences for which the sentence was passed fall under the definition of ‘foreign indictable offence’ in the Proceeds of Crime Act.

Senator NETTLE—But, in 2004, wasn’t the definition of ‘foreign indictable offence’ amended to include the old military commissions? That is my recollection of the amendment in 2004.

Dr Heriot—The amendment in 2004 was an addition; it was not an exclusive amendment. The definition of ‘foreign indictable offence’ is broader than the reference to the first military commissions.

Mr G McDonald—The first one was under an executive order and the offences were under an executive order. That is why we had to amend it then. But the foundation provisions refer to foreign indictable offences and of course these are offences under US statute law, so they are foreign indictable offences. That is basically why the legislation still works for us on this.

Senator NETTLE—So no work has been done to amend that legislation?

Mr G McDonald—It was not necessary.

Senator NETTLE—There was a story in the press about Mr Hicks’s family seeking permission to have a photograph taken of him so as to avoid a situation where the media were trying to sneak in to take a photo and sell it. Is that something that he would have to ask permission for from the federal government?

Mr G McDonald—That would be for South Australia.

CHAIR—Order! It being 11 pm we will adjourn. I thank the officers who have been here today for their time. We will see some of you again tomorrow. I thank all for their attendance today.

Committee adjourned at 11 pm