



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Additional Budget Estimates)

MONDAY, 18 FEBRUARY 2008

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
Monday, 18 February 2008**

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Bartlett, Fisher, Kirk, McLucas, Marshall and Trood.

Senators in attendance: Senators Abetz, Allison, Barnett, Bartlett, Brandis, Bob Brown, Crossin, Fisher, Heffernan, Johnston, Kirk, Ian Macdonald, Marshall, McLucas, Nash, Nettle, Payne, Scullion, Siewert and Trood.

Committee met at 9.00 am

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ludwig, Minister for Human Services

Attorney-General's Department

Management and Accountability

Mr Robert Cornall AO, Secretary

Mr Miles Jordana, Deputy Secretary, National Security and Criminal Justice

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

Ms Sue Chapman, General Manager, Corporate Services Group

Mr David Finlayson, Assistant Secretary, Public Affairs Branch, Corporate Services Group

Ms Jan Blomfield, Assistant Secretary, Human Resources, Corporate Services Group

Mr Graham Fry, General Manager, Information and Knowledge Services

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

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

Output 1.1

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Sue Pidgeon PSM, Assistant Secretary, Family Pathways Branch

Ms Toni Pirani, Assistant Secretary, Family Pathways Branch

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Ms Sandra Power, Assistant Secretary, Federal Courts Branch

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

Ms Kathleen Falko, Acting Assistant Secretary, Intercountry Adoption Branch

Output 1.2

Dr James Pople, First Assistant Secretary, Legal Services and Personal Property Securities Division

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit

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

Ms Kelly Williams, Assistant Secretary, Classification Operations Branch

Ms Amanda Davies, Assistant Secretary, Classification Policy Branch

Ms Philippa Lynch, First Assistant Secretary, Classification, Human Rights and Copyright Division

Output 1.3

Ms Philippa Lynch, First Assistant Secretary, Classification, Human Rights and Copyright Division

Mr Peter Arnaudo, Assistant Secretary, Human Rights Branch

Ms Helen Daniels, Assistant Secretary, Copyright Law 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

Mr James Graham, First Assistant Secretary, Office of Legislative Drafting and Publishing

Output 1.6

Mr Iain Anderson, First Assistant Secretary, Territories and Native Title Division

Dr Rachel Bacon, Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

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

Output 1.7

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

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

Dr Albin Smrdel, Acting Assistant Secretary, Legal Assistance Branch

Output 1.8

Dr James Pople, First Assistant Secretary, Legal Services and 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**

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Dr Dianne Heriot, Assistant Secretary, Strategic Policy Coordination Branch

Dr Karl Alderson, Assistant Secretary, Criminal Law Branch

Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy

Output 2.2

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

Ms Anna Harmer, Acting Assistant Secretary, Mutual Assistance and Extradition Branch

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

Output 2.3

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

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

Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch
Ms Lucinda Atkinson, Director, Counter Terrorism Strategic Policy Unit
Ms Annette Willing, Acting Assistant Secretary, Security Law Branch

Output 2.4

Mr Tony Pearce, Director General, Emergency Management Australia
Ms Diana Williams, Assistant Secretary, Emergency Management Policy and Liaison Branch
Mr Karl Kent, Assistant Secretary, Capability and Operational Coordination Branch
Mr Peter Channels, Assistant Secretary, Community and Sector Development Branch

Output 2.5

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre
Ms Belinda Moss, Assistant Secretary, Information Coordination Branch
Ms Leonie Horrocks, Secretary, Policy and Services Branch
Mr Mike Norris, Assistant Secretary, Counter Terrorism Branch
Mr Mark Brown, Assistant Secretary, Security Coordination

Output 2.6

Ms Elizabeth Kelly, Executive Director
Ms Annette Bouchier, Assistant Secretary, Operations
Ms Jamie Lowe, Assistant Secretary, Business Development and Governance
Ms Kimberly Rowland, Finance Manager

Outcome 3—Assisting regions to manage their own futures**Output 3.1**

Ms Karen Stewart, Acting Assistant Secretary, Territories East Branch
Mr Julian Yates, Assistant Secretary, Territories West Branch
Mr Iain Anderson, First Assistant Secretary, Territories and Native Title Division

Output 3.2

Mr Peter Channells, Assistant Secretary, Community and Sector Development Branch
Mr Tony Pearce, Director General, Emergency Management Australia

Aboriginal and Torres Strait Islander Social Justice Commissioner

Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Commissioner Responsible for Race Discrimination

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar
Ms Megan Cassidy, Assistant Registrar
Mr Steve Wise, Chief Financial Officer

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner
Mr Peter Bache, Executive Director
Mr Nicholas Sellars, Manager Policy and Governance

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer
Ms Jane Bailey, Executive Director, Organisational Services
Ms Debbie Wauchop, General Manager, Strategic Engagement

Ms Kathleen Florian, Acting Executive Director, Programmes Division, Criminal Intelligence and Investigation Strategies

Mr Paul Southcott, Chief Financial Officer

Mr Joseph Stablum, General Manager, Information and Communication Technology and Chief Information Officer

Australian Customs Service

Mr Michael Carmody, Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Ms Linda Smith, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Chris Ramsden, Chief Financial Officer

Mr Murray Harrison, Chief Information Officer

Rear Admiral James Goldrick, Commander (Border Protection Command)

Ms Jaclyne Fisher, National Director (Cargo)

Mr Peter White, National Director (Compliance)

Mr Brian Hurrell, National Director (Enforcement and Investigations)

Mr Jeff Buckpitt, National Director (Intelligence and Targeting)

Mr Demetrio Veteri, National Director (Law Enforcement Strategy)

Ms Gillian Savage, National Director (Passengers)

Mr Ian Grey, National Director (People and Place)

Ms Sue Pitman, National Director (Trade)

Mr Tom Marshall, Director General (Border Protection Operations)

Ms Jo Corcoran, National Manager (Industry Engagement and User Services)

Ms Teresa Conolan, National Manager (Planning)

Ms Tonie Differding, National Manager (Research and Development)

Mr Geoffrey Johannes, National Manager (Trade Measures)

Australian Federal Police

Mr Mick Keelty APM, Commissioner

Mr John Lawler APM, Deputy Commissioner National Security

Mr Tony Negus APM, Deputy Commissioner Operations

Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

Ms Rayne de Gruchy PSM, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Law Reform Commission

Professor David Weisbrot AM, President

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen PSM, Chief Executive Officer

Mr Thomas Story, Executive General Manager

Mr Alf Mazzitelli, General Manager Corporate

Classification Board

Mr Donald McDonald AC, Director, Classification Board

Ms Olya Booyar, Deputy Director, Classification Board.

Family Court of Australia

Mr Richard Foster, Chief Executive Officer

Mr Grahame Harriott, Executive Director Corporate Services

Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Mr Peter Bowen, Chief Financial Officer, Federal Court of Australia

Mr Gordon Foster, Executive Director Corporate Services

Federal Magistrates Court

Mr John Mathieson, Chief Executive Officer

Mr Glenn Smith, Deputy Chief Executive Officer

Ms Anne Hicking, Executive Director, Corporate Services

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Human Rights and Equal Opportunity Commission

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 Elizabeth Broderick, Sex Discrimination Commissioner and Commission Responsible for Age 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 Peter Lowe, Executive Director

Mr David Bergman, Adviser, Policy and Legislation

National Capital Authority

Ms Annabelle Pegrum AM, Chief Executive

Mr Phil Wales, Managing Director, Governance

Mr Todd Rohl, Managing Director, Planning, Urban Design and Projects

Mr Graham Scott-Bohanna, Managing Director, Major Projects

Mr Gary Rake, Managing Director, Finance and Estate

Ms Alison Walker-Kaye, Managing Director, International Relations and Leasing

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel

Ms Glenyce Francis, General Manager

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

CHAIR (Senator Crossin)—I formally declare open this public hearing of the Senate Standing Committee on Legal and Constitutional Affairs. The Senate has referred to the committee the particulars of the proposed additional expenditure for 2007-08, and related documents for the Attorney-General's portfolio. The committee may also examine the annual reports of the departments and the agencies appearing before it. The committee is due to report to the Senate on 18 March 2008, and we have determined 2 April 2008 as the date for the return of answers to questions taken on notice. The committee's proceedings will begin with the examination of the Australian Federal Police. We will then move through the agencies and then go to general questions.

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 contempt. It is also a contempt to give false or misleading evidence to the committee.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings. Any questions going to the operations of financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates. I remind officers that the Senate has also resolved that there are no areas in connection with the expenditure of public funds where any person has a 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 a state shall not be asked to give opinions on matters of policy. He or she shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions which ask 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 has been claimed. Any claim that it would be contrary to the public interest to answer a question is one which must be made by the minister and should be accompanied by a statement which sets out the basis for making the claim.

I formally welcome Senator the Hon. Joseph Ludwig, representing the Attorney-General and the Minister for Home Affairs. I also welcome Mr Robert Cornall, the Secretary of the Attorney-General's Department, and Mr Mick Keelty, the Commissioner of the Australian Federal Police.

Senator BRANDIS—Madam Chair, before we proceed to the opening statements, I would like to raise a matter with you. I notice that Senator McLucas sits this morning as a member of the committee. As you are of course aware, Madam Chair, Senator McLucas, as Parliamentary Secretary to the Minister for Health and Ageing, is a member of the executive government. In my experience it has not been the practice for members of the executive to sit as members of Senate estimates committees. Indeed, I recall an occasion some years ago

when Senator Heffernan, who was then cabinet secretary, was nominated as a member of a Senate select committee, of which I was then a member, and that was objected to by the then opposition. Could you give me some guidance as to the constitutionality, I suppose, of a member of the executive government sitting as a member of this committee? In the event that the committee has obtained legal advice concerning the right of a member of the executive government to sit as a member of this committee, could you produce it please?

CHAIR—Senator Brandis, in response to your question, there are a couple of issues. We are not aware of any legal advice that precludes a parliamentary secretary from sitting on Senate committees. We have ensured that the area for which Senator McLucas is responsible is not directly related to this committee. We are not aware of any legal advice that precludes that. The membership of these committees was put through the Senate last Thursday, and I am not aware that objections were raised at that time.

Senator BRANDIS—Madam Chair, I do not have any ad hominem objection to Senator McLucas sitting; I am sure her participation would be constructive and delightful, so this is not a personal criticism. But I think it is an important departure from the practice of these committees. If you are not aware of any legal advice, that does not reassure me that that clarifies the legal position exactly. I wonder if, at least in the meantime, we could get some advice from the Clerk.

CHAIR—We could do that. I just want to reiterate that I am not aware that there is any legal advice that precludes a parliamentary secretary from sitting on the committee.

Senator BRANDIS—No, I understand what you are saying, Madam Chair.

CHAIR—Senator McLucas's membership of this committee has been appointed and approved by the Senate, and there is nothing in the standing orders under which we operate that precludes her from being a member of this committee.

Senator BRANDIS—That is why I said before—I hope not too grandly—that this is really a constitutional issue, as you yourself of course are aware, Madam Chair. Senator McLucas, as a member of the Executive Council currently under summons, is technically in no different position than any other minister in the government, and it would be—I would have thought—bizarre if, for example, Senator Evans, as Leader of the Government in the Senate, or one of the cabinet ministers sitting in the Senate were also to participate in a Senate estimates committee. Strictly speaking, and allowing for gradations of rank within the executive government, Senator McLucas's constitutional position is no different. So I wonder if some advice can be sought not only in relation to the legality but to the precedent—whether a precedent is being created here which perhaps may be at variance with the conventions of the Senate.

CHAIR—I note what you are saying, Senator Brandis. We will seek advice from the Clerk of the Senate about that, but for the time being we will proceed.

[9.08 am]

Australian Federal Police

CHAIR—I invite either the Minister for Human Services, Senator Ludwig, or Commissioner Keelty to make an opening statement, if that is needed.

Senator Ludwig—Thank you, Chair. I do not have an opening statement. I will leave that for Commissioner Keelty, if he so chooses.

CHAIR—Commissioner Keelty, do you have an opening statement?

Commissioner Keelty—Thank you, Madam Chair, but I will not have an opening statement this morning.

CHAIR—All right. The committee has determined to proceed through the agencies first before going to general questions, so we will start with the Australian Federal Police. Are there any questions?

Senator BARNETT—Thank you, Madam Chair. I thank the officers for being here today, and I look forward to a cooperative working relationship with you, as usual. My first question relates to the impact of the federal government's planned budget cuts for the various agencies across the board and the government's efforts to obtain a budget surplus of 1.5 per cent. We are aware that those decisions have been made. We are interested in the impact on the AFP and in its plans to meet that objective, if that could be outlined to the committee, and specifically how the AFP intends to meet the requirements of the government in terms of those budget cuts.

Commissioner Keelty—Obviously I cannot speak about the next financial year, I can only speak in relation to proposals for additional estimates. In regard to that, the AFP's budget has in fact been increased by \$44.67 million over the 2007-08 financial year.

In relation to cuts, we are expecting to have an additional efficiency dividend applied, but I do not know that it is appropriate to actually describe the quantum of that until it applies.

Senator Ludwig—You may want to provide a little bit more specificity in your question. You talk about budget cuts but what specifically are you referring to? Is it the 2008-09 budget, which, if it is a budget related matter, clearly the commissioner is not in a position to talk about it? You may want to actually ask the specific question rather than a broadbrush question, because the answer to the budget cuts would be, as I imagine, that those matters are budget related and therefore unable to be commented on any further.

Senator BARNETT—My understanding is that the government has publicly stated that there will be—using different words—an efficiency dividend of some two per cent. So the obvious question is, firstly, has the Australian Federal Police been directed to achieve any benchmark budget cuts or efficiency dividend and, if so, could it describe the extent of that directive?

Mr Wood—The specific target for the current year as a result of the two per cent additional efficiency dividend is on page 89 of the portfolio additional estimates statement—a specific line item there for the efficiency commitment savings two per cent efficiency dividend in the year 2007-08. The partial effect of that in that year is \$4.5 million.

Senator BARNETT—I am sorry, I missed that. Could you repeat that.

Mr Wood—The partial effect in 2007-08 of the efficiency dividend—because it is not a full-year effect—is \$4.5 million. It is in that table on the bottom left-hand side of page 89. That is \$4.5 million in the context of a \$1.2 billion budget for the AFP in the financial year

2007-08, and certainly the government is expecting the AFP to meet that efficiency dividend in the current financial year.

Senator BARNETT—With this drilling down we are now getting to the answer, and I appreciate that. It is a \$4.5 million budget cut in the 2007-08 year. From what time—what month—does that commence and over what period of time?

Senator Ludwig—I just want to correct something. You said a ‘budget cut for 2008-09’. Is that what you were referring to?

Senator BARNETT—No, 2007-08. It talks about a two per cent efficiency dividend commencing in 2007-08. What month did it commence in and, secondly, what programs and what measures are being impacted by this budget cut?

Commissioner Keelty—The answer to that question is that it will be an end of financial year effect, so it is a matter of absorbing that cut. As the chief operating officer said, out of the total budget of \$1.2 billion we are absorbing that \$4.52 million between now and the end of the financial year. In terms of what areas will be cut, that will be determined as we proceed through the financial year. We have got to have our mid-year review report, which is due out at the end of this month.

Senator BARNETT—Have you identified any measures at all which you anticipate will change or vary as a result of the efficiency dividend directive?

Commissioner Keelty—As I just mentioned, we have got our mid-year review, which is due shortly, and the chief financial officer is going through each area to see where we can identify these savings to aggregate to the \$4.5 million.

Senator BARNETT—The \$4.5 million does not seem to me—and I did not major in maths—to be two per cent over a \$1.2 billion budget, so what percentage is it and how do you actually achieve the two per cent efficiency dividend?

Commissioner Keelty—It is only a part-year effect, so it is not a full two per cent for the balance of the financial year. I think, unless I am to be corrected, it is about 1.25 per cent. I am sorry: just by way of clarification, the Department of Finance and Deregulation would have determined the starting date and the actual amount for us to find.

Senator BARNETT—My earlier question was: what is the starting date for when this budget cut will kick in?

Mr Wood—The actual percentage works out at 0.42 per cent, the part-year effect.

Senator BARNETT—So it is a 0.42 per cent efficiency gain over that 12-month period?

Commissioner Keelty—Efficiency dividend.

Senator BARNETT—Efficiency dividend—excuse me—over the 12 month—

Mr Wood—Over the 12-month budget, so as to effect a part-year effect through to the end of the year. I will turn to the CFO and see if we have been advised of a specific date upon which that 0.42 was based.

Senator BARNETT—Thank you.

Mr Wood—I understand we do not have a specific start date: it is more a prediction of when the government expected the portfolio additional estimate statements to be passed, and so it is a part-year effect based on the assumption of that date. But, again, it is something provided to us by the department of finance rather than something determined by a change of—

Senator BARNETT—When were you advised by the department of finance of this directive?

Mr Wood—The negotiations with the department of finance over items that we have got for additional estimates would have commenced during late November, from memory.

Senator BARNETT—Were the Australian Federal Police advised of the directive to impose a two per cent efficiency dividend?

Mr Wood—I think the whole of the public sector was aware of the election commitment. The specific date on which we, as all agencies, knew what the amount was would have been in the late November-December period.

Senator BARNETT—Mr Wood, you were aware of the directive during the election campaign, as the rest of Australia was—and the election was 24 November—so I am ascertaining from you as to when the efficiency dividend would kick in. Would it be 1 December or 1 January? If it was 1 January that would be a six-month efficiency dividend that would be applied. If that was the case, it would be a one per cent efficiency dividend which you would achieve, but you have advised that it is a 0.42 per cent efficiency dividend that you are budgeting to achieve. There is a very big differential.

Commissioner Keelty—We did receive correspondence from the Department of Finance and Deregulation. If I could take it on notice, I will give you the date of that correspondence.

Senator BARNETT—Can you explain the differential between the 0.42 per cent efficiency dividend that you will achieve and the one per cent efficiency dividend that you would achieve if it was for six months, implemented from 1 January.

Mr Wood—All I can say is that is the part-year effect we were advised to budget on.

Senator BARNETT—If you apply the two per cent efficiency dividend over the 12-month period, there would be a certain efficiency dividend outcome. I do not know what the figures are, but 0.42 per cent is applied to less than three months of the calendar year.

Mr Wood—I understand that. In fact, in that same table it shows in the out years the full-year effect.

Senator BARNETT—Yes indeed. Is this a negotiation you have had with the department that you have been successful in making such a low efficiency dividend?

Mr Wood—No, it was a figure we were given to operate on.

Senator BARNETT—Can the minister advise whether this figure of 0.42 per cent applies to all agencies in this portfolio?

Senator Ludwig—Having listened to that, it might be advisable that either the question be put to Finance and that area or, alternatively, I can take that on notice and see what the department of finance has to say.

Senator BARNETT—Thank you.

CHAIR—Senator Barnett, do you have any further questions for the Australian Federal Police?

Senator BARNETT—Yes. To the Australian Federal Police regarding overseas deployment of police officers, in an interview with the *Australian* on 11 January this year the home affairs minister, Bob Debus, lamented the ‘skimming’ of Australian Federal Police officers for overseas deployments and foreshadowed a reprioritisation of the AFP’s activities:

Home Affairs Minister Bob Debus told *The Australian* the AFP had been “skimming” officers from domestic operations to fulfil policing commitments in countries such as Solomon Islands and East Timor.

... ..

“We’ve been skimming people off to send them into the various international operations,” he said.

Mr Keelty, how would you respond to those comments from the minister?

Mr Keelty—Given the source of the comment, I would not like to make any comment because I cannot test the veracity of it.

Senator BARNETT—Is it true that there has been a reprioritisation of Australian Federal Police officers deployed overseas back to domestic operations?

Mr Keelty—You are asking me to comment on an article appearing in the *Australian*. My own experience with newspapers is that the veracity of what they write is often questionable. So it is an area where I would not like to comment because I could be doing my minister an enormous disservice because, if he has had the same experiences as I have, it is inappropriate to comment one way or the other.

Senator BARNETT—Thank you for that most astute observation. As politicians, we totally empathise with where you are coming from. However, I will ask it in another way, which I thought I did with my second question. Have you been directed to reprioritise the deployment of Australian Federal Police back to domestic activities rather than to overseas activities? If so, could you describe the extent of that directive?

Mr Keelty—The answer to the question is no.

Senator BARNETT—Have staff numbers deployed overseas changed since December? If so, can you advise the committee of the changes?

Mr Keelty—There have been changes to the number of staff deployed overseas. There has been an increase of 70 officers having been deployed to East Timor in the past week as a result of the situation there. That has been the major change in staffing levels overseas.

Senator BARNETT—Do you plan for any further changes to staff numbers in the near future with respect to deployment to East Timor or elsewhere?

Commissioner Keelty—That will be a matter for the government, in discussions with other governments—principally, in the first instance, the government of Timor-Leste for that deployment. There have been discussions with government about an increase in deployments to other countries as well. I will leave that to Senator Ludwig, if he wishes to discuss that.

Senator BARNETT—Can you advise the committee how many Australian Federal Police officers you have deployed overseas?

Commissioner Keelty—Yes, I can. The total number of deployments to international missions, as opposed to liaison officers posted overseas, is 323 as of 9 January 2008.

Senator BARNETT—Can you advise the committee of the breakdown of those officers?

Commissioner Keelty—Yes, I can. I am now possessed of knowledge to say that it is now 393, with the 70 that went to Timor-Leste last week. In Afghanistan we have four officers. In RAMSI we have 208—that is the Solomon islands. In Papua New Guinea we have one. In Timor-Leste we now have a total of 130. Some of those are attached to the United Nations and some of those are part of the development of the Timor-Leste police. In Tonga we have one. In Cyprus we have 14. We have one deployed overseas to the Law Enforcement Cooperation Program. In January we had 17 in Nauru but that would have been reviewed downwards, I imagine, in the past week. In the Sudan we have eight. In Vanuatu we have eight. In Cambodia we have one. Of the total number, about 34 are currently on leave. In the international network, which is the liaison officer role, there are 87 staff posted to 33 cities in 28 countries around the world.

Senator BARNETT—Thanks very much for that. Can you provide a date? That is effective as at today—would that be correct?

Commissioner Keelty—Yes. If those figures are wrong as of today, I will update the figure with the committee.

Senator BARNETT—Would there have been an increase or a decrease since 30 June last year?

Commissioner Keelty—There would have been an increase since June last year—the main increase being the deployment last week of the additional 70 to Timor-Leste.

Senator BARNETT—Do you have a directive or plans to either increase or decrease those staff numbers in the months ahead?

Commissioner Keelty—The negotiations on that are now government to government between the government of Timor-Leste and the Australian government, as a result of the Prime Minister's visit last Friday. So we do not know what the final numbers will be.

Senator BARNETT—Apart from the East Timor deployment, do you have plans for changes to those numbers in the foreseeable future?

Commissioner Keelty—We do, but they are government initiatives, so I think it is up to the government to announce what they are.

Senator BARNETT—Have you been directed to change those staff numbers by the government and, if so, when was that directive?

Commissioner Keelty—We have not as yet. We have been doing some preparation work and planning work for government which, as I say, is a matter for government to report on. But, in terms of the International Deployment Group, we are in fact building up to a capacity of 1,200 by the end of this year. The International Deployment Group future strategy called for a permanent workforce of 1,200 personnel by June 2008 to be able to be deployed

overseas. This has been broken up into four phases of recruitment. Phase 1 occurred in the period October to December 2006. We had 66 positions advertised and filled. Phase 2 occurred over the period January to June 2007, and 169 positions were advertised and filled. Phase 3 occurred over the period July to December 2007, and 95 positions were advertised and will be filled in the period between January and June this year. Phase 4 seeks to recruit 220 additional positions and it is also scheduled to be finished by June 2008, hence my apprehension about the report in the *Australian* newspaper because, as you can see, we are building numbers in the International Deployment Group.

Senator BARNETT—Yes, from the figures you have given and from listening to you, it sounds like there is a significant increase in deployment of officers, both domestically and overseas.

Commissioner Keelty—That is correct.

Senator TROOD—Commissioner, the aim is 1,200 by 30 June. What number are you up to now—what is the total?

Commissioner Keelty—As I understand it at the moment—and if it is incorrect I will correct it with the committee later on—we are around 944 FTE, so we are about 250 off the full target for the financial year ending 30 June 2008.

Senator TROOD—Are you confident of being able to get to the 1,200 by the target date?

Commissioner Keelty—Yes, we are. There is a lot of interest in coming to the International Deployment Group from a variety of areas, so we are very confident we will get the target.

Senator TROOD—Is there any reason to believe that the efficiency dividends that the AFP might now be required to achieve are going to be directed in any way to the International Deployment Group, or are you able to advise the committee that you can be confident that the 1,200 will remain the target?

Commissioner Keelty—That is a question that we would not be able to answer until we work through with the government how we will apply the efficiency dividend.

Senator TROOD—So is it a possibility that you may be directing some of your efficiencies towards the IDG?

Commissioner Keelty—I would not like to rule in or rule out any possibilities about how we will apply the efficiency dividend. That is really a negotiation we need to have with the government.

Senator TROOD—The 1,200 was a figure presumably developed because you thought that was going to reflect the operational needs of the IDG, given the international environment in which it operates, and I assume that remains the case. Do you have reason to think that the 1,200 is now perhaps below or above what you expect to be the operational needs?

Commissioner Keelty—The 1,200 was a figure agreed to by the previous government. We need to work with the current government in relation to how we will apply the efficiency dividend and whether that impacts on the IDG or not. It may well be that the IDG is

quarantined from the efficiency dividend; we do not know. It is the sort of discussion we need to have with the government.

Senator TROOD—But you have not received any advice to that effect at the moment?

Commissioner Keelty—Certainly not.

Senator TROOD—Were the 70 officers that were sent to Timor Leste last week from the IDG?

Commissioner Keelty—Yes, they were.

Senator TROOD—And they were fully trained and experienced officers?

Commissioner Keelty—Yes, they were.

Senator TROOD—How recently had they been on overseas operations prior to their deployment to Timor Leste, if at all?

Commissioner Keelty—Some of them had been on previous deployments. For some of them it was their first deployment. In fact, some of them had just finished their training for overseas deployment, so it was fortuitous that we were able to deploy them with the training.

Senator TROOD—How recently had they completed the training?

Commissioner Keelty—A small group of, I think, 20 had only completed their training the previous week. But they are experienced police officers, having now been trained for these overseas deployments.

Senator TROOD—Would you have had difficulty finding the 70 officers if the 20 had not completed their training?

Senator Ludwig—That question is bordering on hypothetical, Chair. Perhaps it could be reworded or you could rule on whether or not it is in fact hypothetical.

Senator TROOD—I would not have thought there was anything hypothetical about it. The question is simply whether, if the officers had not completed their training—if, for example, they were still going through their training—the IDG would have had officers available to meet the contingency which was required of them.

Commissioner Keelty—It depends on what the request is. Obviously there are a finite number of people able to be deployed, but certainly we had no difficulty in deploying 70 officers. In fact, the decision was made, as I recall, on Monday, they were deployed the following morning at 4.30 am and most of them were in country by the following afternoon. So within 36 hours we had the full 70 on the ground in Timor Leste.

Senator TROOD—I am delighted to hear the availability was there. Are there officers currently in training?

Commissioner Keelty—There is a further surge capacity available in the IDG, and that was the purpose of the IDG—to have that standing capability able to be deployed. Obviously we are still recruiting and deploying at the same time. There is a limit to what we can do, but at the moment we are managing the requests that are coming from government.

Senator TROOD—Were you to receive a request for another 100 or 50 officers, for example, would they be readily available?

Commissioner Keelty—We would have to work out, firstly, what the request was, the urgency of that request over and above our other standing commitments and the sorts of skills required. The skills that were deployed last week were largely to do with security and forensics as opposed to investigation capability. It would depend on the sort of request we got from government.

Senator TROOD—But the IDG force is largely directed towards security issues, as I understand it.

Commissioner Keelty—Not necessarily. There is a proportion of the IDG directed to security skills, but the major skill in the IDG is a capability for capacity building to train police in developing countries and also a forensic capability, so there is a broad spectrum of skills available. A proportion is directly related to riot control and security, but it is only a proportion of the total number.

Senator TROOD—So any deployment overseas is likely to have various kinds of skills in the commitment. Is that what you are saying to the committee?

Commissioner Keelty—That is correct.

Senator TROOD—In relation to the recruitment activities you are undertaking, my understanding is that you are recruiting from a wide range of sources—that is to say, you are recruiting from state police forces but you are also recruiting people with almost no policing skills at the moment. Is that the case?

Commissioner Keelty—There are a variety of areas we recruit from. We recruit from the state police. The future strategy implemented with the IDG has recruited 108 state and territory police as at 9 January 2008 but, by and large, we recruit from the community. We do not generally recruit into the IDG people who have no policing experience. We backfill from the main part of the AFP should we require new recruits coming into the AFP, and then those trained and experienced police go into the IDG.

Part of the issue that is being addressed here is building up the capability. There is no point in sending police overseas to train and develop foreign police if they are not developed themselves in the domestic environment. It is an issue that is being managed. It is an issue that is concerning all police commissioners in the sense that the recruitment and retention of police is something that affects every jurisdiction—not only the AFP.

Senator TROOD—Do you have the figures for the sources of the IDG officers—from the various state jurisdictions?

Commissioner Keelty—Yes, I do.

Senator TROOD—Perhaps I could put that on notice. I would like those statistics if they could be made available.

Commissioner Keelty—Would you like those?

Senator TROOD—Yes, if you have got them handy.

Commissioner Keelty—I have got them handy. There is a group who are seconded to the IDG and there is a group that are recruited to the IDG from state and territory police. I will deal with the secondees first.

Senator TROOD—Could you please clarify the difference, first of all.

Commissioner Keelty—A secondee is a police officer who comes and works for the IDG for a period of time—

Senator TROOD—Which is normally how long?

Commissioner Keelty—Two years—and then they return to their parent police force. Some secondments are shorter—only 12 months. There are two Northern Territory police, 20 Queensland police, 11 South Australian police, five Tasmanian police and 73 Victorian police. In relation to the police who have been recruited from state and territory police forces—that is, they are now permanent members of the AFP—there are 14 New South Wales police, seven Northern Territory police, 40 Queensland police, nine South Australian police, five Tasmanian police, 17 Victorian police and 16 Western Australian police, giving a total of 108 recruits from state and territory police forces.

Senator TROOD—I am delighted to see that Queensland is making such a substantial contribution to the IDG.

Commissioner Keelty—We welcome the experience of the Queensland police to the IDG. For many years, a lot of people were recruited into the Queensland police from other state and territory police forces, because of the attraction of the state of Queensland to do policing. A lot of them now have come to the IDG, which we are very happy about.

Senator TROOD—This is not so much about recruiting, but I am interested in exploring the extent of the wider capability that the IDG may need for its overseas operations—the acquisition of other equipment, beyond the officers, that supports its activities overseas. Perhaps you could give us a brief rundown on what your needs are there, and whether or not you have programs in place to acquire additional support equipment.

Commissioner Keelty—I will ask the chief operating officer. We have the figures here. He will give you the exact figures. We have been able to, in general terms, acquire the right equipment. In fact, the United Nations visited the International Deployment Group—I think it was in November last year—and we have now been recognised as a capable supplier for the United Nations. We are the only foreign police force in the world to be recognised by the United Nations in that way—in terms of skill preparation and equipment preparation for deployments to overseas missions. I will ask the chief operating officer to give you the actual figures.

Mr Wood—Under the current budget allocation within AFP, the supplier expenses allocation—in other words, the non-employee budget—provided for IDG, the International Deployment Group is a little over \$150 million for the current financial year. So in terms of resourcing for the variety of expenses beyond employee expenses, there is quite reasonable resourcing. IDG has its own procurement capability so that it can quickly move on needs as they arise and access this budget. In terms of the sorts of capabilities it has got to support training activities et cetera, it is worth noting that it has UN accreditation as a training organisation for this sort of work. So the supply chain of logistics and infrastructure as well as the salary dollars for employee responses at the moment are appropriately resourced.

Senator TROOD—Mr Wood, do you have any programs that are in place at the moment for acquisition of any kinds of support equipment that are partially complete?

Mr Wood—I am quite sure the International Deployment Group would have some in process but I do not have visibility of those personally. They certainly use prime contractors to the extent they can—in other words, they leverage off major contracts that have been engaged through competitive processes but they also leverage off existing other Commonwealth contracts such as Defence contracts to enable acquisitions to occur quickly. But I do not have visibility of current tenders and that sort of activity.

Senator TROOD—Commissioner, can you help me in that respect?

Commissioner Keelty—I would have to take it on notice to provide you the detail of those contractors but the chief operating officer is quite correct: we have a number of contracts. A lot of them are on the back of the interoperability between the AFP and the ADF and working with some of the ADF contractors so that we maximise the benefits for the government in terms of what we acquire and how much it costs.

Senator TROOD—Do you have any plans for further acquisitions at the moment?

Commissioner Keelty—There would be, because of the increase in staffing, but if I could take that on notice—

Senator TROOD—I would be grateful if you would. Perhaps if you can just give me the details of any existing programs for acquisition and prospective programs that are in the process, if there are tenders being let et cetera—I mean the kind of equipment we are talking about—that would be helpful.

Senator BARNETT—A final question: in terms of the IDG recruitment outline you have just explained to the committee, can you advise of any impact and specifically what impact it has had on the Northern Territory intervention operations?

Commissioner Keelty—Yes. I can give you that now if you like: the Northern Territory—

Senator Ludwig—As I understand it, your question is about whether the Northern Territory intervention has any impact on the IDG.

Senator BARNETT—No; it is the other way around.

Senator Ludwig—Whether the IDG has had any impact or been used or utilised in the Northern Territory—is that the question?

Senator BARNETT—No; it is on the impact of the recruitment process.

Senator Ludwig—So it is only the recruitment process.

Senator BARNETT—That is correct.

Commissioner Keelty—The deployments to the Northern Territory are coming from the IDG, so, in terms of that standing capability that the IDG has, it is actually providing us with the AFP police to deploy to the Northern Territory. At the moment, as of 31 January 2008, 17 members of the IDG were deployed to the Northern Territory emergency response and, in terms of future commitments, by June 2008 we are developing the options to continue to

deploy up to 66 AFP personnel, including additional investigators to the joint Northern Territory Police-AFP child abuse task force—so that is the answer to that question.

Senator BARNETT—Have you got police numbers in terms of your Northern Territory intervention operations? I am happy for you to deliver that either now or at a later time.

Commissioner Keelty—The impact on numbers is 17 at the moment: five have been deployed in the remote communities of Mutitjulu, Imanpa, Alparra and Numbulwar; seven members have been sent to the child abuse task force in Darwin; there is a commander who we have established in Darwin—he is now sworn into the Northern Territory police as part of its command structure for the task force that has been formed; and four non-sworn support officers are based in Darwin. The first contingent of AFP officers deployed to Darwin on 27 June. The ones going to remote communities were deployed on 6 July 2007.

Senator BARNETT—Perhaps you could take on notice the plans for the period to 30 June 2008, with respect to the 66 AFP officers, as to where they will be and the nature of their deployment. Finally, with respect to the 70 police officers going to East Timor, have any of those been taken from the Northern Territory intervention operational group?

Commissioner Keelty—To my knowledge they have not.

Senator BOB BROWN—I am following up a question on handguns that I asked on 23 May last year. The response to that has just become available. This is about the number of handguns. You have given figures for each of the states and territories, except New South Wales. Firstly, can you tell me why the answers to committee questions from last year have just become available, this answer being an example.

Mr Cornall—There were a number of questions which were not processed by the time the caretaker period started and there was a question after the election as to whether the questions should still be responded to. The decision was made to respond to them and they have now been filed, with the exception, I think, of three answers. There was some uncertainty as to the appropriateness of answering the questions following the election, but we took the view that they should all be answered. I apologise for the lateness of the delivery of that answer to you. I think they have all now been answered.

Senator BOB BROWN—The figures for New South Wales are not available. Is there a reason for that?

Commissioner Keelty—I will have to make an inquiry about that. I was not aware that those figures were not made available.

Senator BOB BROWN—Thank you. They are available for the other states and they indicate there are roughly 200,000 handguns in the Australian community as a whole, but the figures for New South Wales, which, on previous figures I have seen, would be the biggest for any state or territory, apparently are not available. Could you see why that figure is missing and see if we can get a figure from the New South Wales authorities.

Mr Cornall—Do you have the response in front of you there?

Senator BOB BROWN—Yes, I do.

Mr Cornall—Is it headed ‘Attorney-General’s Department’ or ‘Australian Federal Police’?

Senator BOB BROWN—It is headed ‘Attorney-General’s Department’.

Mr Cornall—In that case, it is up to us to answer that question, not Commissioner Keelty.

Senator BOB BROWN—Thank you; I will redirect that to you.

Mr Cornall—I will have to take that on notice and ask our officers if we can answer that question for you.

Senator BOB BROWN—I would like to ask the Australian Federal Police about the availability of handguns and the trade in illegal handguns in Australia. Is the Australian Federal Police investigating any matters relating to that illegal trade and does it have a concern about the knowledge that there are some tens of thousands of handguns, including automatic handguns, on the black market in Australia?

Commissioner Keelty—The AFP involvement in investigations is as part of a wider Australian Crime Commission determination that is looking at the illegal trade in firearms across Australian jurisdictions. As you would be aware, I chair the board of the Australian Crime Commission, and that is a current matter that is under active investigation by them. In addition to that, the New South Wales Crime Commission has a separate reference looking at the trade in illegal firearms affecting the state of New South Wales. So there is quite a deal of law enforcement activity looking at the sources, and also at the subsequent use, of firearms. Both inquiries complement each other and they focus on the origins of handguns and how they are being distributed around the jurisdictions of Australia. Suffice to say that it is not necessarily at the importation level; some of it is about controls in relation to the purchase of firearms, particularly by private security agencies, around the country and the subsequent management and control of those firearms.

Senator BOB BROWN—Do you know how many automatic handguns there are abroad in that illegal trade?

Commissioner Keelty—I have seen intelligence reports on that, but I do not have that figure here.

Senator BOB BROWN—Would you take that question on notice?

Commissioner Keelty—Certainly.

Senator BOB BROWN—My second group of questions is about an inquiry into electoral donations and funding. There are two matters there. The ABC *Four Corners* program on 25 September 2007 said that an investigation had been commenced into the alleged illegal passage of money across Australia’s borders by the Exclusive Brethren sect. Was such an inquiry established and if so what is the progress?

Commissioner Keelty—The answer to the first question is, yes, there was an inquiry established. We received two referrals from the Australian Electoral Commission during 2007 that indicated either direct or indirect links to the Exclusive Brethren. Only one of those referrals was accepted for investigation by the AFP. In addition to that, we received a third referral from another source in relation to the Exclusive Brethren. On 28 May the Australian Electoral Commission made a referral alleging that a company had engaged in conduct contrary to provisions of section 315(1)(b) of the Commonwealth Electoral Act. It was alleged that the company and/or its director failed to lodge returns disclosing details of gifts or

donations relating to approximately \$300,000 worth of electoral expenditure for the 2004 federal election.

Senator BOB BROWN—Which company was that?

Commissioner Keelty—Wilmac. The AFP investigation did not reveal any evidence that an offence had been committed. That matter is currently awaiting finalisation. On 18 October 2007 the AEC referred for investigation a matter that was the subject of a complaint by the ALP. The ALP had lodged a complaint with the AEC about the distribution of unauthorised electoral advertising and alleged that the publications were made by or on behalf of the Exclusive Brethren. We did not continue an investigation into that matter because there was no information provided to support the assertion that the Exclusive Brethren was actually responsible for the publications.

There was a non-AEC referral, the one that I think you spoke about initially from the ABC *Four Corners* program about the 'Brethren Express', and on 8 November 2007 we took a referral about the 'Brethren Express' that aired on the ABC on 15 October 2007. The referral alleged that the Brethren Express program contained information concerning breaches of the Electoral Act and also of the Anti-Money Laundering and Counter-Terrorism Financing Act. Two of the allegations raised in the referral to the AFP had already been examined by the AFP previously. No evidence was found in the previous investigation disclosing support to those allegations. The investigation has not been completed yet. We need to finalise it, and at that point in time we will be able to report on the outcome of that investigation.

Senator BOB BROWN—What were the two matters that were previously investigated?

Commissioner Keelty—They were two matters relating to the 'Brethren Express'.

Senator BOB BROWN—This is the alleged cross-border passage of money?

Commissioner Keelty—That is right. The matters raised in the *Four Corners* program obviously had been previously investigated by the AFP, but we reopened the investigation on the basis of the program going to air.

Senator BOB BROWN—And that matter has not yet been finalised?

Commissioner Keelty—No, but I am happy to report the outcome of that when it is appropriate to do so.

Senator BOB BROWN—When do you think that will be?

Commissioner Keelty—I believe it is imminent, but I cannot give you a date.

Senator BOB BROWN—You referred there to the ALP lodging a complaint. Who actually lodged that complaint?

Commissioner Keelty—I do not have that detail here with me.

Senator BOB BROWN—Could you provide that to the committee?

Commissioner Keelty—If it is appropriate to do so I will.

Senator BOB BROWN—Okay; thank you. In the process of the investigation into the Wilmac matter, police officers came to seek information from my office. Were any other members of parliament able to provide information or were any questioned about that matter?

Commissioner Keelty—I will just need to check on that.

Senator BOB BROWN—Thank you.

Commissioner Keelty—Could I take that notice? I do not have the answer here today.

Senator BOB BROWN—Yes, thank you.

Senator PAYNE—My questions relate to the previous issue which you were discussing with my colleagues—the IDG and the international role of the AFP. Can I just clarify one point around the 1,200-person aim by 2006-08. Is that 1,200 sworn police for the IDG?

Commissioner Keelty—No; some of them will be unsworn—they will be support officers for the IDG. The IDG comprises not only sworn police but also people with other skills such as planning skills, people to run the contracts that we have in place as a result of establishing the capability. There are also intelligence analysts and people with a lot of other skills.

Senator PAYNE—Can you give us a breakdown of what the 1,200 is intended to cover?

Commissioner Keelty—Yes, if I can take that on notice.

Senator PAYNE—Certainly; thank you. In relation to the 70 officers deployed to Timor-Leste in the past week, I think you said they are IDG members.

Commissioner Keelty—That is correct.

Senator PAYNE—Is it correct that they are not under the command of the UNPOL arrangements in Timor-Leste?

Commissioner Keelty—That is correct.

Senator PAYNE—So what are the command arrangements?

Commissioner Keelty—The 70 are deployed as part of the ISF, the internal security force. The reason for that was simple in the sense that that was the quickest way to get them deployed to East Timor, rather than go through the United Nations and seek a request from the United Nations.

Senator PAYNE—I can imagine! Is there a view that the command arrangements may change and they may come back under UNPOL?

Commissioner Keelty—The deployment will be reviewed. But I can say, having been there on Friday and had discussions with the Special Representative of the Secretary-General of the UN, they are quite happy with the current arrangement. We will review that as a matter of course. We will also review it in the context of the government-to-government negotiations or discussions that will now take place about any additional requirement for other skills to participate in the investigation of the events last week.

Senator PAYNE—So what is the timing on that review?

Commissioner Keelty—We are subject to a review on the deployment every seven days, so that will be reviewed by tomorrow. But we will continue to review it every seven days until we get the right mix of the right skills in place. I want to correct something. The ISF is the International Stabilisation Force. When you are working in this Defence environment, you have to get used to these mnemonics.

Senator PAYNE—What is the expectation of the specific roles that these 70 officers will be carrying out while they are not under the command of UNPOL? I understood from what you were saying earlier that some proportion of the total deployment of 130 were involved in training the Timor-Leste police, some as part of UNPOL. Where do these people fit in and what is their role?

Commissioner Keelty—They are working to Brigadier James Baker, the commander of the ISF. They have their own commander, Commander Steve Lancaster, who previously deployed after the 2006 events in East Timor. They have their own AFP commander who reports to Brigadier James Baker as part of the ISF command.

Senator PAYNE—Are the conditions of their service the same as those of other members of the AFP who are deployed in East Timor at the moment?

Commissioner Keelty—Unless I am told otherwise, they are.

Senator PAYNE—Do you need to check that?

Commissioner Keelty—I certainly have not been advised to the contrary. If I am wrong, I will correct the record.

Senator PAYNE—As I understand it from public statements, at this point in time this current enhanced deployment is regarded as a reasonably open-ended exercise.

Commissioner Keelty—It is subject to weekly review. Hypothetically, they could be withdrawn at any time. For the time being, they are obviously still in country.

Senator BRANDIS—No doubt a report in the *Australian* newspaper of 23 January concerning the air security officer program has been drawn to your attention. It is the report in which several aviation industry experts speaking on condition of anonymity are reported to claim the program is to be cut by a third. Are you familiar with that claim?

Commissioner Keelty—Yes, I am.

Senator BRANDIS—I do not want to delay people too much with this. Are you in a position to assure us—and I will not go to operational matters; I am only interested in aggregates—that the number of full-time air security officers will be maintained at the pre-existing level or increased, but not reduced?

Commissioner Keelty—The funding for and the staffing level of the ASA is really a matter for government.

Senator BRANDIS—Let me ask you in the past tense, then. Since the new government came into office, has the number of air security officers been reduced?

Commissioner Keelty—Not to my knowledge.

Senator BRANDIS—Have you been advised of any decision by government to reduce the number of officers?

Commissioner Keelty—No.

Senator BRANDIS—Would you expect to be advised of such a decision had it been made?

Commissioner Keelty—Yes, I would. But I also point out that, as I said in a previous answer, we are working through the issues with government of how to apply the efficiency dividend. As I said before, I do not rule in or rule out any areas of the AFP.

Senator BRANDIS—So it may be that, as the result of the imposition of the efficiency dividend, the number of air security officers will be reduced?

Commissioner Keelty—It may be, and it may not be.

Senator BRANDIS—How many control orders are operative at the moment?

Commissioner Keelty—One.

Senator BRANDIS—And that is in relation to Hicks?

Commissioner Keelty—That is correct.

Senator BRANDIS—In the calendar year 2007, were control orders operative in relation to any other individual which have expired or no longer apply?

Commissioner Keelty—There is an interim control order on Jack Thomas that expired on 28 August 2007. I am sorry, Senator, I probably should not have answered that question in the way I did. I do not know how to handle this, Madam Chair, but it is probably inappropriate to be talking publicly about who has control orders and who does not. Obviously some of these are in the public arena now, but in terms of what the future may hold, I apologise—I probably should not have answered that question.

Senator BRANDIS—I will not ask you to name any other individuals, but can you tell me, in relation to the two individuals concerning whom there currently is or has been a control order: are there any other individuals who, since the operation of the control order procedure began, have been the subject of either an interim or a final control order? Do not tell me names. I am interested in the number of times this procedure has been used in relation to different individuals. This is of course the subject of a report to parliament, as you know.

Senator Ludwig—Perhaps a better way to deal with it is when the report is made in parliament—

Senator BRANDIS—I am entitled to ask questions in this estimates committee not merely in relation to the estimates but in relation to reports to parliament.

Senator Ludwig—I am not confining your questioning—

CHAIR—Senator Brandis, perhaps it might be appropriate if you let Senator Ludwig finish what he was saying before you pass an opinion.

Senator BRANDIS—I will frame my questions in my own way, thanks, Madam Chair.

CHAIR—And you might also wait until I have finished saying what I have to say as well.

Senator BRANDIS—I will frame my questions in my own way, mindful of the terms of the definition of relevance which you recited at the commencement of the hearing. Commissioner Keelty?

Commissioner Keelty—No.

Senator BRANDIS—So there have only ever been two individuals the subject of control orders in any form.

Commissioner Keelty—That is correct.

Senator BRANDIS—I am a little abashed at continuing to refer you to newspaper reports in view of your earlier remarks. Nevertheless, I am sure you are also aware of a story in the *Weekend Australian* newspaper on 26 January in which the Attorney-General, Mr McClelland, is quoted as undertaking that:

Labor will “change the tone” ... on terrorism to rebuild bridges with marginalised Islamic communities ...

Later in the article he is quoted in indirect speech as saying that Labor remained committed to holding a judicial inquiry into the matter—that is the Haneef matter—and predicted one outcome could be the creation of a liaison officer whose job would be to reconcile the activities of the AFP, the intelligence services and the DPP in future investigations. Commissioner Keelty, has the AFP been consulted in relation to the proposed creation of a liaison officer?

Commissioner Keelty—Again, Senator, it is a newspaper report—

Senator BRANDIS—I am only giving you the newspaper report to contextualise it. Let me just ask the question. Has the AFP been consulted in relation to the creation of a liaison officer whose job would be to reconcile the activities of the AFP, the intelligence services and the DPP?

Commissioner Keelty—Not to my knowledge—that is, obviously, presuming that such a matter was ever under consideration.

Senator BRANDIS—It is attributed to the Attorney-General. It has not been corrected or denied. So I am merely inquiring whether anything has happened about it. To the best of your knowledge, it has not. Is that right?

Commissioner Keelty—Well, it is a full-time job trying to correct the media. I do not know any one of us have got the time to correct wrong stories.

Senator BRANDIS—I understand your sensitivity about this but, if a report attributing an opinion to a minister is published and not denied, I do not think it is good enough for an officer simply to avoid the question by saying, ‘Well, it’s in the media; therefore, we shouldn’t take it seriously.’

Senator Ludwig—As I understand it, it was speculation in respect of the outcome of an inquiry that is yet to be announced.

Senator BRANDIS—Well, Senator Ludwig, what is attributed to and has not been disputed by the Attorney-General is that a particular new office is to be created—namely, a liaison officer.

Senator Ludwig—Isn’t that speculation about an outcome of an inquiry?

Senator BRANDIS—No, it is not. It is an announcement attributed to the Attorney-General.

Senator Ludwig—That is what you read out.

Senator BRANDIS—Attributed to the Attorney-General.

Senator Ludwig—Do you have the newspaper article?

Senator BRANDIS—Yes, I do.

Senator Ludwig—Would you like to tender it?

Senator BRANDIS—No. I have read it onto the record. Are you questioning whether I read it accurately? You can have a look at it, but I do not think it is appropriate to be tendering these things. Let's not be diverted please, Minister. Do I simply understand your answer to my earlier question to be that, so far as you are aware, no step has been taken in relation to this suggestion that a liaison officer would be created to reconcile the activities of the AFP, the intelligence services and the DPP?

Senator Ludwig—It is still speculation about a possible outcome of an inquiry.

Senator BRANDIS—I am going to turn to the inquiry in a moment.

Senator Ludwig—You may very well in the next question, but let's settle this issue first.

Senator BRANDIS—Yes, let's settle it.

Senator Ludwig—You are still referring to a speculative outcome, and to that extent it has not been announced.

Senator BRANDIS—Commissioner Keelty, has the AFP been consulted about the possible creation of a liaison officer—yes or no?

Commissioner Keelty—No. And, to complete the answer, I have to say I am unaware of any corroborative material in relation to that speculation in the news article.

Senator BRANDIS—I am putting a proposition to you. I have been good enough to take you to my source—it was not necessary for me to do that but I have been good enough to do that to contextualise it for you. It is remarks ascribed to the Attorney which have not been corrected on the public record. Let us turn to the inquiry. Minister, can you tell us where we are in relation to the suggested inquiry into Dr Haneef?

Senator Ludwig—What I can do is take that on notice and get back to you. I will talk with the Attorney-General. I will see if I can do that today. I will see if it is possible to provide an answer as to where we are at.

Senator BRANDIS—Let me be a little more specific so as to focus your inquiries. Has the identity of the person or persons by whom the inquiry is to be conducted been decided? Have the terms of reference of the inquiry, either in the draft or final form, been prepared? When is it proposed that an announcement in relation to the constitution of the inquiry will be made? When is it proposed, if a decision in this regard has yet been made, the inquiry will convene?

Senator Ludwig—I will see what I can do.

Senator BARNETT—I have one other follow-up question to Mr Keelty. There has been a lot of discussion about this matter and potential compromising of the AFP's operational activities. Could you advise the committee as to whether, if there was a judicial inquiry, you believe that that would in any way impede or impact adversely or otherwise on the integrity and activities of the Australian Federal Police?

Senator Ludwig—A broad question like that appears to me, Chair, to be quite speculative at this point in time.

Senator BARNETT—It is hardly speculative, Minister, when your party announced publicly prior to the election that there would be a judicial inquiry. Since then, of course, there have been different versions of speculation regarding types of inquiry, but it is on the public record that prior to the election you supported a judicial inquiry. There have been discussions at a public level as to whether this would compromise the Australian Federal Police and its operations. I am asking Mr Keelty whether, in his view, that is possible or likely. That is not speculation, Minister.

Commissioner Keelty—There are two points, Senator. Firstly, the AFP welcomes any inquiry into our role in the Haneef matter. We have absolutely nothing to hide. Secondly, as I have stated publicly, the matter is an ongoing investigation. There are outstanding inquiries beyond the control of the AFP yet to be completed.

Senator BARNETT—Can you advise the committee which inquiries you are referring to?

Commissioner Keelty—I cannot, because they are matters that I cannot publicly disclose.

Senator BARNETT—Are they inquiries other than the inquiries referred to just a few moments ago in this committee?

Commissioner Keelty—No. They are outstanding parts of the investigation.

Senator BARNETT—So the investigation is still continuing?

Commissioner Keelty—That is correct.

Senator BARNETT—Why would you accept the merit of a judicial or other type of inquiry if an investigation is still continuing?

Senator Ludwig—I do not think it is up to the commissioner to accept or not accept the matter. It is a decision by government, I would have thought. But I am happy for you to ask the question.

Senator BARNETT—Minister, I will ask you a question: would it be appropriate to have an inquiry, judicial or otherwise, while an Australian Federal Police investigation is still continuing?

Senator Ludwig—That is a matter that the Attorney-General can provide an answer to. I will take that on notice to ensure we do get an answer to you in respect of that. I will not speculate either.

Senator BRANDIS—You might also—and I am sure you will have to take this on notice, Minister—inquire from the Attorney-General whether, at the time he first made the announcement in his capacity as Attorney-General that there would be a judicial inquiry, he had been briefed and was aware that the investigation was still current. I can understand how, in the heat of an election campaign, an opposition spokesman might demand a judicial inquiry and commit an incoming government to establish one. It is a little more difficult to understand how a new Attorney-General in an incoming government would commit to that course if he had been briefed by the AFP that the investigation was current. So all I want to know is: at the

time Mr McClelland, as Attorney-General, first made that announcement, had he been briefed that the investigation was still current?

Senator Ludwig—Just so that I can understand the question: when are you saying that the announcement was made? I can then check back with Mr McClelland.

Senator BRANDIS—I think it is a continuum. We know that that was the position of your party when in opposition, and we know that—

Senator Ludwig—I was just trying to find the point that you were referring to so that I can ask him with some specificity.

Senator BRANDIS—The earliest reference I can find is in a newspaper report of 26 January, which is an article written on the strength of an interview with Mr McClelland, but I am not in a position to tell you whether he may have said the same thing earlier.

Senator Ludwig—Where is that article?

Senator BRANDIS—It is in the *Weekend Australian* newspaper of 26 January.

Senator Ludwig—Thank you very much.

Senator BRANDIS—Let me make this clear: I do not say that is the first time Mr McClelland said this after he was sworn as Attorney-General on 3 December, but it was certainly his position as late as 26 January. I am a little astonished, as is Senator Barnett, that a government would announce a judicial inquiry into a current and obviously non-complete investigation. I am sure you get my point.

Senator Ludwig—Are you saying that the announcement for the inquiry relates to the article of the 26th? I am just trying to understand the context in which you put the question.

Senator BRANDIS—Mr McClelland is quoted on 26 January as having told the journalist who interviewed him, Paul Maley, that there would be an inquiry.

Senator Ludwig—As I understand it, that is different from having an inquiry announced with terms of reference.

Senator BRANDIS—I am not saying that.

Senator Ludwig—I am just trying to qualify what you actually are saying.

Senator BRANDIS—No inquiry has been set up. We know that. That was the point of my earlier questions. But we do know that on 26 January Mr Maley the journalist reported Mr McClelland as having told him that there would be an inquiry into the Haneef case. Given that now, on 18 February, we know that the case is still not closed, it concerns me that, as late as 26 January, the Attorney-General would be announcing an inquiry into an open case.

Senator Ludwig—I think you are drawing two matters together which are—

Senator BRANDIS—I do not want to argue the point with you, Minister.

Senator Ludwig—I think you are arguing it, rather than me. But, as I said, I will take it on notice.

Senator BRANDIS—I would be grateful if you would take that question on notice.

Senator Ludwig—I will get back to you as soon as I can in respect of the matter.

Senator BRANDIS—Thank you. In addition to the earlier questions I asked you to take on notice concerning the contemplated inquiry, can you also inquire for me whether this inquiry will be a public or in camera inquiry?

Senator Ludwig—I will.

Senator BRANDIS—Thank you.

Senator BARNETT—On that point, I have a question to Mr Keelty. I refer you to an article on 1 December 2007 in the *Weekend Australian* where it was reported that Mr McClelland, the Attorney-General, said:

We want to get briefings from the agencies first on how they may have modified their practices in light of criticism they have had.

Without going into the detail of media reports, can I ask you, Mr Keelty, have you had briefings with the minister with respect to the Haneef matter and can you advise the committee of further and better particulars?

Commissioner Keelty—I will take the second question first. It would be inappropriate for me to discuss the matters that the Attorney and I have discussed in relation to Haneef. We have not discussed the Haneef matter in the terms that you have outlined.

Senator BARNETT—Have the Australian Federal Police changed their operational methods and practices with respect to undertaking a Haneef type investigation as a result of the dealings that you have had over many months with the Haneef matter?

Commissioner Keelty—We, in any major investigation, whether it be Haneef or anyone else, review as a matter of course how we have done the investigation, but there is nothing of any great moment that has changed in terms of policy or procedures because of the Haneef matter. We have a current inquiry in relation to another matter that is not yet reported where we were concerned about particular issues in relation to that matter.

Senator BARNETT—Just to clarify for the record: there has been no change in policy or procedure in terms of how you would handle these matters since you have undertaken that review?

Commissioner Keelty—Not in relation to the Haneef matter. That is not to say that, subject to the outcome of any inquiry commenced by the government, we would not. We have reviewed the Haneef matter as a matter of course, and there is nothing that has arisen out of those reviews that has required us to alter our policies or approaches to those investigations.

CHAIR—It is just passed 10.30, so the committee will adjourn for morning tea.

Proceedings suspended from 10.31 am to 10.45 am

CHAIR—Order! The committee will reconvene. Firstly, I want to make a number of comments regarding the issue that Senator Brandis raised this morning. Our research shows that there is a specific reference to ministers and parliamentary secretaries on committees in *Ogders' Australian Senate Practice*, 11th edition, page 375. It states:

There is nothing in the rules of the Senate to prevent ministers or parliamentary secretaries serving on committees.

It further states:

Their presence on committees could give rise to questions of conflict of interest or bias ...

It explains that there has been one occasion of a conflict of interest. In 1994 a senator had a conflict of interest in relation to the subject of a specific committee's inquiry. It states:

There is no precedent of the Senate enforcing this rule by removing a chair or member of a committee, or disagreeing with an appointment.

My ruling is that there is not a problem with Senator McLucas sitting on this committee for the purpose of these estimates. If a senator has an objection to that, it is best left and raised when the Senate resumes.

Secondly, I want to remind senators on this committee that it is particularly difficult for Hansard to record the proceedings when two people are talking at the same time. Not only would it be courteous to wait until one person has finished what they are saying, but please bear in mind that it makes it particularly difficult for Hansard to try and understand when there are two voices speaking at once.

Senator BARNETT—On your response to the point of order, I notice that Senator Brandis is not here. I am sure he would want me to alert you and the committee to *Odgers*, which refers to questions of conflict of interest or bias. In that context, obviously, your ruling is noted.

CHAIR—Thank you. If you wish to raise it further, you can do so when the Senate resumes. It is a matter for the Senate to determine.

Senator BARNETT—If a matter of conflict or bias arises, obviously we will consider *Odgers*.

Senator NETTLE—I want to go back to the issue of control orders that Senator Brandis raised. Was the original decision to apply for a control order in relation to David Hicks taken by the AFP or the minister?

Commissioner Keelty—The AFP.

Senator NETTLE—Was that done in consultation with the minister?

Commissioner Keelty—No; it was an operational decision. The minister ultimately has a role, the Attorney ultimately has a role, but it is an operational decision by the AFP.

Senator NETTLE—So the decision to apply for the original control order was purely taken by the AFP?

Commissioner Keelty—That is correct, but that is not to say that we do not consult. We consult with intelligence agencies and any other police jurisdictions that may be affected by the decision.

Senator NETTLE—Was that the case with Mr Hicks?

Commissioner Keelty—Yes, it was.

Senator NETTLE—Were ASIO and the relevant police agencies consulted?

Commissioner Keelty—That is correct.

Senator NETTLE—Would the AFP make the decision to contest a modification to that control order or would it be done by the minister?

Commissioner Keelty—It may come from a number of sources. It may be from the person upon whom the control order is effected or it may come from us or any of the agencies involved in the implementation of the control order. Our experience with the control orders to date is that they have been very much a negotiated implementation. We have tried to reach negotiated positions in both the instances where control orders have been used to date.

Senator NETTLE—I understood that there was an issue today with a modification of Mr Hicks's control order. From media reports, that is an issue in the Federal Court today. Is the AFP opposing that modification to the control order or is it a government decision?

Commissioner Keelty—It is an operational decision. As you quite rightly point out, that matter is before the Federal Court. Applications to adjust control orders can come from either party. That is part of the nature of the legislation.

Senator NETTLE—Is the AFP opposing the modifications to David Hicks's control order?

Commissioner Keelty—I will just check on my notes in relation to that. This is an application from Mr Hicks and members of his immediate family. They have requested three variations to his reporting obligations. The AFP has agreed to one request, which involved Mr Hicks reporting to different police stations on 31 December 2007 given the heightened media interest surrounding him at that time. That was a one-off situation. Mr Hicks has continued to report to the designated police stations since. The other two requests are currently being considered by us. The AFP has agreed to consider requests for variation in Mr Hick's interim control order obligations on a case-by-case basis, which is consistent with our approach in these matters. Essentially, despite reports to the contrary, we are trying to balance the impact of the obligations imposed by us with the individual's personal circumstances. As I said, our position on control orders has been, right from the outset, that we would prefer to have a negotiated position. It is to everybody's advantage that the person accepts what is happening to them.

Senator NETTLE—Are the other two requests for modification to the control order the subject of the Federal Court matter today?

Commissioner Keelty—It is probably not appropriate for me to describe what the matters are that are before the Federal Court. Suffice to say that both parties are looking for a decision in relation to that control order that will work to the benefit of both parties.

Senator NETTLE—I was not asking what the specifics were. You said that there are two that are a matter of ongoing negotiation and one that was agreed to. I suppose I was just trying to work out if those two were part of the court case or if there is something else involved in the court case. I am not asking specifically what they are.

Commissioner Keelty—As I understand it, it is part of the court case to adjust the control order to the benefit of both parties.

Senator NETTLE—And that is to do with those two requests?

Commissioner Keelty—That is correct.

Senator NETTLE—Minister, does the government support the continuing control order on Mr Hicks?

Senator Ludwig—I will have to take that on notice. I will see if I can get back to you with an answer.

Senator NETTLE—Could I also ask about the modifications in relation to the control order—so not only the ongoing control order but the modifications that are the subject of the court case and the discussions with the AFP.

Senator Ludwig—Okay. I can do that.

Senator BARNETT—Can I continue regarding the Hicks matter? I have a couple of other questions, if you have finished.

Senator NETTLE—That is okay.

Senator BARNETT—Could Mr Keelty advise the cost to the Australian Federal Police of, firstly, legal proceedings like today's hearing? Can you advise the cost of legal costs for the Australian Federal Police in the Hicks matter, and is the government paying for the cost of Mr Hicks or is he paying his own costs?

Commissioner Keelty—In relation to the AFP costs, I would have to take that on notice because the matter is still alive and before the court. So at an appropriate time I can report back to the committee on the costs. In relation to the other question—

Senator BARNETT—Perhaps the minister might be able to respond—

Commissioner Keelty—Or the department.

Senator BARNETT—or the department—as to who is paying the legal costs for Mr Hicks.

Mr Cornall—It is a matter of public record that we have paid a considerable amount of legal assistance to Mr Hicks over the duration of his period in Guantanamo Bay and his return to Australia. It is a normal requirement that we do not disclose the details of legal assistance to particular applicants, so it would be preferable that we did not go into those details in this committee, Senator.

Senator BARNETT—Can you quantify the amount of funds paid to date with respect to the Hicks matter, with respect to costs incurred—is that possible?

Mr Cornall—Certainly we would know the amount we have paid. I will take it on notice as to whether we can disclose it to this committee. I do not have the figure with me.

Senator BARNETT—Can you disclose to the committee whether the government actually has paid or is paying the legal costs for Mr Hicks?

Mr Cornall—As I said, we normally do not disclose details of grants of assistance or the people to whom assistance is granted, but there have been particular aspects of this case in the past where Mr Hicks or his advisers have talked about legal assistance. I will take on notice your question and see what we can answer in respect of the questions you have asked.

Senator BARNETT—If you are able to answer in terms of the first question and the costs to date, could you please in that response break down the different aspects and parts of the costs paid for travel, legal, accommodation and other further particulars with respect to those costs.

Mr Cornall—Yes.

Senator BARNETT—Thank you. Finally, to the Australian Federal Police: can you advise if there have been any costs to the Australian Federal Police in terms of operational or other costs in imposing control orders on Mr Hicks?

Commissioner Keelty—Yes, Senator. Sorry; in answer to—

Senator BARNETT—No, I am talking over and above legal costs with respect to operational cost activities. Is it possible to identify and advise the committee?

Commissioner Keelty—It is, and we will provide that as part of that other response.

Senator BARNETT—Take it on notice.

Commissioner Keelty—Yes.

Senator BARNETT—Thank you.

CHAIR—Senator Nettle, just before you proceed: in relation to the matter raised by Senator Brandis this morning—the question of parliamentary secretaries serving as members of committees—we have received advice from the Clerk of the Senate, Harry Evans, which confirms my ruling, that there is nothing in the rules or procedures of the Senate to prevent a parliamentary secretary serving on committee. With the approval of the committee, I will table this advice so it can be made public for people's information.

Senator BRANDIS—That is fine by me, but I might point out I did extend my inquiries into the question of whether it was a convention of the Senate of parliamentary secretaries not being members of committees.

CHAIR—I think if you read this you will find—

Senator BRANDIS—I have read it.

CHAIR—that Harry Evans has advised us that it is extremely difficult to identify all of the past occasions when parliamentary secretaries have served as members of the committee. I think, if you wish to raise the matter further, you should do it when the Senate next sits.

Senator BRANDIS—I may or may not, but it is appropriate in the first instance to raise it here and I continue to question whether or not it the participation by a member of the Executive Council currently under summons in a Senate committee is inconsistent with the conventions, if not the standing orders, of the Senate.

CHAIR—I hear what you say, Senator Brandis. I have given my ruling today and I am saying to you: if you want to pursue it further, you should do it when the Senate next sits.

Senator NETTLE—I will now go to the Dr Haneef matter. Commissioner, you indicated that investigations are ongoing. The way that you answered the question before about ongoing investigations, it sounded to me like you said there were investigations going on. Do they involve the AFP?

Commissioner Keelty—Yes, they do.

Senator NETTLE—How many AFP staff are currently involved in the ongoing Haneef investigation?

Commissioner Keelty—In terms of the current deployment of staff, I have got historical figures but I have not got the current figure in front of me. Can I take that on notice?

Senator NETTLE—Yes. We can go to the historical figures now. I imagine you can break it into the larger scale Haneef investigation and then, I am guessing, the ongoing one is smaller. Is that a correct assumption?

Commissioner Keelty—That is a correct assumption. Like any investigation, should an event occur or should additional material be provided, then it may be that additional resources are put on the investigation but, at this point in time, it has scaled down significantly from what it was.

Senator NETTLE—What figures can you provide on the historical staff allocation to the Haneef investigation?

Commissioner Keelty—By way of clarification: it is not—believe it or not—all about Haneef. It is about supporting the UK investigation into the attempted bombings in the London metropolitan area and also in Scotland. At its peak, that investigation involved 249 AFP, 225 Queensland police, 12 Attorney-General's Department employees, 54 Western Australian police, 40 New South Wales police, six Australian Customs Service employees, two Northern Territory police, one Tasmanian police officer, six translators, four other law enforcement agencies and two UK police who were posted to Australia.

Senator NETTLE—I just want to check that I got those later figures right. You said there were two Northern Territory and one Tasmanian police officers—

Commissioner Keelty—Six translators.

Senator NETTLE—Yes.

Commissioner Keelty—Four other law enforcement officers—from other agencies—and two UK police who have been posted to Australia.

Senator NETTLE—What are the law enforcement agencies that the four other officers come from?

Commissioner Keelty—I imagine they are FBI and similar entities, but I will correct that if it is wrong.

Senator NETTLE—So what is the total? It is pretty big.

Commissioner Keelty—Whilst that might seem a large number of staff, perhaps it would assist to put it in context if I said that there were in excess of 300 witness statements obtained; a total of 16 telephone intercept and six surveillance device warrants issued; a total of 22 search warrants executed on residential premises, work premises and vehicles; a total of 623 gigabytes of data seized from various computers and portable media devices; and a total of 349 forensic samples collected. As at the end of December 2007, expenses for the investigation were in excess of \$7.5 million. That is made up of approximately \$5.5 million in employee expenses, of which \$1.6 million accounts for overtime, and approximately \$1 million in supplier expenses. Obviously, because the matter is ongoing, the final costs are yet to be determined.

I have been told that 601 was the total number of investigators, at its peak. I do emphasise that it is not just the Haneef aspect of the investigation.

Senator NETTLE—Were those 601 staff in Australia?

Commissioner Keelty—Some of them were deployed offshore. I know, for example, some have been deployed to India and some have been deployed to the United Kingdom.

Senator NETTLE—Can you give any estimate—maybe you cannot; I do not know—about how much longer the ongoing investigation into the Haneef matter will be?

Commissioner Keelty—No.

Senator NETTLE—Okay. I want to go to the media reports of 22 July that related to Dr Haneef and buildings on the Gold Coast. I note some of your comments around that time as well in relation to what may be the source of the information. Has the AFP conducted a leak investigation into those media reports?

Commissioner Keelty—Yes, we have.

Senator NETTLE—Can you tell us the outcome of those?

Commissioner Keelty—There was a leak to the media that was admitted to on 18 July 2007 by Mr Stephen Keim, senior counsel, who admitted to providing a copy of the initial AFP record of interview to Dr Haneef. The second transcript of interview was also released to the media by Dr Haneef's lawyers, on 22 August 2007. That was leaked by Ryan and Bosscher, lawyers. The AFP provided a letter of complaint to the Queensland Legal Services Commission on 8 August 2007 in relation to the conduct of Mr Keim. The complaint is founded on the actions of Mr Keim, as an officer of the court, both releasing the document to the media while the matter was still before the court and acting without instructions from his client. On 1 February 2008 the AFP was advised by the Queensland Legal Services Commission that their inquiry was complete. The commission found Mr Keim's actions constituted a technical breach of the bar rules. They also advised that no further action would be taken against him. The release of the record of interview does not constitute a breach of the Crimes Act 1914.

Other leaks that were investigated by the AFP include investigation of our own staff, and to date we have no evidence to indicate any material was leaked by the AFP; in fact, to the contrary. On 10 July 2007 I spoke to the editor of the *Australian*, Mr Chris Mitchell, who advised me personally that the AFP had not been the source of leaks to the *Australian* newspaper. Some of the disclosures, as discussed, did occur through Dr Haneef's legal team. Other disclosures were the subject, as I said, of our own AFP professional standards investigations. As a result of those investigations, matters were referred to the Queensland Crime and Misconduct Commission. The AFP is currently awaiting the outcome of the Queensland Crime and Misconduct Commission's investigations.

Senator NETTLE—Can you explain what was referred to the Queensland Crime and Misconduct Commission?

Commissioner Keelty—Our professional standards investigation into our own people revealed a number of matters being leaked to the media, not necessarily by police but also by

other Queensland government departments. That was referred to the Queensland Crime and Misconduct Commission for investigation.

Senator BRANDIS—Are you able to say which Queensland departments?

Commissioner Keelty—I will just to check whether I can say that publicly, Senator. I think, Madam Chair, and through you to Senator Brandis, given that it is an ongoing investigation by the Queensland Crime and Misconduct Commission, it is probably not appropriate for me to elaborate further on that.

Senator BRANDIS—I will not press you. Senator Nettle, can I, on this very point, just intervene for a moment?

Senator NETTLE—I just need to ask another question. The actual leak that I was most interested in whether there had been an investigation into was the one in relation to the Q1 residential building. Commissioner Keelty, you have given a general answer about leaks, but can you tell me whether there was any investigation into that particular leak?

Commissioner Keelty—Yes, I can. That forms part of the referral to the Queensland Crime and Misconduct Commission. I can also advise the committee that, when I saw that headline, I realised that it obviously was incorrect, so I took the unusual step of asking my deputy commissioner, national security, to get in touch with lawyers acting for Dr Haneef and explain to the lawyers—I think it was Mr Russo who was spoken to—that not only did we not leak that newspaper story but the story was factually incorrect. So it was to assure Mr Russo that his client was not being investigated as part of that newspaper report.

Senator NETTLE—Just going back to the matters that have been referred to Queensland Crime and Misconduct Commission: you are saying that is as a result of your own internal inquiries. You said that it may or may not be AFP officers; it may be other departments. I was not sure whether you were saying that it is not AFP and it is another department—or it may or may not be.

Commissioner Keelty—Sorry, Senator; I thought I made it clear earlier. There is nothing in the material that we have done through our own professional standards investigations—and also from the media sources themselves, including the editor of the *Australian* newspaper—that corroborates any suggestion that the AFP has been leaking in this matter. The matters referred to the Queensland Crime and Misconduct Commission refer to other people, some of whom were party to the investigation.

Senator NETTLE—Can you just describe how the AFP's interaction with the media over the Haneef matter occurred? Was it one media department within AFP? Can you explain how that process worked?

Commissioner Keelty—Really the interaction between the media and the AFP was through the AFP marketing and communications unit and involved, obviously, a number of responses, some of them with editors and some of them by virtue of media interviews that were done principally to correct the record where the record was wrong.

Senator NETTLE—Thank you. I am happy to go to Senator Brandis now.

Senator BRANDIS—Thank you very much. I will not ask you, in view of the advice you have just taken, Commissioner, to identify the individuals the subject of the Crime and

Misconduct Commission reference, but are you able to tell us, without naming any particular names of persons or entities, that the reference concerns certain nominated departments or agencies of the Queensland government?

Commissioner Keelty—That is right; hence the referral to the Queensland Crime and Misconduct Commission.

Senator BRANDIS—Quite. Does the reference also include nominated individuals?

Commissioner Keelty—Yes, it does.

Senator BRANDIS—And are some or all of those individuals employees of or contractors to the Queensland government or its agencies?

Commissioner Keelty—Yes.

Senator BRANDIS—How many departments and how many individuals are there in the reference?

Commissioner Keelty—Twenty-seven individuals and I think—I may stand corrected—three departments.

Senator BRANDIS—I want to come back to the leak by the barrister Stephen Keim. You told us that the Queensland Legal Services Commission, the professional standards body, found that there had been a technical breach of the rules of the Bar Association. Is the adjective ‘technical’ your adjective or theirs?

Commissioner Keelty—I do not think I have their correspondence in front of me. It is their terminology.

Senator BRANDIS—Interesting. I would have thought there was either a breach or there was not. And, in this case, plainly there was. Commissioner Keelty, when a record of interview by the AFP is provided to legal representatives of a person under investigation or an accused person, is it the practice of the AFP to require the legal representatives who are in receipt of the record of interview to sign or otherwise acknowledge in some manner that the document is provided to them confidentially and on a basis of trust?

Commissioner Keelty—No. Whilst the release to counsel of a copy of a transcript of interview is required by law, it has no conditions attached to it. It is provided under the provisions of the Crimes Act 1914 but it has no conditions attached to it.

Senator BRANDIS—So you do not say that Mr Keim breached any obligation owed to the AFP, but you merely point to the fact that he breached a rule of the Bar Association?

Commissioner Keelty—Yes. We were saying that he was an officer of the court.

Senator BRANDIS—Yes.

Commissioner Keelty—And, acting as an officer of the court, it was inappropriate for him to have released material that could—and still could, potentially—be matters to be considered by a court.

Senator BRANDIS—Could the conduct of Mr Keim in releasing this document to the journalist Hedley Thomas in breach of his professional obligations and his duty to the court potentially have prejudiced this or other contemporaneous investigations by the AFP?

Commissioner Keelty—In fairness to Mr Keim, that is, in a sense, hypothetical.

Senator BRANDIS—It is hypothetical, but I am asking it. I can ask hypothetical questions. You see, Commissioner Keelty, it strikes me that, as a matter of common sense, a record of interview with a terrorism suspect is not the sort of thing that the investigating agency—in this case, the AFP—would expect or want to find displayed on the front page of the daily newspaper. It seems to me, from an untutored point of view in the investigation of these matters, that the release to the general public of information derived from an interview with a terrorism suspect plainly could compromise that or other contemporaneous investigations. As a general proposition, would you agree with me?

Commissioner Keelty—Yes, I do.

Senator BRANDIS—Commissioner Keelty, has the AFP received from solicitors or legal advisers acting on behalf of Dr Haneef any formal demands for compensation?

Commissioner Keelty—No.

Senator BRANDIS—So when we read press reports of Dr Haneef being minded to seek compensation against the Australian government or the AFP or whatever is the relevant agency, so far as you know that is merely conjecture—this has not actually come to pass.

Commissioner Keelty—That is correct, and I hasten to add that, from an AFP perspective, all the dealings that the AFP had with Dr Haneef were subject to judicial oversight.

Senator BRANDIS—Of course.

Commissioner Keelty—And it would be difficult to imagine circumstances where such compensation could be sought in relation to the actions by the AFP.

Senator BRANDIS—Have you taken legal advice that tells you that?

Commissioner Keelty—Right throughout the course of this investigation we have continued with legal advice in relation to every step that we have taken. As I said, every step we have taken has had some form or another of judicial oversight.

Senator BRANDIS—Indeed. One last thing—off Haneef for the moment. Before the morning tea suspension—in fact this is in relation to the foreshadowed investigation into the Haneef inquiry—we were having a debate about dates and when this inquiry was first foreshadowed. It has been drawn to my attention that on 5 December—that is, two days after the new government was sworn—the Attorney-General in an interview with Fran Kelly on Radio National said:

I, again, have obviously been speaking to agencies within my portfolio area and I must say, as they've pointed out, you'd be naïve not to have internally reviewed what's occurred in respect to the Haneef case so I'm in the process of gathering together what those internal reviews have revealed or suggested, the extent to which practices have been modified and so forth.

The Attorney-General is there speaking about internal reviews—plural—without disclosing any operational matters. What number of internal reviews had been conducted concerning the Haneef investigation as at 5 December 2007?

Commissioner Keelty—In relation to the Haneef matter, there was the internal review of our own processes. But, in fairness to the Attorney, he was aware that I had commissioned a

review of a matter involving a person by the name of ul-Haque and there were similarities in the sense that both matters had been before courts in two different jurisdictions. The Attorney would have been well aware that there could have been some overlap in the review in the ul-Haque matter that could have, in some way or another, impacted on the Haneef matter. I do not want to speak for the Attorney, but he was aware of the fact that we were reviewing both.

Senator BRANDIS—Fran Kelly's program, as I think we know—this is not meant to be a free commercial for the ABC—goes to air at breakfast time, so are you telling me that you or officers of the AFP had briefed the Attorney-General in relation to these matters either on the afternoon or the evening of 3 December or some time on 4 December?

Commissioner Keelty—I would need to take it on notice. I am not—

Senator BRANDIS—Would you take that on notice, please. I would like to know the date and time when the Attorney-General was first briefed concerning the internal reviews of which he speaks on the Haneef matter. If it assists you, you can take my copy of the transcript, which was issued by the Attorney-General's office. I direct you to the highlighted portion on the third page.

Senator BARTLETT—I have more on the Haneef matter and the issue of inquiries that Senator Brandis just raised. Firstly, with the previous set of questions about leaks et cetera, you pointed to some referrals to the Queensland Crime and Misconduct Commission. In all of your leak investigations—and I am not sure when something is determined to be a leak because there was a fair bit of stuff flying around in the papers over a long period of time—you indicated that you were satisfied that no information at any stage to any paper, not just the *Australian*, came from the AFP into the public arena. Is that correct?

Commissioner Keelty—No, that is not correct. That is not what I said. I said that the professional standards investigations that we had undertaken had not found any corroboration for the assertion that the AFP had leaked material. Obviously, we had spoken to many media outlets and many individuals in the media. As I pointed out before, there were many occasions where we were forced to go out into the media to correct some wrong reports on this matter. An example of that was a front page headline in the *Australian* newspaper that described the record of interview undertaken by the AFP as being unprofessional and inappropriate. That media headline was picked up by the electronic media and repeated and it was repeated on many internet outlets throughout the country. It was 100 per cent wrong. The matter that Senator Nettle raised with me about Q1 was another front page newspaper report carried by all the electronic media that was absolutely wrong. It was a difficult media situation to manage. But, in terms of unauthorised disclosures, the professional standards investigation and our own reviews have not found any corroboration for any unauthorised disclosures having been made to the media by the AFP.

Senator BARTLETT—I gather from what you said earlier that you did find at least some evidence that suggested further investigation would be desirable in regard to Queensland agencies which you referred to the CMC.

Commissioner Keelty—That is correct.

Senator BARTLETT—Did you find any information suggesting unauthorised disclosures coming from any other sources, such as Australian government departments outside the AFP?

Commissioner Keelty—No.

Senator BARTLETT—So in relation, for example, to a story like the Q1 story, which was obviously very damaging and prejudicial to Dr Haneef, you would of course check whether or not it came from your own people—and I have no reason to doubt you in regard to your view on that and indeed cannot see any reason why it would have done, given that it is factually wrong—but do you have any idea where those things come from? Is that part of what you do as well?

Commissioner Keelty—Yes. But I point out that this is not an issue that only relates to Dr Haneef, although in that circumstance raised by Senator Nettle I did point out that I took the unusual step of asking the deputy commissioner, national security, to contact the lawyers acting for Dr Haneef and confirm with him that the matters being reported in the media were wrong.

Senator BARTLETT—I appreciate that.

Commissioner Keelty—It is not only Dr Haneef—and this is an important point to make; it is the people who live in Q1 or near Q1 or who have businesses there. A whole lot of people are affected by wrong headlines in newspapers. That is why reporting on terrorism matters has to be very carefully managed.

Senator BARTLETT—I appreciate all of that. In regard to that particular story, which was both quite damaging in that broader sense that you described and also in terms of its 100 per cent falseness—about as bad as it can get—were you able to get any idea as to where that would have come from?

Commissioner Keelty—If I did not make that clear, I apologise. That is part of the referral to the Queensland Crime and Misconduct Commission.

Senator BARTLETT—Thank you. With the Haneef case—and I appreciate that it is still ongoing—as I understand from what you said earlier, it is not really an investigation solely into Haneef. Rather, he is still part of this broader investigation into the London bombings. That is correct, isn't it?

Commissioner Keelty—That is correct.

Senator BARTLETT—You would be aware, I am sure, of calls from some of his lawyers and I think others seeking some sort of definitive statement from either the government or you basically clearing him as an ongoing suspect, using the parallel with the federal parliamentarians' investigation from last year. Firstly, is it standard practice to make a statement of clearance, a loose term, or a statement saying that ongoing investigations have concluded? Secondly, is something like that feasible in the foreseeable future given the context of an ongoing investigation into the London bombing, which I imagine is fairly complex?

Commissioner Keelty—I should explain why I cannot go into the detail of what is currently occurring in that matter, and it is that I am prevented by law. There is specific prohibition in legislation of me discussing matters which are within my knowledge at the moment. I think there is precedence for us to say that our inquiries have been complete in particular investigations. I cannot think of specific examples, but in general I do recall

occasions where I have put out media releases saying the AFP's interest in a particular matter has been completed. Regarding whether we would go as far as exonerating somebody, that is not really the AFP's role; it is a matter for a tribunal, should a matter get to a tribunal. Certainly we can go as far as saying that the AFP's investigations into a particular matter or a particular person are complete.

Senator BARTLETT—Obviously that has not happened in this case.

Commissioner Keelty—That is correct.

Senator BARNETT—Are you aware of or have you recommended any conditions or protocols in terms of the possible re-entry to Australia of Dr Haneef?

Commissioner Keelty—His re-entry to Australia, should that be pursued, would obviously be a matter for the Department of Immigration and Citizenship and their minister. We are maintaining contact with DIAC and we are still exchanging information with DIAC.

Senator BARNETT—Have you briefed the relevant minister with respect to the ongoing investigation into Dr Haneef?

Commissioner Keelty—Yes, we have.

Senator BARNETT—Can you comment on your ongoing investigation and the possible impact on his re-entry to Australia?

Commissioner Keelty—No, it is a matter for the minister.

Senator NETTLE—I have two more issues to raise in connection with Dr Haneef.

Commissioner Keelty—In relation to the last answer I gave, we have been briefing the department; Senator Barnett; we have not been directly briefing the minister.

Senator BARNETT—When you say 'briefing', are these regular, ongoing briefings regarding the investigation?

Commissioner Keelty—Yes, they have been.

Senator BARNETT—How regular?

Commissioner Keelty—In response to requests for information from the department. If I could take it on notice, I can advise you as to how many written briefs we have provided to the department in relation to the Haneef matter.

Senator BARNETT—When did they first commence?

Commissioner Keelty—In relation to Haneef, it has basically been ongoing since the initial investigation was commenced.

Senator BARNETT—When did the initial investigation commence?

Commissioner Keelty—I think—and I could stand corrected—on 2 July 2007. I will just check that. That is correct: 2 July 2007.

Senator BARNETT—That is the additional investigation that you say is continuing?

Commissioner Keelty—No, that is the original investigation and it is continuing today. And during that period of time there have been a number of briefings provided to DIAC in relation to Dr Haneef.

Senator BARNETT—Have there been recent briefings with DIAC and, if so, how recent?

Commissioner Keelty—There has been ongoing dialogue with the department, including written briefs, but I would have to take on notice as to when was the most recent brief.

Senator BARNETT—I hope you can understand why, as we have got a probable or possible re-entry into this country of Dr Haneef, it is relevant in terms of the conditions and protocols that may be applied to that re-entry—that is the line of questioning I was following. That is fine; thank you.

Senator NETTLE—I have two things I want to ask. One is about the police writing information in a diary. I note various comments and comments by you saying that that did not occur. Then there is the second transcript, where the sergeant says police wrote those names in the diary. Can you just explain those discrepancies?

Commissioner Keelty—Yes, I can and I am very happy to. I thank you for the opportunity to clarify the record without a spin being put on it by other people. Several media outlets reported that the AFP had written the names and phone numbers of several persons of interest in the United Kingdom investigation into Dr Haneef's diary and then put the diary to him during his record of interview. This is incorrect. The officers executing a search warrant on Dr Haneef's home located the diary and made separate handwritten notes of some of the entries. This is common practice so that you do not interfere with the forensic value of the actual document itself, and so you copy entries from that document onto another piece of paper.

The handwritten document containing the names and numbers was then provided to the interviewing officer in order for him to ask—as is appropriate—Dr Haneef questions about the contents. Dr Haneef was initially questioned about the handwriting on the note, which of course was not his; it was the investigator's. And, when Dr Haneef pointed that out during the interview, the interviewing officer subsequently clarified the situation during the interview and then questioned Dr Haneef in relation to the names and phone numbers referred to in the handwritten note. Dr Haneef subsequently admitted in the interview that the information came from the back of his diary.

Senator NETTLE—Thanks. The other matter I want to ask you about in relation to Haneef is an email from the Brisbane based counterterrorism coordinator David Craig. Is that an AFP officer, or a Queensland police officer working for the AFP?

Commissioner Keelty—No, it is an AFP officer.

Senator NETTLE—Written on 14 July, it talks about 'contingencies for containing Mr Haneef' and detaining him under the Migration Act if he is granted bail. Can you explain that email?

Commissioner Keelty—Yes, I can. That email is not unusual. It is not only appropriate; it is also common practice for us to be liaising—it does not matter whether it is with DIAC or some other government department who also has an interest in somebody in whom we have an interest—to arrange for different contingencies should certain matters arise. In Dr Haneef's case there was the potential for him to be kept in custody. There was a potential for him to be granted bail with certain conditions. There was also a potential for him to be released by the court and allowed to remain free in the community, at which time it would have triggered the

immigration policies that might have applied to Dr Haneef. This is not only in relation to Dr Haneef but in relation to anyone in this sort of circumstance. There has to be some coordination of effort. If a person who is a subject of interest of both departments is suddenly not put in custody and not released on bail with any conditions but allowed to remain at large, it is up to the department to then apply whatever policies it wants to apply to that person. There is a degree of coordination that has to occur because, should somebody who was otherwise subject to some other order be allowed to leave the country, then we would be criticised for not coordinating with the other agency about the release of the person. So that was a very normal interaction between the officer and the department. It happens on numerous occasions that more than one agency has an interest in an individual. There is nothing unusual about that at all.

Senator NETTLE—Does the Street review, which you have ordered, relate to any matters around Haneef or is it only in relation to matters around ul-Haque?

Commissioner Keelty—It is principally about the ul-Haque matter, but there could be matters raised in the final recommendations that could have an impact on ongoing counterterrorism investigations. We have an open mind about that. The Street review was commenced as a result of the decision in the ul-Haque matter. I thought it was appropriate, in consultation with other agencies, to review our arrangements, given the criticisms of Judge Adams in the matter of ul-Haque.

Senator NETTLE—Can you describe what the AFP involvement in ul-Haque was? Most of the reporting has been around ASIO rather than the AFP.

Commissioner Keelty—The AFP was the investigating agency in terms of the criminal charges that were preferred against Mr ul-Haque. This was part of a broader investigation into a person by the name of Lodhi, who has since been convicted. And that was part of a broader investigation of a person by the name of Briggite.

Senator NETTLE—Can you explain the terms of reference for the Street review?

Commissioner Keelty—The committee has been asked to specifically report on the current role and responsibilities of the AFP and other relevant national security agencies, including ASIO and state police, in conducting national security operations; the status and terms of the current relationship and interaction between relevant national security agencies, including observations about the effect that the current interaction has on the discharge of AFP functions in the conduct of national security operations; the existing practices, policies, legal frameworks and operational environment applicable to the AFP when conducting national security operations; any current or future impediments which may adversely impact upon the AFP effectively fulfilling its role in the conduct of national security operations, having particular regard to ASIO's operations; and, finally, the impact of current AFP procedures, and procedures of other relevant national security agencies, on the ability to sustain effective prosecution action in national security operations.

Senator NETTLE—The reports are that that will be completed by the end of February—is that correct?

Commissioner Keelty—That is correct. I have an interim report. I expect to have the final report by the end of this month.

Senator NETTLE—Will the results of the review be made public?

Commissioner Keelty—It will depend on how the committee makes its final report and what part of that impinges on national security. But, obviously, we want to be transparent about what we have done and why we have done it. And so, by and large, the report will be public.

Senator NETTLE—As I understand it, the review does not have the power to compel witnesses. Is that correct?

Commissioner Keelty—That is correct.

Senator NETTLE—Can you tell us about what level of cooperation you have had with the various different agencies? You mentioned a number of them.

Commissioner Keelty—The agencies include ASIO, the Attorney-General's Department, the Department of the Prime Minister and Cabinet, the Commonwealth Director of Public Prosecutions, the Inspector-General of Intelligence and Security, Victoria Police, the New South Wales police, the Queensland police and the New South Wales Crime Commission. I can advise you, Senator, that in my discussions with the chair of the committee, Sir Laurence Street, we have had absolute cooperation from every person who has come from those agencies to discuss the review. There are also some foreign agencies that have been consulted by the review, being the Metropolitan Police Service of the United Kingdom, the Federal Bureau of Investigations in the United States, the Royal Canadian Mounted Police and the New Zealand Police—all of whom, again, have cooperated fully with the terms of the review.

Senator NETTLE—I have one other question, which is about your speech to the Sydney Institute. Did you consult the government prior to giving that speech?

Commissioner Keelty—I did not consult the government. The speech was prepared and a copy of the speech was provided to both the Minister for Home Affairs's office and the Attorney-General's office prior to delivery.

Senator NETTLE—How long was it before delivery?

Commissioner Keelty—I think it was the day before delivery.

Senator BARNETT—What was their response, Commissioner Keelty?

Commissioner Keelty—I did not speak to them personally about the speech. I know that copies were provided to ensure that they knew what I was about to say. I did not have any direct feedback from those offices.

Senator BARNETT—So you did not receive a response from either of the ministers' offices?

Commissioner Keelty—I did not, personally, no.

Senator BARNETT—Did the Australian Federal Police receive feedback?

Commissioner Keelty—I would have to check that.

Senator BRANDIS—Did you take it, Commissioner Keelty, that, as the speech had been provided the day before it was to be delivered, the absence of any feedback constituted assent by the government to the remarks that you proposed to make?

Commissioner Keelty—Not necessarily. The approach was taken that it was the Australian Federal Police Commissioner's speech and that I would deliver it.

Senator BRANDIS—Presumably, by giving an advance copy—well in advance: more than 24 hours before the speech was to be delivered—you had it in mind that you were putting the government on notice of what you were about to say.

Commissioner Keelty—I had it in mind that I certainly did not want the government to be caught unawares by what I was saying. But I have had no interference whatsoever from the government in relation to the contents of that speech.

Senator BARNETT—In respect of security funding for schools, an announcement was made on 10 January by the Deputy Prime Minister of \$20 million in funding for security measures at culturally sensitive schools, particularly Jewish and Islamic schools. From the reports that I have seen, it refers to the Australian Federal Police and ASIO being involved. Could you advise the committee how that is progressing? Can you advise when you expect the schools to receive their assessments and what criteria have been developed in terms of the funding?

Commissioner Keelty—I am aware of the newspaper report—again, that comes with the heavy caveat that it is a newspaper report. I may stand corrected, but I do not think that we have had any discussions with government at all about the matters that were raised in that report.

Senator BARNETT—Would Mr Cornall wish to enlighten the committee?

Mr Cornall—The government has committed up to \$20 million over four years commencing this year. We are in the process of finalising guidelines for the program, which will be a grants program.

Senator BARNETT—When you say this year, do you mean this financial year?

Mr Cornall—Yes, 2007-08. We will be communicating those guidelines and details of how to access funding to the education sector in the near future. Applicants will be required to establish that they are facing a risk and have special security needs. There will be an objective security assessment of the schools who are seeking funding, and the government is currently looking at the best mechanisms for identifying risk levels at particular schools. Priority will be given to schools with an already established or identified security need. In other words, this is a grants program for which the department is presently setting up appropriate guidelines to enable us to call for applications and make recommendations for grants to ministers.

Senator BARNETT—But it is envisaged that the schools that will be applying will be Jewish or Islamic schools, or other schools with sensitive security needs?

Mr Cornall—It will be schools who are able to establish a special security need.

Senator BARNETT—Can you advise the committee of the criteria to meet those special security needs?

Mr Cornall—Mr Jordana was just saying to me that we are developing the guidelines at the present time to try to define the special security needs but they will not necessarily be confined to Jewish or Islamic schools.

Senator BARNETT—What determinations have you made to date with respect to the criteria to meet the special security needs?

Mr Jordana—This is still a process of development and discussion with the government about the guidelines; therefore it is difficult at this stage to give you any further clarity, because these have not been agreed with the government.

Senator BARNETT—But Mr Cornall did advise that it was to start this financial year. We are currently in February; that only leaves another four months. When might the applicants first apply and when might this program commence?

Mr Jordana—I will have to take that on notice. The officers responsible for that will come up later in the proceedings of the committee and perhaps there might be something further they can say. I do not have that information at hand.

Senator BARNETT—Is it correct that the Australian Federal Police will be involved in making assessments regarding security and/or ASIO?

Mr Jordana—I could take an educated guess at that but I do not think that would be appropriate. I would like to take the question on notice at least until we have the officers responsible here, later in the proceedings.

Mr Cornall—This is a departmental matter, and not all of our officers are here while we are going through the agencies. What Mr Jordana is suggesting is that we can take it up in more detail when the officers are all here.

Senator BARNETT—Which will be under general questions for Attorney-General's?

Mr Cornall—We can do it there or in outcome 2, whichever you like.

Senator BARNETT—Thank you; I will defer.

Senator KIRK—I have a question arising out of a matter that received a lot of publicity last year: the distribution of the fake flyer in the seat of Lindsay just a few days prior to the federal election. Are you familiar with the one that I am referring to?

Commissioner Keelty—I think it would be fair to say I recall the event, Senator.

Senator KIRK—The Labor Party made a complaint to the AEC, and I understand that the AEC then referred the matter on to the AFP. My question is whether or not the investigation has commenced into this matter.

Commissioner Keelty—I think I might have answered that in part when answering a previous question.

Deputy Commissioner Negus—The matter was referred to the AFP, but at the same time it was actually referred to the New South Wales police. Shortly after that period of time we became aware of that. A decision was made to allow the New South Wales police to have the primary carriage of the investigation, and they have continued to do so. The AFP then made itself available to provide any assistance that was required during that process. The offences at

the Commonwealth level related to the Electoral Act, of course, but the New South Wales police were investigating the matter under different parts of state legislation which were deemed to be more appropriate. The Electoral Commission was advised to that effect.

Senator KIRK—You said that the AFP indicated that it would be available to assist the New South Wales police if required. Has there been any request for assistance from the New South Wales police in relation to this matter?

Deputy Commissioner Negus—Certainly in the early stages the material that the AFP was in possession of was provided, but I am not sure—I will have to double-check—what recent assistance may have been asked for.

Senator KIRK—Perhaps you could take that on notice.

Deputy Commissioner Negus—Certainly.

Senator KIRK—Do you have any idea as to the length of time that the New South Wales police investigation will take?

Deputy Commissioner Negus—No. I stand to be corrected again, but we have had very little feedback recently from the New South Wales police about how this has progressed.

Senator KIRK—So is it your understanding that, once they have completed their investigation, they will then notify you of what they have found and the AFP will take over from that point and conduct its own investigation?

Deputy Commissioner Negus—I think the New South Wales police in its own right will decide whether any charges need to be proffered out of the matter. The AFP will certainly expect to be advised of that at that time.

Senator KIRK—If any charges are laid and then prosecutions go ahead, would the AFP wait until those matters have been resolved before commencing its own investigation or would you commence an investigation once the charges have been laid?

Deputy Commissioner Negus—What would happen is that the New South Wales police would take carriage of the complete investigation. There would not be a separate AFP investigation as such. The New South Wales police would look, in the context of the offences they are investigating, at whether it was most appropriate to lay state based charges or Commonwealth charges which we could then provide them assistance with—but they could actually lay those charges in their own right.

Senator KIRK—So they could lay the Commonwealth charges and then it would proceed through the state courts?

Deputy Commissioner Negus—That is right—with the assistance of the Commonwealth DPP.

Senator KIRK—Thank you. They are all the questions I have.

Senator BARTLETT—I think you have answered most of the questions I was going to ask. You have detailed all of the agencies that were participating in that inquiry. I heard you list through them all but I just wanted to check whether, as far as you are aware, the Commonwealth Ombudsman has also been involved in that at all.

Commissioner Keelty—I did not mention the Ombudsman, but the Ombudsman was consulted at the earlier discussion about the setting-up of the inquiry. He obviously has retained his right to do what he might want to do under his own legislation. Certainly he has been consulted and is aware of the inquiry.

Senator BARTLETT—You have read from what I presume is the terms of reference for the inquiry. It seems to have stemmed from the ul-Haque case, so it is predominantly around that, but it is not specifically and only about the running of that case; it can be about wider issues—is that right?

Commissioner Keelty—That is right. Those terms of reference are wide enough to cover the interoperability between AFP and other national security agencies for any counterterrorism investigation.

Senator BARTLETT—So do you expect it will potentially touch on some of the other cases that have been subject of debate, like that of Haneef, Habib or those sorts of ones?

Commissioner Keelty—It may well do, but it was not established to look at the Haneef matter in particular. But of course, because it is looking in general at the AFP's response to counterterrorism investigations, there may well be issues that arise out of its recommendations that are relevant.

Senator BARTLETT—I understand it is chaired by Sir Laurence Street. Could you just confirm who the other members of the committee are.

Commissioner Keelty—The other two members of the committee are Ken Moroney, the former Commissioner of the NSW Police Force and Mr Martin Brady, the former Director-General of the Defence Signals Directorate.

Senator BARTLETT—Was the decision to pick those people a matter for government?

Commissioner Keelty—No. It is an AFP inquiry, and the decision to select those people was my own.

Senator BARTLETT—Thank you. That is all I have.

CHAIR—I think that concludes—

Senator NETTLE—I have one more question, Madam Chair.

CHAIR—We are nearly finished.

Senator NETTLE—Yes. There were some comments by an ASIO officer in the Federal Court, in relation to the rendition of Mr Habib, in which he mentioned that what might happen to Mr Habib was discussed with government officials from the beginning of his detention in October 2001. I am wondering whether those government officials included any AFP officers.

Commissioner Keelty—I am not avoiding the question, but I am not sure, if the matter is currently before the court, whether I ought to make any comment in relation to it. It is still before the court, I think. I stand to be corrected, but I think it is an action brought by Mr Habib. My recollection is that the matter is not yet complete. Through you, Madam Chair, I decline to answer that question on that basis at this point. I do not think it is appropriate for me to respond to it, if the matter is still before the court. I am not sure if Senator Nettle is

aware, Madam Chair, but there is a Senate Privileges Committee hearing to occur in relation to Mr Habib. At this point, it might not be appropriate for me to answer.

Senator NETTLE—I am certainly aware of the Privileges Committee inquiry, because I moved the motion in the Senate that saw that happen. I have sought advice from the Clerk of the Senate and the information that I have been provided with is that these questions are about a different body of evidence. It is subsequent to the establishment of the Privileges Committee and it also does not go the merits of the Privileges Committee or whether there any additional matters of fact.

Commissioner Keelty—It may assist you if I refer to question No. 79. Notwithstanding that the matter is under current examination by the court, there is nothing in my response to that question from Senator Ludwig at the estimates hearing on 23 May 2007 that has changed.

Senator NETTLE—I do not have that in front of me. Is it possible for you to read that out?

Commissioner Keelty—The question was—obviously a very well-framed question, might I add!—‘Was the AFP provided with information from any intelligence authority, either inside or outside of Australia, about the alleged rendition of Mr Habib?’ The answer provided by the AFP—and as I have just stated, the answer has not changed—was that the AFP was present during a meeting in Pakistan on 22 October 2001, when US authorities discussed the possibility of deporting Mr Habib from Pakistan to Egypt on the basis that Egypt is his country of birth. The AFP representative at this meeting strongly expressed his view that Mr Habib is an Australian citizen and should be dealt with accordingly. The AFP was subsequently advised by the Australian head of mission in Pakistan on 19 November 2001 that he understood that Mr Habib had been transferred to his country of birth.

Senator NETTLE—Thank you.

CHAIR—That finishes questioning to the Australian Federal Police. Thank you for your attendance this morning. It has been a long session.

[12.05 pm]

Australian Security and Intelligence Organisation

CHAIR—We will now have questions to ASIO.

Senator TROOD—Mr O’Sullivan, welcome back to estimates. Could I begin by exploring with you the Office of National Security, which is listed under ASIO figures. This is a new office that has been created, as I understand it. Could you outline for us what its role is. How many officers are part of the office at the moment and what is its long-term mandate within ASIO?

Mr O’Sullivan—This is not an office that will be established within ASIO. If I understand correctly, it is an office that will be established in the Department of the Prime Minister and Cabinet.

Senator TROOD—It seems to be listed under your additional estimates and variations. Is that an error? Or are you making a contribution to its activities?

Mr O'Sullivan—That is correct. In the process of the additional estimates and variations, one of those variations is a contribution by a number of agencies to the funding of that office. The ASIO contribution is listed there.

Senator TROOD—It seemed a very modest contribution, so I was going to applaud your efficiency in the services you were providing. What particular contribution will you be making to the office?

Mr O'Sullivan—The contribution we will be making in 2007-08 will be \$49,000. That will rise to \$68,000 in 2008-09, to \$103,000 in 2009-10 and to \$105,000 in 2010-11.

Senator TROOD—Is that the contribution of an officer of ASIO or is it a contribution from your funding to the running and the equipping of the office?

Mr O'Sullivan—Funding.

Senator TROOD—So it is not proposed that there is an officer within ASIO that is specifically dedicated to or deployed to the office—is that right?

Mr O'Sullivan—I am not excluding that that could become possible, but it has not, as far as I am aware, been formulated in those terms at this stage.

Senator TROOD—So, as far as you understand, that is not the intention.

Mr Cornall—If I could just assist: in respect of the cost of this office, there was an allocation by the government of a certain amount of money to the department, and we spoke with both ASIO and the AFP and said that we felt that this was a contribution that should be shared between the three agencies, as we all had an interest in it. You will see a similar entry on page 28 in respect of the department and a similar entry on page 91 in respect of the Australian Federal Police that basically represent moneys being transferred from those three budgets across to, in effect, PM&C for this office.

Senator TROOD—So what is the total for A-G's?

Mr Cornall—The figures are pretty much the same. There must be some small rounding in them, but it is \$48,000 this year, \$68,000 next year, \$104,000 the next year and \$105,000 the next—multiplied by three.

Senator TROOD—I see that figure in relation to ASIO. What is the total A-G's portfolio figure?

Mr Cornall—That is what I am saying: the figures are the same as for the AFP. There is a slight difference in the rounding, but basically if you multiply by three that will give you the answer.

Senator TROOD—Mr O'Sullivan, these cuts—the two per cent efficiency dividend—which are on page 118 seem to be a figure of about \$1.3 million, as I understand it. That is for the current financial year. You have, no doubt, turned your mind to how you are going to make these efficiencies. Perhaps you could let the committee know how your mind is running on that subject.

Mr O'Sullivan—The figure, as you say correctly, for the two per cent amortised over the period 2007-08 comes out to, in our case, 0.46 per cent, which equates, as you say, to \$1.341 million. That is a figure that will come out of our budget and we will distribute the incurred

costs of that \$1.34 million across the various programs in the agency. But one of the things I have to consider, as you imply, is trying to ensure that that efficiency does not affect operational activity. That is what I am currently considering.

Senator TROOD—Have you made any decisions about that as yet?

Mr O'Sullivan—It may be possible for us to absorb this amount through delays in some of our programs. For instance, recruiting activities can be slowed slightly—people who would have come on to the payroll in May can come on in June. There are various actions like that where the delay processes may achieve some savings in salary dollars. It will depend exactly on which suppliers of which equipment are providing materials to us for capital expenditure. So there are a series of options. It depends a little bit on processes of recruitment and on labour market supply issues.

Senator TROOD—The \$1.3 million is for the current financial year, which in one sense is modest compared to the expectations of later years, but they are cuts that are going to have to be delivered by the end of the financial year. Are you suggesting—or shall I take it from your evidence—that you are focusing largely on equipment rather than personnel as a means of meeting this requirement?

Mr O'Sullivan—I hesitate to say that is exactly the case yet, senator, because I need to look in more detail about precisely what would be the effects of either one. It depends on the particular options that emerge from a review we have going on internally about how to absorb this money.

Senator TROOD—You have had very substantial increases in your budget over the last few years, and I think that reflects the difficulties of the national security environment. Is it possible that perhaps some of these fundings could be found from not implementing some of the programs that you had in relation to those increases? In other words, that there might be a forestalling of some of the plans that you had in place.

Mr O'Sullivan—That could be true or it could become true, but then we have to consider what the operational impact of such delays might be. That is why I am saying to you that we are looking at the moment to see how to minimise the impact on operations and, at the same time, achieve the savings.

Senator TROOD—Do I take it that it is unlikely that you will be slicing particular sections from the agency's activities? In other words, your preference would be to thin out its competency in particular areas rather than remove an area of activity altogether.

Mr O'Sullivan—Yes, that is broadly correct, except that it is not so much a process of thinning out, as you say, but it is a question of the rate of thickening up that might be slowed down.

Senator TROOD—I see. Are there any areas where the thickening up might be more naturally a focus of your activities?

Mr O'Sullivan—I prefer not to go into public debate about which areas we might or might not delay some decisions in. It gets too close to operational activities.

Senator TROOD—I understand that imperative. As I say, \$1.3 million is a modest figure but by the time we get up to 2010-11 we are looking at a figure of \$8.3 million in terms of

cuts, which is a far more serious slice into the agency's funding. I imagine you are focused on the immediate, but can you see how this \$8.3 million might impact on the agency in the future and indeed the \$7 million and the \$8 million on the years in-between?

Mr O'Sullivan—That is correct that the figure rises to 7.099 in 2008-09, to 8.228 in 2009-10 and to 8.358 in 2010-11. But, of course, that is in the context of forward estimates where the total budget is also rising. What that means is we will simply have to do forward planning that lives on the budget that is going to be delivered in those out years, and that will require us to prioritise and make some management decisions. I cannot therefore say precisely what those figures of seven, eight and eight in the three out years will mean in any particular sense.

Senator TROOD—I imagine that the kinds of cuts that you might now be looking at would be cuts that might lay the foundation for future efficiencies—is that true? I am trying to get a sense of the strategy here, of whether or not you might perhaps identify a particular part of the agency in 2007-08 for efficiencies and then move to other parts—or are you seeking to do otherwise?

Mr O'Sullivan—To answer that question I need to go back in history a little bit. What happened in 2005 was that the government commissioned the former head of ASIS, Mr Allan Taylor, to conduct a review of ASIO to see whether it was able to deliver the things that the government wanted. Out of his review came a program and funding implications which are reflected in those forward estimates. What I have to do now in view of these reductions is look at the total amounts that will be there in the out years and see what parts of those programs will be delivered in what sequence. That is the broad task.

Over the year and a half since Mr Taylor's report there has been an emphasis, broadly speaking, on what we call 'enabling' functions. You cannot bring new people in and train new people and deliver new capabilities if you do not have someone to pay them salaries, to provide them with accommodation, to do other things that are called —broadly—enabling. What I hope we will be able to do is reduce the enabling side of the build-up, as it were, as we go through these out years and leave intact the operational dimensions to the organisation. In fact, if anything, I would like to shift an emphasis toward some of those operational activities. So it will be a question of prioritising, as I say, but the broad objective will be to move away from enabling functions to operational functions.

Senator TROOD—In relation to the increases that you have had, has all the recruitment taken place that you intended under those increases in funding?

Mr O'Sullivan—No. The report adopted by the government in 2005 provided for ASIO to grow to 1,863 staff by 2010-11. We are on track to meet that, but at the moment I think we are at about 1,450.

Senator TROOD—Where did you hope to be by 30 June?

Mr O'Sullivan—We hope to be at about 1,530 and I believe we will be.

Senator TROOD—Do I take it that there is a possibility that you might be scaling back some of those recruitment plans?

Mr O'Sullivan—I do not exclude that possibility because, as I say, some of those enabling functions particularly may be able to be delayed. But I have not reached any decisions about that yet.

Senator TROOD—Are you likely to reach decisions in relation to that matter with regard to the current year's funding efficiencies?

Mr O'Sullivan—The current year's efficiency of 1.3 may be able to be absorbed, as I was saying before, by simply delaying some activity already underway.

Senator TROOD—But you do not rule out the possibility that, in meeting the other expectations in later years, some of this recruiting activity might have to be scaled back?

Mr O'Sullivan—That could become true.

Senator TROOD—I think that is all I have for the moment.

Senator BARNETT—Just to follow up on that, have you negotiated with the Department of Finance and Deregulation with respect to the level of the efficiency gain for this financial year?

Mr O'Sullivan—The discussions with the department of finance, if I understand correctly, Senator, were based a broad decision to have a two per cent efficiency dividend applied across the outlays, so it was not a particular ASIO—

Senator BARNETT—But it would appear that there have been some negotiations regarding this financial year, which was my question.

Mr O'Sullivan—We accepted the requirement to apply the two per cent pro rata, which is, as I say, 0.46 per cent across this financial year.

Senator BARNETT—Did you negotiate or attempt to put a view that, because the defence department had been quarantined from any efficiency dividend, then, because you are involved in a very similar type of service—in terms of ASIO's purpose and agenda—you likewise should be quarantined from such an efficiency dividend?

Mr O'Sullivan—That is an argument that did occur to me, but it is not an argument that I have yet put to the government.

Senator BARNETT—On the matter of security funding for schools, have you received any instructions from the Attorney-General's Department, the minister's office or anywhere else with respect to the \$20 million funding initiative to provide security for sensitive schools like Jewish and Muslim schools?

Mr O'Sullivan—I think Mr Jordana helped the committee earlier on by explaining that this was a policy in the process of development and that guidelines were now being set up. What I can say is that, should the government seek ASIO's assistance to implement that plan, we would be able to provide advice on potential threats. We could also provide advice on protective measures that schools might wish to adopt or propose to the government for funding under those guidelines. We would not ourselves supply that physical protection or physical security, but we could provide advice that would allow schools to go and seek such assistance.

Senator BARNETT—Sure, and we will be following that up with the department, but to date you have not received any instructions or advice from the department with regard to that announcement?

Mr O’Sullivan—I am not so sure it is correct to say that we have not received any advice or announcements, because I do not think they are quite at that point, but we are happy to assist them in the development of those guidelines. I should have said that the NTAC, the National Threat Assessment Centre, is active and keeps its eye on those issues so that if we saw any threats to schools, even before this particular program was initiated, we would act on that advice.

Senator BARNETT—I am certain that you would be willing to assist and act on any advice that you might receive. My question is: have you to date received advice or instructions from the department or the minister’s office?

Mr O’Sullivan—The answer is no, I think.

Senator NETTLE—I will start by asking questions relating to the ul-Haque matter and whether any action has been taken in relation to the two officers that the judge described as engaging in grossly improper conduct, false imprisonment and kidnapping in common law.

Mr O’Sullivan—The Inspector-General of Intelligence and Security has initiated an inquiry into that matter and I have received legal advice that it would be inappropriate for me to take any actions in respect of the officers before the Inspector-General’s advice and report is received.

Senator NETTLE—I note you made some comments at the time that the officers had not had an opportunity to rebut the charges. Did they give evidence to the court?

Mr O’Sullivan—I believe so, yes.

Senator NETTLE—And was that not an opportunity for them to rebut the charges made against them?

Mr O’Sullivan—The issue before the court at that stage, as I understand it—and Secretary Cornall can perhaps correct me if I make an error in law—was the voir dire hearing where the judge was to determine whether AFP records of interview were admissible as evidence, and he determined that they were not.

Senator NETTLE—I have seen a media report indicating that the officers gave evidence to Justice Adams, and Justice Adams found their testimony unconvincing and at times untruthful. Does that fit with your understanding of the situation?

Mr O’Sullivan—As I said, I understood that the question he was required to determine was whether the transcripts of interview were admissible as evidence. He determined that they were not. He then made other comments, but that was the question for determination before him.

Senator NETTLE—I have a media report in front of me. I am asking you whether that media report is correct—that Justice Adams found the testimony of the ASIO officers unconvincing and at times untruthful.

Mr O'Sullivan—I think that that is an accurate quote from his finding. In other words, the newspaper report accurately quotes him, if that is what you mean.

Senator NETTLE—I accept what you said about any disciplining of the officers—that you were waiting for the IGIS report. Were they operating within ASIO guidelines?

Mr O'Sullivan—That is what the IGIS is going to comment on, I assume.

Senator NETTLE—Do you know whether any apology has been offered to Mr ul-Haque?

Mr O'Sullivan—I do not know—from ASIO, do you mean?

Senator NETTLE—Yes.

Mr O'Sullivan—Well, the answer is no.

Senator NETTLE—Minister, do you know if any apology has been offered by the government to Mr ul-Haque?

Senator Ludwig—I am not aware of that. I can find out and get back to you.

Senator NETTLE—And if you could take on notice not only the apology but whether any compensation had been offered to Mr ul-Haque as well.

Senator Ludwig—We can do that.

Senator NETTLE—Do you know, Mr O'Sullivan, whether any compensation has been offered by ASIO in relation to Mr ul-Haque?

Mr O'Sullivan—I know that there has been no such offer.

Senator NETTLE—Next I want to go to the matter of the ASIO officer appearing in the Federal Court case with Mr Habib in relation to his rendition to Egypt. First, can you confirm whether the individual using the pseudonym Paul Stokes is an ASIO officer?

Mr O'Sullivan—I have to take that question on notice because there is a considerable amount of redacted evidence before that particular hearing.

Senator NETTLE—What type of evidence?

Mr O'Sullivan—Evidence about the identity and representativeness of witnesses has been protected by the courts, if I understand correctly.

Senator NETTLE—Can you confirm that that ASIO officer appeared before that hearing, without being more specific?

Mr O'Sullivan—I would like to take advice on what material has been protected by the courts.

Senator NETTLE—I note that the reporting of that case indicates that an ASIO officer indicated that there had been discussions with government officials about the possible rendition of Mr Habib from the beginning of his detention in October 2001. I wondered if you had anything to add to evidence that you have given to this committee in relation to that matter, because that is different to the discussions that we have had in this committee previously.

Mr O'Sullivan—First of all, the answer is no, because the evidence which my predecessor gave to the committee in February 2005, I think, stands out there in respect of that issue of

rendition. In respect of the evidence that was presented before one of the three court hearings which I am engaged in with Mr Habib at the moment, my understanding is that a witness called Paul Stokes said that rendition was discussed in the sense that it could conceivably happen. But that does not change the evidence that I gave previously to this committee.

Senator NETTLE—Could you outline for the committee the discussion in relation to the possibility of rendition occurring and give us some context for that.

Mr O'Sullivan—No, I cannot. I do not have the transcript of the evidence provided.

Senator NETTLE—Can I ask you to take that on notice.

Mr O'Sullivan—Yes.

Senator NETTLE—Presumably the answer to this is yes, but did ASIO know about the US rendition program in October 2001?

Mr O'Sullivan—I assume that the answer to that question is yes, because my predecessor gave testimony here in 2005 about discussions that he had had in 2001.

Senator NETTLE—In the annual report, there are figures for adverse security assessments provided in relation to visa assessments, but in relation to adverse security assessments for Australians wanting to travel it just says 'a small number' of them were made. Can you tell us how many of those there were?

Mr O'Sullivan—Yes. I think the answer is that in 2005-06 a total of 13 adverse security assessments were issued out of a total of 53,147 such assessments. In 2006-07 a total of seven adverse security assessments have been issued out of 53,387 issued. Between 1 July 2007 and 31 January 2008, which are the latest figures that we have, a total of two adverse security assessments have been issued out of 35,819 so far issued.

Senator NETTLE—So that is for visa security assessments for people coming into the country.

Mr O'Sullivan—That is correct.

Senator NETTLE—In the annual report it goes on in the second paragraph to talk about Australians wanting to travel and adverse security assessments. I am interested in the figures for that.

Mr O'Sullivan—I am not sure that they are different. Can I take that question on notice and clarify it for you?

Senator NETTLE—Okay. Thanks.

Senator BARTLETT—On the same issue of security assessments and the number of 50-odd thousand last year—it has been fairly steady for a year or two in terms of those immigration security assessments—are there any performance criteria in terms of the length of time that those assessments take?

Mr O'Sullivan—The answer is that there is an agreed time frame. My advice is that in the last year for which we have details, which is 2006-07, approximately 74 per cent of cases referred to ASIO for security assessment were finalised within DIAC- and ASIO-agreed time frames. However, delays do occur—if this is the burden of your question. What we are trying

to do is work closely with DIAC to improve electronic connectivity so that the transmission of data allows more swift handling and to move away from paper based handling of material. There is a project in our IT area known as the security referral service. We are using that area to try and improve our performance in terms of the turnaround times. But sometimes, I have to say quite frankly, the complexity comes not out of the handling but out of the actual issues.

Senator BARTLETT—Perhaps you could point it out to me if it is in the annual report somewhere. Are you able to provide a copy of the agreed performance standard between yourself and DIAC?

Mr O'Sullivan—I do not think we provide that, and I would be surprised if we would, because it probably goes to the issue of how we handle material. It would allow somebody who was aware of those standards to then compare and make inferences about who was a person of security concern, so I do not think we would publish those.

Senator BARTLETT—I am more interested in just the speed with which they are done really—I appreciate that sometimes that is outside your control—and trying to monitor how that is progressing over time. Certainly, if it is a matter of when someone can get into the country or not—

Mr O'Sullivan—Actually, I am sympathetic to that argument. One of the arguments for the improved connectivity between ASIO and DIAC is that it is not just to handle these sorts of referrals more efficiently; it is also to allow ordinary travellers to get an answer very quickly. I would be happy to see if I can provide some more information about it for you.

Senator BARTLETT—I note in the data in the annual report the number of visa security checking assessments has been pretty stable for about three years, but there were fairly big increases in the temporary visas as opposed to permanent visas, which is perhaps not surprising given the shift in our migration intake. I am wondering if it is possible, on notice, to indicate how many of those related to protection visa applicants.

Mr O'Sullivan—I would like to take that on notice. If I can, I will answer it.

Senator BARTLETT—Thank you.

CHAIR—That finishes our questioning to ASIO. Thank you.

Proceedings suspended from 12.35 pm to 1.35 pm

CHAIR—We will now have questions to the Australian Customs Service.

Senator Ludwig—Before we commence, I have an answer to an earlier question, in relation to the ul-Haque matter. I will read it into the record:

The government has no plans to make an apology or offer compensation. Given the inquiry is currently being conducted by the Inspector-General of Intelligence and Security and agencies, it would not be appropriate to comment further on this matter.

I gave an undertaking to provide an answer from the Attorney-General in respect of that question earlier today.

Mr Cornall—Madam Chair, could I make a further statement?

CHAIR—Go ahead.

Mr Cornall—I have been asked by the Attorney-General's office to make this statement to the committee in relation to the question of the AFP commissioner's speech to the Sydney Institute:

A copy of the Commissioner's speech was provided to the offices of the Attorney-General and the Minister for Home Affairs by the Law Enforcement Liaison Officer on the afternoon of the day it was due to be delivered.

The office of the Attorney-General indicated to the Law Enforcement Liaison Officer that it was the Commissioner's speech and they did not propose to comment, but if asked, they would state that they were the Commissioner's views and, on the question of media blackouts, the Government would be sticking to its policy on open government.

[1.36 pm]

Australian Customs Service

CHAIR—We now move on to the Australian Customs Service.

Senator ABETZ—I have a number of questions for Customs, in particular in relation to its oceanic operations. Customs undoubtedly has vessels that are under its direct control. Is that correct?

Mr Carmody—Yes, we do.

Senator ABETZ—Who determines the operational movements of those vessels?

Rear Adm. Goldrick—The operational movements of those vessels are determined according to the assessed requirements for patrol and surveillance and are coordinated by a planning process which takes place between the Customs officers involved and the defence officers involved, working out of NORCOM in Darwin. So there is a synchronisation process for that. In addition, where it is an independent operation, such as for the *Oceanic Viking*, planning is conducted within Customs with Border Protection Command to actually plan out how the operation will run.

Senator ABETZ—It is interesting you should mention the *Oceanic Viking*, because we might go there later. First of all: the operational matters are not publicly disclosed as to when a ship is going to leave port or where its potential patrol or destination is going to be?

Rear Adm. Goldrick—In general not. It is not our policy to comment on operational matters.

Senator ABETZ—But there would not be a difficulty, if a ship is tied up at a wharf for everybody to see, in confirming that that ship is in fact tied up at wharf?

Rear Adm. Goldrick—If that question were formally asked, no.

Senator ABETZ—So you have got no explanation as to why the Deputy Prime Minister said it was an operational matter and that she could not comment on the whereabouts of the *Oceanic Viking*, although the ship had been tied up for 15 days at Fremantle port? And of course there was TV footage of her there, so the excuse that it was an operational matter clearly does not wash.

Mr Carmody—I suspect that any advice we would have given would have been standard, and that standard advice would be not to comment on such matters.

Senator ABETZ—So, if she was asked why the ship was still sitting in Fremantle port 15 days after the announcement, she was unable to comment on that, although everybody could see the ship?

Mr Carmody—As I said, I suspect our advice would have been standard advice which we apply across the board.

Senator ABETZ—So the Australian people are not entitled to know the reason a ship has been tied up at a wharf for day upon day. It has been broadcast on television and printed in newspapers. Your advice to ministers is that they cannot comment on that which thousands of Australians know about?

Rear Adm. Goldrick—Yes, I understand that the advice is that we do not comment on operational matters. There is much more to operational matters than simply whether the ship is alongside at the moment the question is asked.

Senator ABETZ—I think it was a bit embarrassing, wasn't it, really, for the Deputy Prime Minister to try to hide behind that, but let us move on. What was the *Oceanic Viking* obtained for? What was the purpose for which it was obtained? We do not need a long dissertation on this: it was for patrolling for illegal fishing and for border patrol.

Ms Grant—The *Oceanic Viking* was acquired as part of our package to operate against illegal foreign fishing in the Southern Ocean area.

Senator ABETZ—I thought that might be the answer. How long has the *Oceanic Viking* now been off that task as a result of its whale watching endeavours?

Rear Adm. Goldrick—The *Oceanic Viking* sailed on 8 January to conduct the surveillance mission on whaling operations. That mission is completed. The *Oceanic Viking* is now within the exclusive economic zone at Heard Island conducting tasking. Of course, while she is there she is conducting a presence and surveillance mission.

Senator ABETZ—What was the cost of removing the gun from her bow?

Ms Grant—There was no cost involved in removing the gun. The gun is mounted on an as-needs basis. On this particular mission we did not need to mount the weapon.

Senator ABETZ—While she is on patrol she has the gun mounted?

Ms Grant—No, the gun is not mounted as a matter of course while we are on patrol. The weapon is deployed if that situation arises.

Senator ABETZ—Wasn't there a great fanfare that the gun was being deliberately removed for the purpose of this whale watching exercise? Are you saying that is not correct?

Ms Grant—I am saying that we did not need to have the weapon mounted for this operation to monitor the whaling.

Senator ABETZ—One would hope not. It would have been quite offensive, I would have thought. But, that aside, normally if you are in the Southern Ocean patrolling for illegal fishermen do you say, 'Oh, we have spotted a boat; let's mount the gun?'

Ms Grant—We have quite strict rules of engagement. Without going into those matters here, it does not work that way. There must be an escalation before you engage the weapon.

Senator ABETZ—I am not talking about engaging the weapon. That is a very clever answer to try to get me to sidestep. Is the gun mounted whilst on patrol when searching for illegal fishing vessels in the Southern Ocean?

Ms Grant—While the vessel is in its surveillance mode the gun is not mounted. The gun is part of our escalation procedures.

Rear Adm. Goldrick—I should add that the gun can be installed very quickly. It is not good for a weapon like that to be exposed, even under covers, to all conditions of weather, particularly in those circumstances.

Senator ABETZ—I would have thought that the Royal Australian Navy has many of those sorts of weapons permanently mounted on its—

Rear Adm. Goldrick—No, Senator. Although the mount is permanent we do not necessarily carry the guns installed on the upper deck at all times.

Senator ABETZ—Not necessarily, but most of the time?

Rear Adm. Goldrick—It would depend on the operational situation and the weather.

Senator ABETZ—Most of the time.

CHAIR—Senator Abetz, I think that the Rear Admiral is assisting you in his answers, so perhaps let him finish.

Senator ABETZ—I have the right to delve a bit further. I would suggest that most of our Navy ships have their guns and weapons mounted the majority of the time.

Rear Adm. Goldrick—I do not think that, for 50-calibre machine guns, that would necessarily be the case.

Senator ABETZ—How many of our Navy boats have 50-calibre machine guns?

Rear Adm. Goldrick—A majority.

Senator ABETZ—And you are saying that they are not mounted on a permanent basis?

Rear Adm. Goldrick—The mounting is permanent. The actual gun can very quickly be brought up by a couple of sailors and installed on the mounting within minutes.

Senator ABETZ—I understand that. The fact that the gun was below deck was, therefore, nothing out of the ordinary when it embarked on its whale watching exercise?

Rear Adm. Goldrick—I think the intent was to indicate that the guns would be permanently stowed within the secure stowage in the ship for the duration of that mission.

Senator ABETZ—For how long was the *Oceanic Viking* off patrol—and when I say ‘off patrol’, I mean off patrol for the purpose for which it was actually obtained? She was tied up for what—three or four weeks at Fremantle? She then went on the whale watch expedition, then came back. How many weeks are we talking about?

Mr Carmody—The *Oceanic Viking* was going to be docked at Fremantle anyway. It was between patrols. So there was nothing extraordinary in that. In response to your question, I will get the specific details, but if we could answer it in terms of the time on the whaling

exercise that meant it was not in the Heard and Macquarie islands exclusive economic zone—though I think you have given the dates on that, Rear Admiral.

Rear Adm. Goldrick—I have given you the dates for departure, Senator. I might also add that the normal patrols of the *Oceanic Viking* are also outside the exclusive economic zone on areas such as the Banzare Bank in order to support the monitoring of illegal and unregulated fishing. In fact, my understanding is the *Oceanic Viking* actually detected and reported at least one unregulated fishing vessel. Because the area of operations for part of the time was appropriate to what we call the CCAMLR patrol. So it is actually quite difficult to disentangle precisely, without studying very closely, where one would say that it was not able to contribute to that surveillance task.

Senator ABETZ—It was unable to undertake that surveillance task whilst tied up at Fremantle and whilst on the whale exercise.

Mr Carmody—As I explained, the fact that it was at Fremantle was a standard part of its operations. It is not in the ocean all the time.

Senator ABETZ—We know that, but—

Mr Carmody—And there was nothing extraordinary in the fact that it was at Fremantle at that time. It was always scheduled to be there.

Senator ABETZ—The federal government told us that the *Oceanic Viking* would be leaving port within a few days for this whale exercise and was then still tied up 15 days later. Indeed, I think it was nearly three weeks that it was tied up there. Are you saying that that total period of time was normal?

Mr Carmody—I understand that it was due to go on patrol on 8 January—it was always scheduled to go on patrol on 8 January. Ultimately, the decision was taken to leave that as its departure date for the particular mission you are speaking about.

Senator ABETZ—Who made that decision that she would leave on 8 January to go on this whale watch exercise?

Mr Carmody—That was the date on which it was scheduled to go on patrol anyway. I do not know the exact mechanics, but there would have been discussions between the Australian Customs Service and ministers as to the appropriate timing of departure.

Senator ABETZ—That is the point, isn't it—that the *Oceanic Viking* in the past has undertaken its exercises on the basis of expertise and intelligence and not by ministerial interference.

Mr Carmody—I would not describe it as interference. Customs and Border Protection Command were charged with a particular mission, which you are well aware of. That is a perfectly legitimate decision for government to take. We then would have advised government as to the practicalities and timing of leaving. And that is what happened.

Senator ABETZ—Customs did not advise the government that a whale watch exercise would be undertaken. We have been told that Customs had already arranged for the *Oceanic Viking* to undertake normal patrols as of 8 January. Did it then not undertake those normal patrols because of the ministerial interference?

Mr Carmody—I am just having trouble with the term ‘ministerial interference’, Senator. You would be aware that two years ago there were decisions by government to expand our operations in the northern waters in relation to illegal foreign fishing. I did not describe that as ministerial interference and I would not describe this as ministerial interference.

Senator ABETZ—Very clever, Mr Carmody. Did a minister ever tell you where a particular vessel ought to be headed, to which island or which part of the northern seas it should go? That was always done on the basis of intelligence available at the time and without ministerial interference. Yet now we have the *Oceanic Viking* destined for patrolling in the southern oceans and she was diverted from that exercise.

Mr Carmody—I was not trying to be smart or tricky, Senator. In relation to the northern waters, government decided that there was a need for increased enforcement. That was a policy decision. And, yes, when it came to the specifics of where a boat should be at a particular time that was an operational matter. The same thing occurred here—the government decided that there was a need to address the whaling issue and then the details of where the ship sailed to and its specific location at a particular time was determined through Border Protection Command in Customs.

Senator ABETZ—So what border protection imperatives were at stake for the whale watch? Did they think the Japanese boats were going to come into Australian waters? Did they think some illegal immigrants were going to come along? Did they think there was poaching of Australian interests? What was the imperative for the border protection issue?

Mr Carmody—I used Border Protection Command because they have expertise in coordinating such missions as does Customs in operating such missions. That was the only purpose of that. There was government policy to undertake this mission and we gave effect to that policy.

Senator ABETZ—You have not been able to assist us anywhere else with border protection patrols where a minister or a government has directed a particular vessel to go. That has not happened before, has it?

Mr Carmody—I am not trying to be tricky the way you may think. I am just explaining that there are government policies about illegal fishing, whaling and so on, and we have the capability to respond to those government policy requests.

Senator ABETZ—Of course you do.

Mr Carmody—That is part of our role, as I would have thought, Senator.

Senator ABETZ—I think that is obvious to everybody sitting around here.

Mr Carmody—That is what we did on this occasion.

Senator ABETZ—How much did it cost in fuel, staff and victualling?

Mr Carmody—First of all there was going to be a mission into the Southern Ocean at that time, as I have already explained. There were some additional costs—

Senator ABETZ—Which was pulled because I assume there was no imperative and there was no longer a problem in the southern oceans.

Mr Carmody—No, we are not always in the Southern Ocean, as you would understand and know, Senator. We have no evidence to suggest that there was any detrimental consequence of this one mission not going there.

Senator ABETZ—Well then, why were you planning for it? Surely, if there was not going to be any detrimental consequence, how could you have gone about planning it in the first place if it was going to be of no earthly use?

Mr Carmody—Senator, what I was trying to explain was that over a period of time we conduct a number of patrols there. What I am saying is that we are able to see that, as a consequence of this mission not occurring in the way it was intended to out of a number of missions, there is no evidence of any detrimental consequence of that.

Senator ABETZ—Not even broadcasting to the world that that ship, which had been specifically obtained to patrol our southern oceans, was going to be taken off for a whale watch exercise?

Mr Carmody—As I have explained to you, we have no evidence of any detrimental impact of this mission. That is just factual, I am explaining to you. On the question of costs—

Senator ABETZ—So how many patrols do you think that we need if we can pull them at the request of the government? Keep this in mind: all the advice and evidence is that we should have had the patrol. You were gearing up for the patrol on 8 January. Then it was pulled.

Mr Carmody—It was one of a regular number of patrols.

Senator ABETZ—That is right.

Mr Carmody—I was trying to respond to the fact that this one-off mission has had no detrimental impact. That does not alter the overall requirement to maintain patrols down there.

Senator ABETZ—What ship did we have down there to confirm to us that there was no detrimental impact? I suppose what you are saying is what we do not know will not hurt us.

Mr Carmody—No. But I am not sure that I can talk about this unless—

Rear Adm. Goldrick—If I might comment, we maintain surveillance of the Heard Island and Macquarie Island exclusive economic zones by other mechanisms, including commercial satellite imagery. During that period, there were no detections that gave us concern that there might have been illegal activity taking place within the EEZs.

Senator ABETZ—And if there was, we would have had our ship watching whales.

Mr Carmody—I expect an operational decision would have been made on that occasion in the face of that evidence, but it never arose, so—

Senator ABETZ—You suspect. We have obligations to the French and the South Africans to patrol those southern waters and cooperate and support each other.

Mr Carmody—We do with the French.

Senator ABETZ—And we are nearly there with the South Africans—

Mr Carmody—That is true.

Senator ABETZ—with Prince Edward Island. Did we tell the French and the South Africans that we were going to pull the *Oceanic Viking* for a whale-watching exercise?

Rear Adm. Goldrick—We certainly keep the French informed of our intentions for the operation of the *Oceanic Viking*. Yes.

Senator ABETZ—Will they be requiring us to pull our weight a bit more in the future? If it is an equal partnership, I would imagine that you cannot pull out at whim from undertaking your normal scheduled patrols.

Mr Carmody—I do not think that there has been any detriment to the relationship and I do not see any tic-tacking or quid pro quoing or anything else. This is a healthy relationship that respects the operational requirements of each country.

Senator ABETZ—So if the French were to pull out sometime because they wanted to do something else that would be fine by us, would it?

Mr Carmody—If the French decided on their particular policy grounds that they needed to do something then we would respect that.

Senator ABETZ—Were there any AFMA officers on board this vessel while she was whale watching?

Mr Hurrell—On this occasion there were no AFMA officers on board the *Oceanic Viking*. Nor were there any French officials, which there would normally be.

Senator ABETZ—Having departed her whale-watching exercise, did she go straight into the southern waters on a patrol or did she come into port first?

Mr Hurrell—She is coming through those waters now on the way back.

Senator ABETZ—So she has not resumed patrols?

Mr Carmody—She is sweeping through those waters at the moment.

Senator ABETZ—She is coming back to port; give me a break.

Rear Adm. Goldrick—She is conducting a task at the moment. She is in the exclusive economic zone. Because she is there, she is maintaining a presence and conducting surveillance and she is capable of responding to any event that happens.

Senator ABETZ—Without an AFMA officer on board.

Mr Hurrell—That is correct. That would not preclude us responding to any situation.

Senator ABETZ—I am sure that that is right. Can you indicate to the committee what other *Oceanic Viking* trips of surveillance have taken place without at least one AFMA officer on board?

Mr Hurrell—None that I am aware of.

Senator ABETZ—Why do you have AFMA officers on board on all the other *Oceanic Viking* trips?

Mr Hurrell—To assist with evidence gathering.

Senator ABETZ—That is right, because of their expertise, capacity and capabilities. But we are led to believe that this is now just a normal exercise coming back from whale

watching, but without those crucial personnel on board. Do you want to reconsider your answer and tell us—

Mr Hurrell—No.

Senator ABETZ—that she is coming back from whale watching into port?

Mr Hurrell—No, I do not want to reconsider my answer. What I have given you is correct.

Senator ABETZ—It was not your answer that I was referring to.

CHAIR—Senator Abetz, is there a line of questioning here or are you just badgering our witnesses today?

Senator ABETZ—I think that it is very obvious line of questioning, Chair. If you cannot follow it, I apologise. I might have to go a bit slower and get into more detail. It is quite clear that here we have the first ever trip by the *Oceanic Viking* without AFMA officers on board, yet we are being told she is currently doing her normal operations in the southern waters without crucial personnel on board. I would have thought that is a—

CHAIR—Senator Abetz, if you have a question, we would appreciate hearing it rather than your comments.

Senator ABETZ—I was asking questions as to how normal it was for the *Oceanic Viking* to sail without AFMA officers on board. Much to the embarrassment of the government, it has now come out that it has only happened once and that was for the whale watch exercise. I was then told she was resuming normal duties as we speak, but it has now come to light that it is without AFMA officers. We have since been told as well that those AFMA officers are crucial for the purposes of obtaining evidence.

Rear Adm. Goldrick—I think Mr Hurrell did say that if needed that was not an impediment to our operations.

Mr Hurrell—That is correct, yes. It is helpful to have them there and it is desirable to have them there, but the Customs officers are more than capable of conducting an apprehension and gathering the necessary evidence, as we do in northern waters frequently with no AFMA officer on board.

Senator ABETZ—Are AFMA officers now superfluous to need?

Mr Hurrell—I did not say that.

Senator ABETZ—So we do need them. You have never sailed without them, except on this exercise—is that correct?

Mr Hurrell—That is correct, as far as I know, yes.

Senator ABETZ—I think that it is pretty obvious then. Who else was on the *Oceanic Viking* apart from Customs officers? I assume there were some P&O officials?

Mr Hurrell—P&O actually run the vessel. They are the crew. They are there, as they always would be.

Senator ABETZ—Yes, that is what I said: P&O, Customs. Anybody else?

Mr Hurrell—The AAD doctor.

Senator ABETZ—Anybody else?

Mr Hurrell—On this particular occasion, an Environment official did deploy.

Senator ABETZ—Thank you. That is the sort of information I was seeking. Apart from the P&O people who crew the vessel, there were Customs officers and one Environment officer. What level was the Environment officer?

Mr Hurrell—I would have to take that on notice; I do not know.

Senator ABETZ—What was the purpose of his/her engagement? I do not need to know the person's name and I do not want it, if you are taking anything on notice.

Mr Hurrell—The aim of having the Environment officer on board was to provide advice to the Customs officers as to what evidence might be required to assist in that mission that we had been given.

Senator ABETZ—What was the purpose of this mission? What sort of evidence was actually sought to be obtained?

Rear Adm. Goldrick—Fundamentally, it was video evidence of a sufficient fidelity to understand exactly what whaling operations were being conducted such that the government could use it for whatever requirements it sees fit in the future.

Senator ABETZ—I would have thought that is a very important point: that you would gather evidence for a specific purpose. Was anybody advised as to what that specific purpose was? Why did they need this evidence? We have the bizarre situation, and it is on the public record, where the Minister for Home Affairs has admitted that he did not know what to do with the evidence gathered. We have had this expensive whale watch exercise without any idea what to do with the evidence gathered.

Mr Carmody—Very broadly, my understanding of the requirements was that it was to be of sufficient quality to be used as evidence in potential legal action. That was the charter to us.

Senator ABETZ—I suppose we will have to wait for the Minister for Home Affairs in order to pursue further what may or may not have been in his mind. The whole cost of this exercise has been borne by Customs—is that right?

Mr Carmody—There were normal costs associated with the sailing of the *Oceanic Viking*, there were some additional costs specific to this particular mission—

Rear Adm. Goldrick—And there are additional costs for the A319 which will be borne by the Australian Antarctic Division.

Mr Carmody—Yes. In relation to the additional costs, I think there is a statement in the additional estimates as to the provision of extra funding for that.

Senator ABETZ—How much was that, if you could assist me please?

Mr Carmody—It looks like \$1.271 million to me.

Senator ABETZ—\$1.217 million extra?

Mr Carmody—\$1.271 million. It is on page 69 of the additional estimates statements.

Senator ABETZ—Thank you for that assistance. Has Customs received any supplementation?

Mr Carmody—That is the nature of the additional cost.

Senator ABETZ—That is the supplementation?

Mr Carmody—Yes, for the additional costs associated with this.

Senator ABETZ—The simple fact is that, but for this trip to watch whales, there would have been AFMA officials on board to go down into the Southern Ocean, leaving on 8 January.

Mr Carmody—I assume that would have been the case, yes, Senator.

Senator ABETZ—Thank you, Chair.

Senator SIEWERT—I would like to continue on this train of thought. Could you tell me how long it took the *Oceanic Viking* to engage with the Japanese fleet, once it had left port on 8 January?

Rear Adm. Goldrick—I am sorry, I am not willing to comment on operational matters to that level of detail.

Senator SIEWERT—Okay. When did it finish its operation? When did it disengage with the fleet and then—

Rear Adm. Goldrick—It effectively finished the operation in direct relation to whaling on 15 February.

Senator SIEWERT—You may decide this is an operational issue, I presume, but I am going to ask the question anyway. Where were the photos that we have seen in the media taken? Were they taken in Australian territorial waters?

Rear Adm. Goldrick—We will not comment on that issue at this stage, Senator.

Senator SIEWERT—So all you are saying is they were taken in the Southern Ocean?

Rear Adm. Goldrick—Yes.

Senator SIEWERT—Do you know where they were taken?

Rear Adm. Goldrick—As part of the evidentiary process there will be clear record of where and when all the video evidence was taken, which can be used by government as appropriate.

Senator SIEWERT—Why can't the Australian people know where those photos were taken, whether they were in fact taken in our waters? Surely the reason for the expedition was to gather evidence for the Australian government to use to—hopefully—end whaling. Why can't we know whether those photos were actually taken in our waters?

Rear Adm. Goldrick—I really do not wish to comment on what is still an operational matter, Senator.

Senator SIEWERT—Can you explain to me why it is still an operational matter? I am sorry, but I am not familiar with operational matters, or with Customs that much, to tell you the truth.

Mr Carmody—Senator, can I suggest that we are concerned about this and the evidential trail and what use the evidence might be put to, and the rear admiral has obvious cautions about operational matters. Can I take that on notice, and if we are able to advise you I will do that on notice.

Senator SIEWERT—Usually when things are taken on notice—and I have a great deal of experience with this—we do not find out for six months.

Mr Carmody—We will do the very best we can to provide as quickly as possible what we can provide.

Senator SIEWERT—I would really appreciate it if you could come back over the next period of these estimates. What I want to know, if I cannot find out whether the photos were actually taken in our waters, is why I cannot find out whether they were taken in our waters.

Mr Carmody—We will provide what information we can, Senator.

Senator SIEWERT—Thank you. Is the plane part of your responsibilities, or is that somebody else's responsibility?

Rear Adm. Goldrick—Border Protection Command is coordinating the sorties of the plane, which is a leased A319 which is operated on the Australian Antarctic Division's behalf by a commercial company.

Senator SIEWERT—So you are Border—

Rear Adm. Goldrick—I am commander of Border Protection Command.

Mr Carmody—Border Protection Command is a joint Customs-Defence command that coordinates these operations.

Senator SIEWERT—I was just double-checking that I was asking the right people. The plane, as I understand it, has not been used.

Rear Adm. Goldrick—Yes, it has. It has conducted two sorties. For some of the time either the Japanese fleet has not been in range or the weather has precluded the A319 from conducting an effective sortie. However, we have conducted two. The first one in fact detected two illegal and unregulated fishing vessels on the high seas which we have reported to CCAMLR, the Convention for the Conservation of Antarctic Marine Living Resources. Indeed, with one we had direct evidence that it was actually engaged in fishing—which is always useful. The second sortie was able to detect and photograph two of the Japanese 'spotter' vessels, which were operating away from the fleet.

Senator SIEWERT—Okay.

Rear Adm. Goldrick—We have potential to conduct further sorties. We will continue to monitor the situation and if weather and availability line up then we will consider conducting further surveillance sorties.

Senator SIEWERT—When it made the two original sorties, was the *Oceanic Viking* actually shadowing—or whatever the appropriate term is—the Japanese fleet, or had they already disengaged?

Rear Adm. Goldrick—Both sorties were during the period in which the *Oceanic Viking* was operating in the vicinity of the whaling fleet.

Senator SIEWERT—My understanding is that the *Oceanic Viking* will not be engaging again with the Japanese fleet—that is, it will not be going back to its previous whale surveillance. Am I mistaken?

Rear Adm. Goldrick—That is not the expectation this season, no.

Senator SIEWERT—So the purpose of the plane going down again—as I understood it and as it was described in the media, which I understand do not always get it right—was that there would be interaction between the vessel and the plane. Is that in fact not the case?

Rear Adm. Goldrick—There was no requirement for direct interaction and, because of the positioning, that did not occur. The plane has the potential to see units when the *Oceanic Viking* cannot be in contact with them because the whaling fleet is not necessarily closely joined. The vessels can be spread over quite a wide area, so one of the benefits of the plane is that it can look at the whole fleet over a short period. Similarly, it can also look at things from a different angle.

Senator SIEWERT—What would justify it going out again on another sortie?

Rear Adm. Goldrick—I really do not want to specify what exactly would make up my decision to do another sortie at this stage.

Senator SIEWERT—You might take this on notice as well: when it found the Japanese vessels on the second flight, as I understand it, were those vessels in Australian waters?

Rear Adm. Goldrick—I would have to take that on notice.

Senator SIEWERT—I thought you might say that. So the *Oceanic Viking* disengaged on 15 February?

Rear Adm. Goldrick—That is when she ceased to conduct whaling monitoring, yes.

Senator SIEWERT—What date was the evidence that was collected released on—that is, the video evidence that we saw?

Rear Adm. Goldrick—I would have to check on the exact date. I am sure we can get back to you before the end of the session.

Senator SIEWERT—Why was the decision made to release it to the media—as I understand it was—and not to, for example, HSI, who have been asking for it?

Mr Carmody—That was taken by ministers, not by the Australian Customs Service, so I cannot help you there.

Senator BARNETT—On the two per cent efficiency dividend, next financial year it is \$14.9 million and then in 2010-11 it is \$14.773 million. How do you anticipate meeting the requirements of the dividend and can you provide further and better particulars to the committee as to how you envisage doing that?

Mr Carmody—We will be doing that as part of our natural planning process for 2008-09 and the following years. We are going through our planning process at this time, so I cannot be specific. But we anticipate that we will be able to manage that by looking at costings that

do not affect our direct operational outcomes. We will be looking at the areas of consultancies, corporate overheads and expenses and the like. We are going through that planning process now.

Senator BARNETT—Can you advise the committee as to whether it will impact on staff numbers and/or the recruitment process?

Mr Carmody—It will depend on the final mix as to whether the savings come from supplier costs or staffing. I suspect there will be some impact on staffing, but that will be a reduction not in actual staff—given natural attrition, we do not see any major impact of being able to manage within that efficiency dividend.

Senator BARNETT—What are the staff numbers now?

Mr Carmody—You can always get into head counts and average staffing levels. I think the head count is around 5,900 at the moment.

Senator BARNETT—So over the course of this year and the next three years after that you do not envisage any substantial change, significant change or even minor change to the staff numbers?

Mr Carmody—Staffing is affected by a whole range of policy considerations, so each year our actual funding is different to that of the prior year anyway. I think it is fair to say that we would, in those out years, have some number of staff fewer than we would have had but for the two per cent efficiency dividend. The final make-up of what that will be, as I say, will depend on where we achieve the savings. The point I was making is that that operates well within our bounds of managing, because of the variation in funding we receive through the years and the natural attrition of staffing, so we think we will be able to manage that.

Senator BARNETT—What you are saying is that, as a result of natural attrition and so on, the staff numbers will in toto drop but people will not necessarily be retrenched or whatever for that purpose—that will be done by natural attrition.

Mr Carmody—We do not foresee any need for a general retrenchment program as a result of the two per cent efficiency dividend.

Senator BARNETT—Can you identify or advise the committee on any programs that you have considered or identified that will be cut or changed in any way as a result of the directive of a two per cent efficiency dividend?

Mr Carmody—As I said, we are going through our planning process at the moment, so we can share the outcomes of our planning process. Obviously our objective is not to impact on our operational activities.

Senator BARNETT—You have to achieve a \$3.43 million efficiency dividend by 30 June. How will you achieve that?

Mr Carmody—At the moment we believe that we will be able to manage that by looking at our supplier expenses without any particular difficulties for us.

Senator BARNETT—What is a supplier expense?

Mr Carmody—An expense other than wages.

Senator BARNETT—Give me an example.

Mr Carmody—There is a range of consultancies, travel, general office expenses, legal expenses and so on—a whole range of things. I do not like to say this, because it is on the record which the department of finance will read, but that is not a lot of money in our budget to find to save within this current year.

Senator BARNETT—Well, every dollar is important to the Australian taxpayer.

Mr Carmody—As I said, could we cut that from the version that goes to the department of finance?

CHAIR—That might have been a dangerous admission!

Senator BARNETT—Did you negotiate with the department of finance, bearing in mind that the Department of Defence has been quarantined and your services are at least providing a similar type of objective as the Department of Defence?

Mr Carmody—No. We received advice on what the efficiency dividend would be, and that was as it stood. To complete the answer: you need to also understand that there are some things that are excluded from the efficiency dividend base. Our contract costs for surveillance, for example, do not come into the base when considering the efficiency dividend.

Senator BARNETT—How significant are those contract costs? Can you advise the committee?

Mr Carmody—We can advise you of the costs. In fact, someone might be able to get them for us in the next few minutes if we are lucky.

Senator BARNETT—Are we talking significant numbers? How big a figure are you talking about?

Mr Carmody—Around \$100 million—somewhere in that territory—is surveillance costs.

Senator BARNETT—So that will not change?

Mr Carmody—That is not subject to the efficiency dividend. There are other elements of our budgets that are not subject to the efficiency dividend.

Senator BARNETT—Can you advise the committee, perhaps on notice, of what elements of your budget are not subject to the efficiency dividend?

Mr Carmody—Yes, we can do that. The import processing charge and the surveillance are the two items that are not in the base for the efficiency dividend.

Senator BARNETT—Can you provide the detail of that either now or on notice in terms of the costs?

Mr Carmody—The amounts involved that are not included in the base? Yes. Hopefully someone will be able to provide it. We might be able to provide it now, if we are lucky.

Mr Ramsden—There are two components of our appropriation that are not included in the efficiency dividend. One is the Coastwatch contract, which is around \$109 million to \$110 million in current year terms, and around \$144 million for the import processing charge is also not affected by the efficiency dividend. So the total that is not affected for Customs purposes is around \$254 million.

Senator BARNETT—Are they both outsourced measures?

Mr Ramsden—No, the import processing charge is not. The Coastwatch contract certainly is a contract payment. The import processing charge relates to the charge that is applied on importers when they import goods.

Senator BARNETT—Who is the Coastwatch outsourcing to?

Rear Adm. Goldrick—We have three contractors for aerial services: Surveillance Australia for the Sentinel, the major fixed-wing program; Australian Helicopters, who run the two helicopters in the Torres Strait; and, confusingly, Helicopters Australia, who run a third helicopter which is now used as a rapid response helicopter in the Northern Territory.

Senator IAN MACDONALD—I want to return to the issues that Senator Siewert and, I understand, Senator Abetz were talking about. On the efficiency dividend, is the Customs marine unit subject to that three per cent efficiency dividend?

Ms Grant—Yes, it is.

Senator IAN MACDONALD—But your contract with P&O in relation to the *Oceanic Viking* would be on a fixed-term amount.

Mr Carmody—When we say that something is subject to the efficiency dividend, we do not get a pro rata—you have to take this much off that contract and that much off that contract—

Senator IAN MACDONALD—You are answering my question, so—

Mr Carmody—We have got a budget that is reduced by whatever it works out to be as a result of that and we manage where it comes from.

Senator IAN MACDONALD—So, because the *Oceanic Viking* and, now we hear, Surveillance Australia are excluded from that, it means that the actual impact of the efficiency dividend on those that it is going to fall on is going to be much more than three per cent.

Mr Carmody—No. Surveillance Australia—that cost is not subject to it. What happens—and I am sure my chief finance officer will correct me if I am wrong—is they take our total budget and they deduct the amounts that are not within the base for the efficiency dividend. So you take off, say, the \$109 million for Surveillance Australia and then the \$149 million for the import processing charge, and the two per cent applies to the balance.

Senator IAN MACDONALD—That is my point. Then it will not affect the *Oceanic Viking*—

Mr Carmody—It does not increase the—

Senator IAN MACDONALD—It does not affect the *Oceanic Viking* so that means that, for those parts of your department it does affect, it will be more than two or three per cent.

Mr Carmody—Just so that we are clear: the base does not include the aerial surveillance costs and it does not include what is related to the import processing charge. The cost of the *Oceanic Viking* is in the base that the efficiency dividend would apply to, just as there are a whole range of—

Senator IAN MACDONALD—But I am saying you are on a fixed-term contract for that. You cannot cut that, so those parts of your department that can be cut will have to be cut by more than two per cent to make up for the *Oceanic Viking*—

Mr Carmody—There are a range of contracts that you cannot reduce.

Senator IAN MACDONALD—That was my question. Could you on notice give us the list of the contracts which cannot be impacted upon by any cut. Once we get those we will be able to see that the impact on your department will be, I suggest, considerably more than two or three per cent.

Mr Carmody—We will provide you that. I guess the point I am just making is that the two per cent applies to a total base—how you find it is there. I am sure in determining what figure it should be, those things are taken into account.

Senator IAN MACDONALD—But it will be relative to how much of your work is outsourced—which, from memory, is reasonably large.

Mr Carmody—Not a lot is outsourced but there are a range of contracts—

Senator IAN MACDONALD—I am calling that outsourced. We will be interested to see that.

Mr Carmody—Certainly. We will provide that.

Senator IAN MACDONALD—I understand that Senator Abetz raised with you the work of the *Oceanic Viking* in chasing Japanese whalers. I am conscious that I can not expect, and would not ask for, any operational details but I would just like a comment on the impact that the work of the *Oceanic Viking* has been doing with Japanese whalers has had on the other work of the *Oceanic Viking*. As I recall, it was fully accounted for in other work. Could someone explain that to me?

Mr Carmody—If I can recap what we provided to Senator Abetz, the *Oceanic Viking* was due to go for a mission down to the Southern Ocean and it took up the whaling mission in response to government policy. That meant that, for a period, it was not in the area of the Southern Ocean that it would normally be operating in and dealing with illegal and unregulated fishing. There was a period where it did not undertake that mission as it undertook the whaling mission. We have indicated that, having finished its whaling mission, it is coming back through the Heard and McDonald Islands area and taking the opportunity to do a sweep through there. We have also indicated that, on the surveillance evidence available to us, there has been no detrimental impact on those operations from it undertaking the whaling mission.

Senator IAN MACDONALD—My understanding is that the *Oceanic Viking* usually worked in Australian territorial waters which are accepted by everybody as being Australian territorial waters. My understanding is that the whales—

Rear Adm. Goldrick—Could I take up your question. Firstly, the ship does not only work within the exclusive economic zone, which is of course a much wider area than simple territorial waters. Secondly, very often she operates on the high seas outside our exclusive economic zone but within the zones that fall under the auspices of the Convention for the

Conservation of Antarctic Marine Living Resources. Indeed, for a lot of the time that she was monitoring the Japanese whaling fleet, she was in those areas anyway.

Senator IAN MACDONALD—Do not tell me anything that gives away secrets, but what does she do in the CCAMLR areas when she is not chasing whalers?

Mr Hurrell—In those important CCAMLR areas, a lot of material has been gathered to assist that international organisation, including evidence of IUU vessels—the illegal, unregulated, unreported fishing vessels—that operate within those CCAMLR waters, even when they are closed. That information is fed through to the international community and on a number of occasions there have been some diplomatic representations about those vessels operating in that area.

Senator IAN MACDONALD—Is it giving away secrets to get information on where over the last 12 months the *Oceanic Viking* has been or does that still cause operational difficulties after the event?

Mr Hurrell—I do not see why we could not provide that to you on notice. I think that it is pretty common knowledge to the vessels that we have identified, so we are not giving away too much. Some of those representations about what we have seen and what we have done have been in the public domain.

Senator IAN MACDONALD—Thank you. How long is the contract for the *Oceanic Viking*?

Mr Hurrell—It is contracted to Customs until 2009-10. It finishes in June 2010.

Senator IAN MACDONALD—Moving on slightly, how is the fight against illegal fishing in the northwest—the Indonesian boatmen—going?

Mr Carmody—It is going exceptionally well.

Senator IAN MACDONALD—That is very good to hear.

Mr Carmody—The sightings, and consequently the apprehensions, continue to decline. We are in a position now where our focus is on deterrence as much as on countering with apprehensions.

Senator IAN MACDONALD—What are the assets used from the Torres Strait around to Broome these days?

Mr Carmody—There is a combination of the Customs patrol boats and the Navy's patrol boats.

Rear Adm. Goldrick—Generally speaking I have available to me, from Customs, the northern response vessel *Triton* and up to seven out of the eight Australian Customs Service patrol boats. In addition, the Navy provides up to six Armidale class patrol boats under operational control. Generally major fleet unit is also available and generally there are a couple of other smaller naval vessels available.

Senator IAN MACDONALD—That is how it has always been, fortunately. What other activities have Customs—or the unit of which Customs is part of—been involved with in relation to activities in the Indonesian sphere of influence? Again, you will be discreet in your answer if you answer at all.

Rear Adm. Goldrick—We have a very cooperative relationship with Indonesian agencies such as the Indonesian Maritime Security Coordinating Board, or Bakorkamla—which is the broad equivalent of our Border Protection Command—and the Indonesian fisheries ministry. We have discussions between the staff of those agencies. We do provide them with sighting data where we feel it is of value to them. I believe that they have acted on that on at least one occasion. There has been one cooperative patrol boat patrol between units of the Australian Customs Service and patrol boats of the Indonesian fisheries ministry.

Senator IAN MACDONALD—Only one?

Rear Adm. Goldrick—One so far, but we are expecting that program will continue. In addition, there is a separate line of cooperation and discussions between the military authorities.

Senator IAN MACDONALD—Did the education program go ahead?

Mr Carmody—In relation to illegal foreign fishing?

Senator IAN MACDONALD—The education program in Indonesia.

Mr Carmody—Yes. That was part of the suite of initiatives that was introduced as a result of the previous government's policy decisions. We believe it has been a very successful operation in reducing the penetration of illegal fishing. Certainly, a firm response from our vessels was part of that, but the cooperative education program in fishing villages was also a significant part of that.

Senator IAN MACDONALD—Do we have officials working with the Indonesian officials on the chain of supply for illegally caught fish?

Ms Grant—As part of the illegal foreign fishing package, we were also funded to post an officer to Jakarta. We have had an officer there since the decision was taken.

Senator IAN MACDONALD—So that is working?

Ms Grant—That officer visits the villages and works on those at-source issues.

Senator IAN MACDONALD—Do we issue regular sightings data as a matter of course?

Mr Carmody—We do not generally issue that publicly.

Rear Adm. Goldrick—But we do share sighting data with Indonesia where we believe it will be of assistance to them. To give you a picture of the operational situation: in general the Australian EEZ is largely clear of illegal fishing vessels. But, if you look at the boundary between the Australian exclusive economic zone and the Indonesian one, there are very large numbers of fishing vessels inside the Indonesian zone, not all of which, the Indonesian authorities confirm to us, are legal from their point of view.

Senator IAN MACDONALD—Are legal?

Rear Adm. Goldrick—They are not legally registered to fish in Indonesian waters. We are flying the boundary regularly with the Coastwatch and Air Force aircraft, and we now regularly provide data to Bakorkamla of activities in their waters that we are seeing from our side.

Senator IAN MACDONALD—Are the Indonesians actively enforcing their laws in relation to fishing?

Rear Adm. Goldrick—I think it would be fair to say that. It is commenting on another government's activities, but my understanding is they have been taking a very active attitude in the last couple of years.

Senator IAN MACDONALD—That is good to hear. It is good to see that is coming to fruition. In the Torres Strait, do we have vessels now that can operate in the shallower waters, in the reef waters, of the Torres Strait? That was always a problem.

Rear Adm. Goldrick—There are two challenges. One is shallow waters and the second is the charting of waters. There is a program, which is well underway, to chart many of the key areas of the Torres Strait which hitherto have been uncharted. I think the hydrographer reports on progress on that in his appropriate parliamentary reports. They certainly have gone a long way. There is a lot more to do.

Senator IAN MACDONALD—But have you got smaller boats now that can work in the reef areas?

Mr Hurrell—Senator, perhaps I could answer that. As the admiral has indicated, the shallow water is less of an issue than the uncharted water. We have got vessels that we can deploy from the larger vessels that can get into those shallow waters. There is now a 12-metre vessel with a shallower draught, which is located in Thursday Island. But, again, the restrictions are the uncharted waters.

Senator IAN MACDONALD—What is the 12-metre vessel named?

Mr Hurrell—Off the top of my head I cannot remember, sorry. We name them after rivers in the North. But I cannot remember—

Senator IAN MACDONALD—It might be the *Burdekin*.

Mr Hurrell—*Jardine River*.

Senator IAN MACDONALD—It is based at Thursday Island?

Mr Hurrell—At Thursday Island, yes.

Rear Adm. Goldrick—Senator, at the suggestion of the chief executive officer, I would like to add something. In relation to the assets of the north that Senator Macdonald was asking about, we now have the new Sentinel program with the all Dash 8 fleet, of which nine aircraft are now in service and the tenth will very soon be in service and on time. In addition, we have the two helicopters in the Torres Strait and the rapid response helicopter in the Northern Territory for onshore incursions. And we generally have the services of a P3 Orion to support the surveillance effort.

Senator IAN MACDONALD—You have done very well. Congratulations. Tell me, did we ever complete the Indigenous ranger program up there?

Ms Grant—The Indigenous ranger program is ongoing. We have the three states: Western Australia, the Northern Territory and Queensland. The three programs are in varying stages of development. Customs and our counterpart state colleagues are fully engaged in those

programs and we are making good progress, particularly in two of the locations. The Queensland program is still very much in its infancy.

Senator IAN MACDONALD—Where are the two places?

Ms Grant—Maningrida community in the Northern Territory, One Arm Point in Western Australia, and the Aurukun community in Queensland.

Mr Carmody—Seeing we are getting into clarifications: there seemed to be a question of confusion about whether I answered a question correctly or not. So I will just make it perfectly clear. In relation to the efficiency dividend, the surveillance amount of \$109 million or something and the amounts relating to the import processing charge come off our total funding and the two per cent, or the efficiency dividend, is on the net of that amount.

Senator IAN MACDONALD—I understood that, but the extension of my question was the fixed price contract.

Mr Carmody—I just wanted to clarify in case there was some confusion.

CHAIR—That is all from the Australian Customs Service, so thank you.

[2.40 pm]

Australian Crime Commission

CHAIR—The committee will now go to questions to the Australian Crime Commission.

Senator IAN MACDONALD—If nobody else has anything, I will ask a question to make sure that your attendance was not a waste of time, Mr Milroy.

CHAIR—I think your party asked for them to come, Senator Macdonald.

Senator IAN MACDONALD—Did we? Perhaps someone watching a TV might be soon rushing to get here. In the last 12 months, have the operations of the commission proceeded as you would have hoped?

Mr Milroy—Yes. One of the pleasing aspects has been the significant contribution by the various partner agencies as well as a larger number of agencies. I think something like 14 agencies are currently working on a range of intelligence and operational work with the ACC—which is broader than the actual members of the board. A lot of those agencies of course are contributing their resources, at their cost, to the joint intelligence and operational work. We have seen quite an increase in the upload of data to the Australian Criminal Intelligence Database—about a 20 per cent increase per annum. Again, this shows that jurisdictions and other partner agencies are contributing to the ACC database with their intelligence data. That is allowing us to develop a lot more knowledge about criminal markets and sectors and increase our disseminations to our partner agencies to assist them in their various operational activities. I think we have seen a lot more improvement across the board and it is very pleasing.

Senator IAN MACDONALD—Are you still completely satisfied with the telephone intercept ability you have throughout Australia?

Mr Milroy—We are currently in a tender looking to improve our capability. Of course, as technology changes, one has to be abreast of that and we are looking at telephone intercept,

data interception and other new methods of technology. I think it is a challenging area and we are currently looking at what a new system should look like into the future. Of course we are doing that in partnership with our other agencies who are also in that field.

Senator IAN MACDONALD—Do you have absolute cooperation of all partners in relation to telephone intercepts?

Mr Milroy—Yes, we have. I think the department could speak more thoroughly on that because they chair a number of committees looking at a joint approach to the challenges of technology in that field.

Senator IAN MACDONALD—Are all the states now uniform in their Australia-wide coverage in relation to telephone intercepts?

Mr Cornall—No, they are not. Perhaps when we come to the department, our Security and Critical Infrastructure Division could give you a proper briefing on that.

Senator IAN MACDONALD—Could you give me a brief briefing before they arrive?

Mr Cornall—What I had in mind was that Queensland does not have telephone intercept laws. That was the principal point. If there is someone here who wants to add to or correct what I have just said, they are more than welcome to do so.

Senator IAN MACDONALD—Last year, this committee spoke about this. Perhaps Ms Smith could help me on that.

Ms C Smith—The secretary is quite correct that Queensland currently do not have interception powers. That is a matter that has been the subject of ongoing consultation with Queensland and is continuing.

Senator IAN MACDONALD—But it is no closer to resolution?

Ms C Smith—I am not in a position to comment on that because it is just a matter of negotiation. The Attorney-General needs to make a decision once he is approached by Queensland.

Senator IAN MACDONALD—As I recall, Queensland want a system of public interest monitors that is different than that required by every other state—is that correct?

Ms C Smith—That is correct. The legislation is a national scheme and it has major accountability within the scheme as well as requiring accountability in each state. At the moment all states, with the exception of Queensland, that have the powers have very similar accountability, meaning an ombudsman or like oversights the process after warrants are issued. My understanding is that a PIM is a process that would come before that accountability regime—therefore in the part that is currently in the Commonwealth scheme—so it is inconsistent with the current legislation.

Senator IAN MACDONALD—Could you just remind me how long we have been negotiating with Queensland on this?

Ms C Smith—There have been discussions with different Queensland governments over a number of years. The most recent negotiations, I believe, may have been over a period of about 12 months, but I will have to check if that is 100 per cent correct.

Senator IAN MACDONALD—I am not sure whether this is an appropriate question for Mr Milroy and perhaps by asking the question I am not helping what I am going to complain about. In your understanding, is the inability of these arrangements in Queensland known to those who might benefit from that inability, or would you prefer not to comment?

Mr Milroy—I think it is inappropriate for me to comment on what legislation states have in place.

Senator IAN MACDONALD—No. I am not asking you to do that. I am saying, ‘Are the crims aware of all this?’

Mr Milroy—Well again, it is difficult for me to comment—

Senator IAN MACDONALD—You are not speaking for the crims.

Mr Milroy—We do not have too many that come in and tell us what they are aware of and what they are not aware of.

Senator BRANDIS—We will find out if they are listening to Senate estimates.

Senator IAN MACDONALD—I am sure there are not any criminals that silly—to listen to Senate estimates, I mean. They would be doing much better things.

Mr Cornall—Senator, just so we are very clear. The Australian Federal Police and the Crime Commission can intercept calls in Queensland, so it is not as if there is no interception in that state.

Senator IAN MACDONALD—I am conscious of that. But there is still a gap in the enforcement agencies across Australia. Unfortunately, the criminals do not have the same sensitivities to state boundaries that we seem to have in Australia.

Mr Cornall—Yes, Senator.

Senator IAN MACDONALD—The sooner we have a national system of law enforcement, the sooner we will have a better chance—or the ACC will be better equipped—to do even better work than what they already do.

Senator BARNETT—Mr Milroy, is the Australian Crime Commission subject to the two per cent dividend efficiency measure that other agencies are subject to?

Mr Milroy—Yes. Although the ACC does have another area of funding that would not be affected. We are affected this financial year to a reduction of \$443,000.

Senator BARNETT—And forward years?

Mr Milroy—The forward years are: in 2008-09, the impact will be \$1.896 million; then in 2009-10, it will be \$1.797 million; and 2010-11, \$1.813 million.

Senator BARNETT—Can you identify specific areas within your operational services that will be cut?

Mr Milroy—Yes. I can indicate that this financial year it will not have any effect on our core business in the area of intelligence and operations. We have completed a mid-year financial review and we have identified some adjustments for some areas—lease agreements and also improvements in purchasing arrangements—and we are confident that we can absorb that reduction for this financial year. In relation to 2008-09, we are currently reviewing

aspects of the commission's activities—in line with our annual menu of work—and looking to identify options for achieving the savings in 2008-09. We would be in a position to provide the committee with advice out of session, if they so wish.

Senator BARNETT—Did you put a view to the Department of Finance and Deregulation that, because Defence is quarantined from this efficiency dividend, you also should be quarantined?

Mr Milroy—No. When we received the advice from the department, we complied, and adjusted our budget for the next six months accordingly.

Senator BARNETT—So, what are your current staff numbers?

Mr Milroy—Currently, our staff numbers are 744, including staff that are funded under an IGA agreement, other staff that we purchase from the Commonwealth, state and territory agencies and then APS staff. They make up the 744. In addition to that, there are staff provided to us at the cost of both Commonwealth and state agencies under joint operations or task forces—which at present run at about 47. So, effectively, our staff capability is about 790, but it fluctuates, depending on the joint operational activity and the contributions by partner agencies at their cost.

Senator BARNETT—Can you give an example of the joint forces? Are you talking about East Timor or the Northern Territory intervention?

Mr Milroy—No. They are really across all areas of our work—they are currently about all our intelligence operations and investigations. Eighty-six per cent of those are either with one or multiple jurisdiction partners, who fund their contribution. There is a board approved task force, for example, where all the contributing agencies—whether they are board members or outside the board mechanism—contribute their resources at their cost under ACC management.

Senator BARNETT—So there are other state and territory—

Mr Milroy—There are state, territory and Commonwealth agencies. There are 14 agencies that have contributed staff, working on a raft of intelligence or operational work at the present time.

Senator BARNETT—Can you advise the committee—on notice—of the details of those agencies and the type of work that they are undertaking?

Mr Milroy—Yes. I can advise that the agencies are all the Commonwealth, state and territory police forces, Customs, DIAC, Centrelink, AUSTRAC, the CMC, the NSW Crimes Commission and the Australian tax office.

Senator BARNETT—Can you advise us—on notice—of the nature of the work that is undertaken by those joint activities?

Mr Milroy—Yes. Where it does not address operational matters, we can give you a summary of the activities and the contributions they have made.

Senator BARNETT—Thank you. That would be appreciated. In terms of staff numbers at 30 June next year, would you envisage that they would be going down as a result of this efficiency dividend or for other reasons?

Mr Milroy—It really would depend on the menu of work. The ACC has a very flexible menu of work run on an annual basis—because we try to adjust to the changing criminal environment. That is due for consideration by the Crime Commission board in June this year. Depending on whether more task forces have been set up by the board or more joint operations, the contributions of partners, at their cost, could vary considerably. We are looking at the 2008-09 budget to see whether there might be some positions that would not be filled, but we also need to align our staff or skill capability to our menu of work and make some adjustments accordingly. There are some areas that we will not be working on in 2008-09 and there will be other areas in which we will be doing more work, so there will be a variation in our skill base.

Senator BARNETT—Have you a view, a plan or a budget to reduce those numbers?

Mr Milroy—No. We are working on that at the present. As I indicated, that will depend a lot on what our menu of work will be for 2008-09 through to 2010.

Senator BARNETT—All right. Finally, is the Crime Commission involved in anyway in the Northern Territory intervention measures?

Mr Milroy—Yes.

Senator BARNETT—How so?

Mr Milroy—Currently, we have a board approved intelligence task force in relation to Indigenous crime across the whole of Australia, not just specifically in the Northern Territory, although we have done quite a lot of field intelligence collection in the Territory. We are also doing some work on the Northern Territory response project. That is looking at further intelligence collection to assist those agencies involved in investigation in the Northern Territory—the AFP, for example. The national child abuse desk is being funded out of that project. We are also looking to support law enforcement agencies to export child offence case notes from their respective case management systems so that we can draw them into a database to better analyse them and better understand the extent and scope of this problem, not only in the Territory but more broadly.

Senator BARNETT—Can you provide the committee—on notice, perhaps—with further and better particulars of the outline of the measures and the operational involvement that you have in the Northern Territory intervention measures?

Mr Milroy—Yes.

Senator BARNETT—It would be appreciated if you can provide further detail and give the breakdown of where you are involved, what you are doing and how many staff are allocated to each operational area.

Mr Milroy—Okay. We may also include the work that we are doing on the Indigenous task force, because it is far better to look at the big picture and not at the two separate issues.

Senator BARNETT—Sure. That covers outside the Northern Territory. That would be appreciated.

Senator PAYNE—In the pre-election process, there was an announcement by the new government of a review into the Australian Crime Commission. That is one of the public documents that I saw. What is the status of that?

Mr Milroy—Is that the review done by the Parliamentary Joint Committee on the Australian Crime Commission or the review into the former NCA and ACC act?

Senator PAYNE—Perhaps you could tell us about both.

Mr Milroy—Both matters can be responded to by the department.

Senator PAYNE—I can ask later.

Senator Ludwig—I understand that there is a range of agencies to go. By my estimation, there is AUSTRAC, the Australian Commission for Law Enforcement Integrity and then, after we get through outcome 2, a range of agencies stretching from the Human Rights and Equal Opportunity Commission to the Office of Parliamentary Counsel.

CHAIR—Correct.

Senator Ludwig—If there is any opportunity for the deputy chair to look at that list to see if all of those are going to be questioned in the available time or if there can be some reprioritisation, that would be helpful for those officers who are being required to stay back tonight. Perhaps you could have a look at that in the afternoon break. I am entirely in your hands. They are here and available. It is a matter for you how you apportion your time

[2.58 pm]

Australian Transaction Reports and Analysis Centre

CHAIR—I call the Australian Transaction Reports and Analysis Centre. We will start with Senator Barnett.

Senator BARNETT—Thanks very much for being here. I have some questions regarding the progress of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and the implementation of that program. Could you provide the committee with an update of the progress of its implementation?

Mr Jensen—A lot has happened over the past six months or so in terms of the implementation phases of the new legislation. We are working apace to put into place a whole range of different activities, ranging from rules, guidance and education to internal programs for the purpose of ensuring that the technologies are in place to capture information to assist the reporting entities to undergo their activities.

There are a range of rules, for example, that have been put up on our website in draft and have now been made—I think there are some 18 chapters of rules that have been made to this point in time. Accompanying them are guidance notes, and there are quite a number of those. We have also put on our website policies that we will be adhering to in the process, all of which we have either put up as drafts or, in their development, have had extensive consultation with industry, the department and other government agencies.

We released four products in early December. One was a regulatory guide to help the interpretation of the legislation, to help people understand and link together all the various components of that. That was the first iteration and related to all the requirements that were in

place by early December last year. That will be updated as further requirements come into place. The next was AUSTRAC online, which is a portal where people can register with AUSTRAC. They can give us their information and therefore we can get information back out to them more readily. They can update their information on that site as well.

Something that has been asked for for some time is our product relating to typologies and trends in money laundering and terrorism financing. That is a volume of some 51 different cases and about 200 indicators of money laundering. That has been received very strongly and welcomed by the industry. On top of that is our e-learning product. We have had an e-learning product on our website for a number of years now—this is significantly enhanced. In fact, the number of hits on that in December was the total for the previous 11 months of the year on the old product. Both products are still there and can be accessed. So we have done a lot of work.

Senator BARNETT—How many hits was that? Do you know?

Mr Jensen—It was about 114,000 hits. Also in our education role we have done more than 250 visits or education activities over the past number of months. That work will continue. We have had to develop programs and take that out into the marketplace, generally to industry groups. The number of entities that we are now dealing with is quite significant. Any entity that engages in a designated service has a responsibility under our legislation. We have identified 19,700-plus entities that will potentially have obligations under the legislation. That was a project that we initiated. We had to identify, locate and send out letters to all of those entities to advise them that they may have obligations and to try to get them to register online with us so that we can get further information to them. We have a hotline into the organisation. We are frequently getting inquiries on that hotline and providing information back.

A lot of work has been done in the private sector at varying degrees of implementation. The minister at the time, Senator Ellison, issued policy principles which allowed a 15-month period where I would not initiate civil penalty proceedings for entities that were working towards taking reasonable steps towards compliance. Most entities are progressing down that line but at differing levels in that process.

Senator BARNETT—On that last point, is industry responding cooperatively and appropriately to the new legislation, and to what extent is it abiding by the new regime?

Mr Jensen—The major entities that we are consulting with are progressing reasonably well. Again, across the range of those 19,000 entities, they are pretty much all at different levels. Under the legislation I can seek a compliance report from industry. That compliance report is due on 31 March. I will have a much better idea at that point in time as to the number of entities that engage in designated services and also the level of their compliance. It is a bit hard to gauge at this point in time, without visiting everyone, exactly where they are at. So that is a very significant—

Senator BARNETT—Are there certain industry sectors that are not complying as they should be or not as well as they should be?

Mr Jensen—Because it is a staggered implementation, again, it is hard to gauge. We are doing a lot of work with alternative remittance services, and we have identified that and it has been an area that we consider to be high risk. To try and help that process we have engaged in

advertising. Alternative remittance services are required to register with AUSTRAC, so we have put out advertisements to let them know. There are a lot of ethnically based entities and single person entities as well, so we are trying to get that message across through the ethnic newspapers and radio.

Senator BARNETT—Which are the main high-risk areas you are referring to?

Mr Jensen—The alternative remittance services—those entities that are sending money overseas or receiving money from overseas, generally outside the normal financial sector.

Senator BARNETT—Are there certain ethnic communities in which that is more prevalent than others?

Mr Jensen—All I can say is that it is spread across the community. But, particularly in ethnic communities, alternative remittance services are used for sending generally small amounts of money, subsistence, back home to families. They are identified as a high risk in money laundering and terrorism financing.

Senator BARNETT—A report was made available in 2004 estimating that the amount of money being laundered in Australia was \$4.5 billion. Does that sound accurate to you and has that increased or decreased? What is the level of money laundering in Australia in your assessment?

Mr Jensen—As that was initiated by me, I guess I go along with the answer to it. But it is an inexact science. If you look at the report, you see it says it was somewhere between \$2.5 billion and \$6 billion. We did a similar report in 1995 and found that it was somewhere between \$2 billion and \$4½ billion. The issue is that you are trying to estimate something that you are not entirely sure of. You can estimate based on criminal activity that has already been identified, but trying to estimate it on what you do not know is very difficult. The difference between 1995 and 2004 is that we know a lot more about money laundering now. So that difference is quite interesting to look at, where we are estimating the difference between \$3.5 billion or \$4.5 billion.

Senator BARNETT—But, using your best guess, since 2004—it is now 2008—how are we doing? Has it improved or has it got worse?

Mr Jensen—We have not done a survey, so I cannot say that we are improving.

Senator BARNETT—You cannot say?

Mr Jensen—No.

Senator BARNETT—Even on anecdotal evidence and feedback you are getting from industry et cetera?

Mr Jensen—Not at this point, no. It requires an extensive study to determine that figure. As I said, it is inexact. The authors of that report, who worked very closely with AUSTRAC in that process, took some time to try and analyse that level. Very little work has been done around the world to try and get that figure, because it is so difficult to find.

Senator BARNETT—Will all the advices that you have been providing to the committee in the last few minutes be in your annual report? When will we get a further update on the progress of the anti-money-laundering and counterterrorism legislation?

Mr Jensen—Certainly at estimates and certainly in our annual report—we see that as a major publication, so we put a lot of information into our annual report. If you go to our website—

Senator BARNETT—We do not have time today to go through it. Can we get further and better particulars from you on notice for an update in terms of a progress report?

Mr Jensen—Subject to the minister, of course, we have always made the offer to come and visit AUSTRAC at any point in time. We can show you what we do. We can go through the process. We can show you where we are at. If you go to our website you will find there is a lot of information there. It is provided for all senators, the committee—the world at large can access that information.

Senator BARNETT—I think the question relates to the progress that has been made with respect to the legislation and its implementation—that is where I am coming from.

Senator Ludwig—Just on the earlier matter, I would encourage the committee to take the opportunity of visiting AUSTRAC. Having visited it myself, it was particularly informative but it is a matter for the committee.

Senator BARNETT—I have one other question about the tender for the development of a tertiary course in anti-money laundering and other financial tracking. You have issued a tender for the development of a tertiary course. Could you provide an update on how that tender is progressing?

Mr Jensen—It was not a tender as such but a request for expressions of interest. We have identified a need within the organisation to develop our staff in an area where there has not been a lot of skill or information in the past. We have employed quite a large number of staff in our context and we need to ensure that they are appropriately skilled to do the job. As a consequence, we have identified the need to go into partnership with an organisation that has the skills to provide us with an appropriate product. We have the skills to provide the information and background. We are evaluating those expressions of interest which closed about a week and a half ago, then we will look at seeking a tender to go forward. The hope is that at some stage a course will not only be available for us but also have the potential to assist the private sector in understanding what we do and understanding the concept.

Senator BARNETT—When will the terms of reference for the tender be available do you expect?

Mr Mazzitelli—Depending on the responses received, the evaluation of those responses will be forming our terms of reference. The time frame is yet to be established, but we were hoping to finalise the terms of reference and the request for tender this financial year.

Senator BARNETT—Returning to the anti-money-laundering activity of your organisation—and I appreciate your advice as to checking out the website and so on—can you advise us with respect to the financing of terrorism and terrorist activity. Is that something you undertake and to what extent do you undertake the monitoring of that type of activity? I would also like you to explain to the committee the level of activity that is currently underway in Australia.

Mr Jensen—In answer to your question, yes, we do monitor the activity. We certainly do not engage in terrorism financing or other related activities. It is coupled with the anti-money-laundering processes. So we receive a range of different transaction reports that goes into our database. We have tools that analyse that information. As we are analysing for money laundering, we are analysing for terrorism financing. Terrorism financing is a lot more complex—there are lower dollar values in it—but we are analysing it to look for those sorts of activities. Where we identify something that may be an item of interest or we feel may be related to terrorist financing, then we provide that to Federal Police, ASIO or, depending on whether it is other money laundering, to other agencies. That is ongoing. That is our financial intelligence unit role. We have been talking about the regulatory role to a large degree up until this point in time. We have a range of tools that we apply to the database. We have analysts who then look at the output from that and we provide the information to law enforcement. The major point to focus on in terrorism financing is that the legislation acts as a deterrence, and our conduct in analysing the data acts as a deterrence to terrorism financing being facilitated through the Australian financial system.

Senator BRANDIS—Are you able to tell us, without revealing operational matters, how many transactions in the last year have raised a sufficient level of concern that you have passed them on to the AFP or ASIO on the basis that they may have indicated a financing of a terrorist activity?

Mr Jensen—I cannot provide that and I would be reluctant to provide it unless I necessarily had to because of the operational nature of it.

Senator BRANDIS—No, I do not want to press you in relation to anything that you feel impinges too closely on operational matters. Can I ask you then, have there been some?

Mr Jensen—There have been some that we have identified in our review that may assist investigation of a range of activities, which may have also included terrorism.

Senator BRANDIS—Under the protocols, which I assume govern your relationship with other agencies, including the AFP and ASIO, do they report back to you on outcomes of the investigation of data that you have passed on to them?

Mr Jensen—That is certainly part of our memorandum of understanding that I have with each agency head. And yes we do get some feedback. But feedback on some matters may be years down the track because of the extent of the investigation. There may be nothing reported to us for a period of time, particularly in a terrorist financing case, where it is quite sensitive to ensuring that their investigation proceeds. So, we may not readily hear that information back. But ultimately we will get information back.

Senator BRANDIS—As I understood your answer before, and correct me if I am wrong, you said that the possibility that a transaction might relate to terrorist financing is one of a number of things for which you test. Is there actually a dedicated section of your agency that is tasked exclusively to deal with transactions raising concerns about terrorist financing?

Mr Jensen—Not specifically in that sense because, in the analysis of the data, it will raise a number of items of interest, bearing in mind that all the data gets linked into the database. So, an analyst will get information out of it and then look more deeply into it. It does not immediately come up and say ‘this is terrorism financing’ or ‘this is drug related activity’, but

it will be an item of interest. Then they will analyse it and then they will provide it. We also have outposted officers. We have an outposted officer, for example, at ASIO and we have a number of them at the Federal Police. They will be working more closely, when the information comes forward, with the police on those activities.

Senator BARNETT—Can you advise the level of feedback over a 12-month period you get from the various agencies—you mentioned ASIO and the Australian Federal Police? Do they communicate with you on a regular basis? Do you have monthly meetings. How does that operate?

Mr Jensen—There are a range of things. With the outposted officers, they are there on a daily basis, so they are getting information feed on that. There is reporting on some cases, where we are engaged in a multiagency task force, for example. There is information passing where they have a specific investigation where we may be assisting in an analytical sense to provide it to them. Under the memorandum of understanding, there is a requirement to report generally on a quarterly basis. So, we get this information in a range of different ways.

Senator BARNETT—So you would also undertake, based on their instructions or advice to you, specific investigations. How many, for example, of those would you undertake per year?

Mr Jensen—We do not engage in investigations but we may provide analytical support. The report back for the last financial year of investigations which have used our data has been, from recollection—it is in our annual report—around 1,500 investigations. We may have got feedback in more than that, in the sense that we have a range of things coming back to us but it may not be a full investigation. It may be intelligence value, for example, so it may not be used for a number of years but it becomes relevant a bit later. The other side of it is the tax office's work. For example, the tax office and the Federal Police use our data extensively in a lot of their investigations. The tax office issued assessments directly related to our data of about \$85 million, I think it was, last year. So there were a lot of investigations or inquiries in that process.

Senator BARNETT—Overall, in terms of your operational effort, how would you break it down? Is it more, say percentage-wise, for money-laundering or for drug activities or tax crimes or for terrorist financing? Can you break it down in any way that gives us a feel for the operational activities of your organisation?

Mr Jensen—I think it would be fair to say that tax related issues are probably the most significant. Drug related activities are still fairly high in that area, as are fraud related activities. I would imagine that terrorism financing is down a level somewhat. There is a range of different criminal activities that will be in that—

Senator BARNETT—You said earlier that the dollar value of terrorist financing was probably less than money-laundering activities. What sort of figures are we talking about?

Mr Jensen—I think it is publicly made available that terrorism activities, generally, cost a relatively small amount of money. Drug related activities can be quite significant in terms of the value that comes out of them. That is not always the case. Some drug activities will find low values leading to something that is quite significant, maybe overseas, where the value is still low here because they have not built up their activity. Terrorism on the other side is

generally small amounts of money, but potentially it could be much larger. We are quite often finding that terrorism and other criminal activities are linked in many ways. Terrorists will use whatever they can to get their money. Drug related criminals will use whatever they can to get the money that they need as well, with the drugs as the main focus.

Senator BARNETT—But, in terms of terrorist financing in Australia, are we talking about certain groups of families providing funds for terrorist activities? Can you describe what we are actually talking about?

Mr Jensen—I do not really think I can comment on the specifics of that at all. Generally that would be an operational matter. I think it is probably more appropriately directed to the Federal Police or ASIO or those that are engaged in the investigation.

CHAIR—There being no other questions for AUSTRAC, I thank you, gentlemen.

[3.23 pm]

Australian Commission for Law Enforcement Integrity

CHAIR—I call the Australian Commission for Law Enforcement Integrity.

Senator BARNETT—In terms of the two per cent efficiency dividend, can you advise if you are subject to that. To what extent?

Mr Moss—Yes, the Australian Commission for Law Enforcement Integrity, or ACLEI, is subject to that efficiency dividend of two per cent. That works out for the remainder of this present financial year to \$9,000. In the full year 2008-09, it \$42,000 and so on. It is \$43,000 and \$44,000 for the following financial years. It may not seem like a large amount of money but in a small agency where most of our budget, which is \$2 million, is allocated to staffing, it does cause us having to rework things and it would come out of such items as travel and what have you. But, like other agencies, we will do our bit to meet our obligations.

Senator BARNETT—Have you identified at this stage any particular programs or any particular staff that will be impacted as a result of this dividend?

Mr Moss—ACLEI has a total of nine permanent full-time staff and two part-time staff. I hope that it will not affect our staffing levels. They are modest as they are. We will find that two per cent elsewhere.

Senator BARNETT—Have you identified any programs, outsourcing activities or anywhere else where the funds will be obtained?

Mr Moss—No, not in particular at this stage.

Senator BARNETT—I have a question in regard to the Haneef case and the role and objectives of the Australian Commission for Law Enforcement Integrity. Some people would say that it would be the appropriate body to undertake an inquiry into the role of the AFP and the DPP and other aspects of the Haneef case. What is your view? Secondly, have you been instructed or have you had discussions or a liaison with the government with respect to such an inquiry?

Mr Moss—Let me deal with the last question first. The answer is no. As to the first question, the jurisdiction of ACLEI is focused on law enforcement agencies, and at the moment two—that is, the Australian Crime Commission and the Australian Federal Police. If

you were going to focus such an inquiry into the integrity of those particular agencies then you might consider ACLEI, but if you wanted to consider a more broadly based inquiry you might need to go elsewhere to find the breadth of jurisdiction that is not otherwise available through ACLEI.

CHAIR—There are no further questions for ACLEI. Rather than starting now on the Attorney-General's Department and general questions, we might break for afternoon tea.

Mr Cornall—Chair, could I deal first with a couple of matters that were raised earlier?

CHAIR—Yes.

Mr Cornall—Firstly, Senator Brown asked about the number of guns in New South Wales, which was a figure missing from the answer to question No. 40 from estimates on 23 May 2007. The number of guns for New South Wales is 53,368.

Secondly, the questions in relation to the Haneef inquiry have been referred to the Attorney-General and the Attorney has asked that I advise the committee that the government has previously announced its commitment to conducting an inquiry into the handling of Dr Haneef's case. Arrangements for the establishment of that inquiry are yet to be finalised, including the timing. There are a number of factors which need to be taken into account, including our ongoing national security operations.

Senator PAYNE—Chair, I have a question to Mr Cornall on the first answer, on the number of guns from New South Wales. I think you said 53,648. Why was that number not included in the original answer?

Mr Cornall—I am not sure. I have only got the figure. If you want me to find the answer to that I will endeavour to do so.

Senator PAYNE—That would be helpful, thank you. It is not a matter to which I have turned my mind at length previously, but how is a number as precise as 53,648 determined?

Mr Cornall—I am not sure of that either, but all of the figures in response to this answer are very precise.

Senator PAYNE—I understand that. If you could provide the committee with some advice from the appropriate agency as to how that number is determined that would also be helpful.

Mr Cornall—Yes.

Senator BARNETT—With regard to the second answer, Mr Cornall—and perhaps this should go to the minister—it seems like you have received a non-answer from the minister's office, in the sense that it was quite clear before the election that the now government's position was in favour of a judicial enquiry into the Haneef matter. We have been advised by the Australian Federal Police today that there is an ongoing inquiry, and you have now advised the committee that an inquiry is still to take place. You have not advised the committee on the terms of reference, you have not advised the committee whether it will be a judicial inquiry or otherwise and the minister's office—through you, Mr Cornall—has not advised us as to whether today's revelation that there is an ongoing inquiry by the Australian Federal Police will impact the merit of a judicial or other inquiry. So it is incomplete.

Mr Cornall—I took the Attorney-General's answer to say that the government is in the process of finalising these details and it will announce the outcome of that consideration when it is in a position to do so. In the interim, any inquiry undertaken by the AFP of its own volition is a matter for the AFP. The two inquiries are able to proceed.

Senator BARNETT—I did not hear your last sentence.

Mr Cornall—You can have two inquiries. The AFP can make an inquiry if it wishes to do so, but the inquiry by the government is a separate matter.

Senator BARNETT—In terms of the merit, or otherwise, of having a judicial inquiry into the Haneef matter and the terms of reference relating to it, if there is an ongoing police investigation into the same matter, you have an inquiry on an inquiry, and the merit of that sounds most dubious. What would the minister's response be to that?

Senator Ludwig—It would depend on a range of factors, but you have an answer in respect of the question. It is a matter for government. They have indicated that the arrangement for the establishment of that inquiry, which would include the matters that you go to, including the timing, are yet to be finalised. When that is clear, the government will announce it.

Senator BARNETT—Are you saying that the Australian Federal Police admission today that they are having an ongoing inquiry into this matter has no bearing on whether or not there will be a judicial or other inquiry into the matter?

Senator Ludwig—What has been said today is that there are a number of factors which need to be taken into account, including our ongoing national security operations. That is the answer in respect of that question. If you wanted to ask a question about the Australian Federal Police and their ongoing inquiry then I am happy for you to put that on notice.

Senator BARNETT—I have one final question. Has the department itself, or through you, Minister Ludwig, had any liaison, or discussion or briefing from the Australian Federal Police on its ongoing inquiry into the Haneef matter?

Senator Ludwig—I can say I have not.

Mr Cornall—The normal course is that the AFP does not brief us or consult with us on ongoing operational investigations. That is the position in this case.

Madam Chair, before we conclude, I wonder if we could come back to Senator Payne's question. The answer to question No. 40 is introduced with this statement: 'The figures have been provided by state and territory firearms registries in June 2007, and they include handguns registered for private purposes such as sporting shooters, primary producers and security businesses, and for government purposes such as handguns held by government departments and police.' So I think the answer to the question is it comes from the state and territory firearms registries.

Senator PAYNE—Okay, I understand that.

Proceedings suspended from 3.34 pm to 3.50 pm

Attorney-General's Department

CHAIR—We are now dealing with general questions to the Attorney-General's Department.

Senator NETTLE—I will follow up the answer that we got from the Australian Federal Police earlier today to the question on notice asked by Senator Ludwig about Mr Habib. Was the Attorney-General's Department represented in any way at the meeting that the question refers to?

Mr Cornall—Can you remind me where and when that meeting was?

Senator NETTLE—I will read the answer, if you like: 'The AFP was present during a meeting in Pakistan on 22 October 2001 when US authorities discussed the possibility of deporting Mr Habib from Pakistan to Egypt on the basis that Egypt is his country of birth.' It goes on to say: 'The AFP representative at this meeting strongly expressed his view that Mr Habib is an Australian citizen and should be dealt with accordingly.'

Mr Cornall—We were not present at that meeting.

Senator NETTLE—Obviously, this answer indicates to us that the government knew that that was a possibility—that he might be rendered to Egypt. Do you know if the government did anything else beyond the comments of the AFP officer?

Mr Cornall—We were not there. We were not involved in the matter in the way that you are indicating. I do not think that we can answer that question for you.

Senator NETTLE—Mr Cornall, you were asked a series of questions about this by Senator Bolkus in the Senate estimates in 2005. Is there anything that you wanted to add to the answer you gave then in light of this new information?

Mr Cornall—Sorry: what new information are you specifically referring to?

Senator NETTLE—The answer that the Federal Police have provided to question 79 about the discussions in 2001.

Mr Cornall—No, I do not think so. I have an extract of that estimates testimony. I am not sure if it is comprehensive and covers all of the area that you are referring to. But I do not believe so.

Senator NETTLE—In the transcript, you talk about not knowing until after he had been transferred. Is that still the case?

Mr Cornall—Yes.

Senator NETTLE—Do you know who was present at the meeting?

Mr Cornall—No.

Senator NETTLE—Because we got the answer so late—this happened in 2001—it is very difficult to work out where to go with that intervening information. It is claimed in media reports about the Federal Court case that Mr Habib is involved in that there were discussions with government officials. The ASIO officer said 'government officials' and that there were discussions in 2001. Did any of those government officials include people from the Attorney-General's Department?

Mr Cornall—No.

Senator NETTLE—I will now ask you about the control order in relation to David Hicks.

Mr Cornall—Sorry: just before we go on, Mr McDonald says that there may have been some meeting here in Canberra at which some issue was raised that a department officer may have had some knowledge of. He would have to check that for you.

Senator NETTLE—Do you mean in 2001?

Mr G McDonald—Yes. We need to double-check our records.

Senator NETTLE—I am happy to wait for that.

Mr Cornall—Just so we are clear, all of our people were here in Canberra. None of them were in Pakistan and none of them were involved in any of the meetings in Pakistan.

Senator NETTLE—I am happy for you to take on notice whether there were any discussions here.

Senator MARSHALL—How would those discussions have come about? Would that have been advice being sought by the AFP?

Mr G McDonald—I have just said that I would like us to check our records.

Senator MARSHALL—That is because you think that there might have been such a meeting?

Mr G McDonald—No. I just want to check our records. It is possible that something could have been mentioned. That is all.

Senator MARSHALL—So did the AFP at any time seek advice from the Attorney-General's office in relation to that matter?

Mr G McDonald—I cannot answer that question. I would have to double-check our records.

Senator MARSHALL—I would have thought you would know the answer to that. This is not an issue we have just sprung on you now.

Mr G McDonald—AFP does not seek advice from us on operational issues.

Senator MARSHALL—Is the answer no then?

Mr G McDonald—The question was whether anything had been mentioned to officials. That is a different matter. Please let us double-check our records on that.

Senator NETTLE—Obviously the AFP was involved in the discussions in 2001. As part of what you are checking, are you checking whether the department was aware of that?

Mr G McDonald—Yes. If someone has said 'government officials', that sounds broad, so I just want to double-check our records in case there was some meeting where something might have been mentioned. That is all.

Senator NETTLE—I want to move on to the control order for David Hicks. Again, there was some discussion about this earlier. Is the government opposing the application in the court about the modification of David Hicks's control order?

Mr G McDonald—The situation with the control order is that that is before the court today. In fact, we are expecting a result at any moment now. The actual application for the control order, of course, is consented to. We have to get a consent from the Attorney-General, and the Attorney-General's consent relates to the whole of the application. The AFP explained that the operation, or the initiation, of the control order is a matter for the AFP, and they will of course monitor the situation. Obviously it has been several weeks now of the control order being in operation. However, the government involvement, in the sense of the Attorney-General consenting, ends there. He consents to the initial application.

Senator NETTLE—So there is no further role for the Attorney-General in modifications to that control order—is that correct?

Mr G McDonald—The decision about modification of the control order will be made by the court. Of course, the Federal Police will put forward relevant information to the conditions of the control order and then the magistrate will make a decision.

Senator NETTLE—I understand about the AFP and the court, but what I am trying to work out is: is Attorney-General's involved?

Mr G McDonald—No.

Senator NETTLE—I want to ask Mr Cornall about your writing to the Judicial Commission of New South Wales regarding the ul-Haque matter. Are you able to provide the committee with the copy of your letter and the reply that you received?

Mr Cornall—Yes, I can.

Senator NETTLE—Can you table that for us?

Mr Cornall—I do not have spare copies, but, if someone can do copies for me, both letters are here.

Senator NETTLE—Thank you. Have you written before to the Judicial Commission in relation to a matter?

Mr Cornall—No.

Senator NETTLE—What prompted you to write in this instance?

Mr Cornall—I thought that the findings by Justice Adams about three criminal offences having been committed and two torts went considerably further than he had to go for the purposes of finding the evidence inadmissible and reflected very unfairly, in my opinion, on the officers who were doing their jobs. I wrote to ask the Chief Executive Officer of the Judicial Commission what his view of that opinion was.

Senator NETTLE—While we wait for the documents to come, do you want to outline for us the reply—generally?

Mr Cornall—He said that he felt that the judge had made his findings under the relevant section of the Evidence Act and it was not up to him to express an opinion about the findings.

Senator NETTLE—In writing to the Judicial Commission, did you have any discussions with the government about doing that?

Mr Cornall—No. My recollection—I have not got it now in front of me—is that it was during the caretaker period. The letter was sent on 23 November.

Senator NETTLE—There were no discussions with the government about that?

Mr Cornall—No.

Senator NETTLE—Would that be usual?

Mr Cornall—Firstly, it was in the caretaker period, so it was not appropriate to consult with the minister at that stage. Secondly, I thought it was a matter that went to the treatment of officers of agencies within the portfolio and was more appropriately dealt with by me as secretary.

Senator NETTLE—Were you asked to write by any other agency, like ASIO?

Mr Cornall—No. I had discussed with both ASIO and the AFP my views about the judgement and how I thought that the criticisms of the officers were unfair, and they were aware that that was my view. I had also said that I was considering writing to the Judicial Commission before I wrote to the Judicial Commission, but they had not asked me to do it.

Senator NETTLE—Turning to the National Security Hotline—I do not know whether it is to you or to the minister—with the change of government have there been any changes to the hotline?

Mr Studdert—Our centre has operational responsibility for the hotline.

Senator NETTLE—Have there been any changes to the hotline since the new government came in?

Mr Studdert—No.

Senator NETTLE—Have there been any changes to the amount of advertising or promotion of the hotline since the new government came in?

Mr Studdert—The advertising campaigns for national security matters are dealt with by the public affairs department of Attorney-General's, not by the PSCC.

Senator NETTLE—Is there anyone here from that department that we could ask about the advertising?

Mr Finlayson—At this stage, there are no bookings for future advertising for the hotline.

Senator NETTLE—Was the last lot of advertising before or after the election?

Mr Finlayson—It began just before the election and the campaign received bipartisan exemption to continue throughout the caretaker period.

Senator NETTLE—Could you let us know how much has been spent on the advertising of the hotline to date?

Mr Finlayson—In this current financial year, we have to the end of January expended in the order of \$6.67 million—that is in administered funding.

Senator NETTLE—This will not be for advertising. What is the total cost of the hotline over the same period this financial year?

Mr Studdert—We have that as part of the relevant branch costs, so I would have to get that figure cut down for you, if I may.

Senator NETTLE—Thank you. Is it possible to get a month by month breakdown of the number of calls?

Mr Studdert—Yes, it is.

Senator NETTLE—Is that on notice?

Mr Studdert—I will have to give you the breakdown on notice. I can, I think, get that to you reasonably quickly. I can give you totals.

Senator NETTLE—Okay.

Mr Studdert—As at 29 January 2008, the hotline had logged 111,187 calls. Indeed, I can give you a breakdown of the monthly totals from May 2007 to January 2008.

Senator NETTLE—Do you want to table it rather than read it all out? That is an option.

Mr Studdert—If I may, yes.

Senator NETTLE—Has any analysis been done about the effectiveness of the advertising?

Mr Finlayson—Yes. As part of the standard procedure for government advertising there is benchmarking research and then tracking research throughout the period of a campaign.

Senator NETTLE—Can you tell us, in a general sense, the results of that effectiveness?

Mr Finlayson—The current creative that is being used has tested very well. Whenever the campaign is on air, there is a spike in the number of calls to the campaign hotline.

Mr Cornall—On that point, Commissioner Keelty is on the record as having said publicly that the National Security Hotline has provided a considerable amount of useful information to the AFP, and I think Mr O’Sullivan would also say that it has provided assistance to ASIO and its activities as well.

Senator NETTLE—Do you know whether any of the hotline calls have resulted in successful prosecutions?

Mr Cornall—I am unable to answer that question specifically, but Commissioner Keelty has made comments that it has been of great assistance. That may be a question you could direct on notice to him. The Director-General of Security has also commented in other places that it has been of considerable assistance.

Mr Studdert—The call numbers increased by approximately 52 per cent on average during the last two advertising campaigns. Secondly, Ms Moss is the branch head of the relevant branch, and she has budgetary breakdown figures, if you would like them now.

Senator NETTLE—Thank you.

Ms Moss—Senator, you were asking about the budget for this financial year. Is that right?

Senator NETTLE—Yes.

Ms Moss—My branch has an allocation for the hotline of \$3.4 million for this financial year. I do not have a monthly expenditure that I can give you, but I can take that on notice if you would like. The monthly expenditure would be based pretty well just on staffing costs.

Senator NETTLE—Do you know what percentage of calls lead to investigations?

Mr Studdert—Not specifically. All calls are directed from the hotline to the relevant jurisdiction or agency, and then the analysis and use of the information in those calls occurs within those agencies. So we do not have a feel for anything other than a general acknowledgement by all jurisdictional agencies that it is a useful source of information to them from an investigative point of view.

Senator NETTLE—How could you work that out? If information gets forwarded to them, they will not know what percentage of the calls they are looking at. How is it possible to—

Mr Studdert—I am not sure if it can be quantified. It certainly cannot be by us. But each of the police commissioners and, as the secretary said, the D-G of Security has said publicly that it is a useful source of information.

Senator NETTLE—I am interested in the quantification of it, which, as you described, is difficult.

Ms Moss—Senator, I would suggest that it might be useful for you to look at the ASIO annual report for 2006-07. They gave some numbers in that report in terms of what was useful to them.

Senator NETTLE—Did you say that all of the calls are referred to other agencies?

Mr Studdert—Correct.

Ms Moss—That is, only calls that provide information. We have various categories of calls. We have calls that provide information. It is only the information calls that we refer routinely to ASIO, AFP and then to the relevant jurisdictional police.

Senator NETTLE—Minister, has the government made a decision in terms of the ongoing advertising of the hotline? Do you know that?

Senator Ludwig—I can seek to take that on notice and I can get back to you.

Senator NETTLE—I note some comments by the Attorney-General in relation to the proceeds of crime legislation as it relates to David Hicks. The comments, as I recall, were that any publication of material could trigger that legislation. Has the department been asked for advice on that?

Dr Heriot—Could you repeat your question, please?

Senator NETTLE—I noted some comments by a spokesperson for the Attorney-General about the proceeds of crime legislation in relation to David Hicks. In that media comment, the spokesperson for the federal Attorney-General is indicating that any move by David Hicks to sell his story could result in civil action under the proceeds of crime legislation. Has the department provided advice about whether that legislation would be triggered were David Hicks to sell his story?

Mr Cornall—We do not normally disclose details of advice that we give to the Attorney-General.

Senator NETTLE—I am not actually asking you what the advice was; I am asking whether you have been asked for advice on it.

Mr Cornall—No, we do not normally disclose that either.

Senator MARSHALL—You are required to.

Mr Cornall—I do not believe we are.

Senator MARSHALL—The chair's comments at the beginning of the meeting outlined that you are required to.

Mr Cornall—We have had this discussion over a number of years about the extent to which we disclose legal advice and we understand that the established practice is that we do not disclose either advice or whether we have been asked to give advice. But, in respect of the specific question, the issues relating to the proceeds of crime have been very well publicised in the media. The Attorney is very well aware of the law on this issue and would be able to form his own view.

CHAIR—Mr Cornall, my understanding from Senate procedures is that it is a legitimate question to ask and for you to answer as to whether you have provided advice, not necessarily the details of that advice.

Mr Cornall—I do not think that is the position and I do not think it is the position in other places either. The English parliament has a similar view that merely even disclosing whether or not there has been advice could in certain circumstances be very sensitive.

Senator BRANDIS—I think there is a distinction, if I can contribute to this. Mr Cornall, with respect, I do not think that has been the uniform practice of these Senate committees. I know that in the Senate Finance and Public Administration Committee on occasions which I can remember within the last eight years, the question of whether or not advice had been taken by government was in fact put without objection and was answered. I also recall on one occasion the advice itself was tabled. I am not urging as a general rule departure from the wise practice of not producing advice but I have to say, with respect, that the suggestion that it is, as a matter of practice, beyond the capacity of these committees to inquire whether advice on a particular matter has been sought, is not, I would suggest to you, as you understand. Perhaps it may have been the practice of this committee, but I would, Madam Chair, maintain very strongly that it is quite proper for a senator to inquire whether or not advice has been sought and obtained.

CHAIR—Senator Brandis, I concur with you. My advice from the Clerk of the Senate reads as follows: 'Advice to government: as with legal advice, the mere fact that information consists of advice to government is not a ground for refusing to disclose it. Again, some harm to the public interest must be established, such as prejudice to legal proceedings, disclosure of cabinet deliberations or prejudice to the Commonwealth's position in negotiations. Any general claim that advice should not be disclosed is defeated by the frequency with which governments disclose advice when they choose to do so.' Mr Cornall, I would perhaps suggest that you might refer your answer to the minister if you want to take it to a higher level.

Senator Ludwig—Having listened to that, I will check with the AG as to the way forward in this. It is not an easy matter of simply disclosing or indicating whether advice has or has not been sought and what that advice is. I know in relation to the latter that it is certainly the longstanding principle that we do not table advice unless the government of the day chooses to undertake that course. That would depend on its views. In respect of the first part of the question, I will check with the AG as to whether he can answer that in some way to assist the committee.

Senator BARNETT—Could we seek some further consideration of this by the Clerk of the Senate? I know that what you have read seems to be quite clear, but there seems to be some disparity between it and what is in the minds of Mr Cornall and Senator Ludwig regarding if we can be told whether advice was sought and received. From our side, it seems that there is absolutely no doubt, but I would like some clarity on this. Can the Clerk of the Senate provide advice regarding both the question of whether it has been sought and received and the timing of that and the question of on what conditions it should be made available and tabled and whether that should be in confidence or otherwise?

Senator BRANDIS—I will add to what Senator Barnett has said, if I may. I would submit that the subject matter of the advice, including, if necessary for the purposes of the inquiry, some particularity as to the instructions to the legal adviser, may be a proper matter of inquiry, even if the advice is not disclosed by the government.

Mr Cornall—In referring the matter to the Clerk of the Senate, I wonder if you could also draw his attention to the United Kingdom report of Lord Butler in 2004 relating to the weapons of mass destruction, in which he said that in the UK there is a longstanding convention, adhered to by successive governments and referred to in paragraph 24 of the ministerial code, that neither the fact that the law officers have been consulted in relation to a particular matter nor the substance of any advice they may have given is disclosed outside government.

CHAIR—We will refer that to Harry Evans.

Senator NETTLE—Minister, you indicated that you were going to ask the Attorney-General about this. I wonder if you could also ask the Attorney-General about what the timing of that advice, if any, was.

Senator BRANDIS—I have a series of questions on a range of topics for the department. I suppose it is probably convenient, since we are dealing with this right now, that I start with the question of legal advice. I heard what you said, Mr Cornall, and no doubt you heard what I have said. From statements that the Prime Minister and other ministers have made, we know that it is the case that the government has received legal advice on the question of the potential liability—if any—of the Commonwealth to members of the so-called stolen generations in consequence of the statement of apology adopted by both houses of the parliament last week. This particular case does not fall within the second of Lord Butler's categories because the receipt of the advice is an acknowledged fact. Can you tell me, please, by whom the advice was provided? Was it by the Australian Government Solicitor, counsel or a private law firm?

Mr Faulkner—I think questions about the apology and what kinds of information were relevant to the apology really should be directed to the Department of Families, Housing, Community Services and Indigenous Affairs.

Senator BRANDIS—I do not agree with you. Let me narrow my question. Was the advice of which the Prime Minister has spoken given by the Australian Government Solicitor?

Mr Faulkner—I am afraid I cannot say. I do not know precisely what the Prime Minister might have said in that regard or to what he was referring.

Senator BRANDIS—You know I am sure, unless you were not in the country last week, that there was a great parliamentary occasion in relation to saying sorry to the so-called stolen generation. You are surely aware that the Prime Minister confirmed—and Senator Evans in the Senate on the afternoon of last Wednesday in answer to a question from me confirmed and acknowledged—that advice in relation to the potential exposure of the Commonwealth to a liability in consequence of the apology had been taken by the Australian government. All I am asking for the moment is whether that advice was advice provided by the Australian Government Solicitor.

Mr Cornall—The Australian Government Solicitor is a government business enterprise which acts in the same way as a private law firm: it does not consult us about the advice it gives, nor do we know all of the advice it gives, and indeed it would hesitate to give us that because it would be a breach of its obligations.

Senator BRANDIS—Do you know the answer to my question?

Mr Cornall—No, I do not.

Senator BRANDIS—I see the Australian Government Solicitor is an agency listed—

Senator Ludwig—It does come up later in the program, so you may want to ask it then.

Senator BRANDIS—later on, so I will direct that question to the Australian Government Solicitor. Let me direct this question to you, Mr Cornall: did the Attorney-General's Department or any of its officers provide advice to the Australian government on this topic?

Mr Cornall—On compensation?

Senator BRANDIS—Yes.

Mr Cornall—Not that I am aware.

Senator BRANDIS—Did the Attorney-General's Department or any of its officers provide advice to the Australian government in relation to the nature or consequences of the apology?

Mr Cornall—Mr Faulkner says he has been involved in discussions about those issues with the Department of the Prime Minister and Cabinet, but it is not appropriate for him to give further details of those advices to that department.

Senator BRANDIS—Mr Faulkner, I am not going to ask you, at least for the moment, what the substance of that advice was, but I will put this directly to you: is it your evidence to this committee that, in the course of discussions with the Department of the Prime Minister and Cabinet, you provided some advice bearing upon this matter? I am not asking you what it was.

Mr Faulkner—It seems to me appropriate to say that I was consulted in relation to the apology.

Senator BRANDIS—Were you the principal officer within the Attorney-General's Department who was consulted?

Mr Faulkner—I think that is fair.

Senator BRANDIS—In the course of that consultation, you provided advice, did you?

Mr Faulkner—I was certainly consulted.

Senator BRANDIS—Did the advice you provided to the Prime Minister's department bear upon the legal implications of the apology?

Mr Faulkner—For the reasons that the secretary identified earlier, I do not think it would be appropriate for me to go into that.

Senator BRANDIS—I am pressing you, Mr Faulkner, because, for the reasons I have identified, the Butler principles, if I may call them that, have not been observed by Senate committees in Australia. I am not asking you the substance of the advice you gave; I am merely asking whether you gave advice on the legal implications of the apology.

Senator Ludwig—I think in this instance it might be appropriate for this question to be taken on notice and for us to get some instruction from the Attorney-General in respect of the matter. We can ask today and see if we can get a response back. I cannot say whether the Attorney-General will respond within the day, but I will certainly try.

Senator BRANDIS—Minister, thank you. I wonder whether that might, please, be done in a timely manner—over the dinner adjournment—so that I can come back to this at 7.30 pm. If it cannot be, it cannot be, but I would ask you to, if possible, enable that to be done. I do not want to be embarrassing respected senior public service officers by pressing them on this matter, which really is a political matter. But, equally, I do not intend to be deflected.

Senator Ludwig—I understand that. As I indicated, I would endeavour to gain a response. I am not certain I can guarantee your timing, but I can certainly undertake to try.

Senator BRANDIS—Thank you, Senator. Mr Faulkner, was the advice you gave reduced to written form, or was it only oral advice?

Mr Faulkner—On the same basis, I do not believe I can really go into that until we resolve the other matter.

Senator BRANDIS—Heavens above! You have told us you gave advice. You have declined—

Mr Faulkner—I am afraid I have to—

Senator BRANDIS—You have said you were consulted.

Mr Faulkner—That is right.

Senator BRANDIS—And you responded to the consultation.

Mr Faulkner—Of course.

Senator BRANDIS—You have declined to tell us whether the character of what you conveyed was as to the legal implications of the apology, and we will deal with that, as indicated by the minister at the table. What I am now asking you is merely this: is there a document created by you, or at your direction, which embodies what you conveyed?

Mr Faulkner—I am hesitant to go there, I am afraid, for the reasons I have—

Senator BRANDIS—I am afraid you have no choice, Mr Faulkner. I would ask you, Madam Chair, to direct, consistently with what you have said, the witness to answer the question of whether or not what the witness told the government—whether it be characterised as advice or not is a quibble I will not get into—was conveyed orally or reduced to a document. I submit to you, Madam Chair, that is a proper question, and I ask you to insist on an answer.

CHAIR—I might refer to the minister for a moment, to see whether he wants to intervene in this matter and provide a comment.

Senator Ludwig—I think it really bears on resolving the first issue—to determine what the Attorney-General might want to say about it. We can certainly bring the witness back at that point, when that is resolved, depending on whether I can secure an answer in time. If not, we can provide it in writing.

Senator BRANDIS—Minister, with respect, it does not bear upon the earlier issue. The earlier issue was as to the substance of what it is that Mr Faulkner conveyed to the government. My question is directed only to the form because, as you will have discerned, I am interested in identifying whether a document exists. That does not depend on an answer to the earlier question.

Senator Ludwig—It may go the fact of whether or not a document exists. It might also inform in respect of the first question. To err on the safe side in these matters, I would prefer to take it on notice and seek to obtain an answer in respect of that. If there were any other questions that you might want to direct in respect of this issue, I would ask that you put them now so that I can include those in the matters that I endeavour to put to the Attorney-General, to see if I can get a response in a timely fashion this evening.

Senator BRANDIS—Minister, this is what it amounts to. The Prime Minister has said there was advice. Your Senate leader, in your presence, last Wednesday confirmed to me that there was advice. Mr Faulkner has this afternoon told us that he was the principal officer of the Attorney-General's Department consulted. He has cavilled at the use of the word 'advice', perhaps because it is a loaded word, but at least we know that he was consulted on this issue. He has declined, until instructions are taken from the Attorney-General, to say that what he conveyed bore upon the legal implications of the policy. And you are now saying to us that the Senate is not even entitled to know whether what the principal interlocutor of the government in the Attorney-General's Department concerning this matter conveyed was written or oral—whether or not a document exists or not. Is that what it amounts to?

Senator Ludwig—What you have also indicated is that advice was sought. Let me take it on notice and find out whether the advice that was referred to in the Senate is the same advice that you are now seeking to obtain from the Attorney-General's Department or whether or not

the question should be directed to the Australian Government Solicitor or the Prime Minister's department itself.

Senator BRANDIS—Indeed. That is why I began this line of inquiry with a more general question about whether it was the Australian Government Solicitor or counsel or a private law firm. I did not get anywhere, so I asked whether this matter came from the Attorney-General's Department. I am certainly happy to pursue the matter with others.

Mr Cornall, for reasons you have indicated, I will not ask you about the Australian Government Solicitor. I can ask them. Do you know whether advice to government concerning the apology to the stolen generations has been obtained from counsel?

Mr Cornall—No, we do not know.

Senator BRANDIS—Does anyone at the table know? Mr Faulkner, do you know?

Mr Faulkner—Yes, I do know the answer to that question. But I think the fundamental point here is that we appear to be talking principally about statements by the Prime Minister about advice.

Senator BRANDIS—And by Senator Evans—

Mr Faulkner—Quite possibly, yes.

Senator BRANDIS—who is the Leader of the Government in the Senate.

Mr Faulkner—Can I suggest—

Senator BRANDIS—This is a committee of the Senate.

CHAIR—Senator Brandis, can you just let Mr Faulkner finish providing you with the information you have repeatedly sought now.

Mr Faulkner—It seems to me now that the question about what the Prime Minister was referring to, and what advice might have been referred to, is better directed to the Prime Minister's department. I am simply not in a position to speak with any authority about those kinds of things.

Senator BRANDIS—Mr Faulkner, with respect, I do not mind if you speak with great or little authority. I simply want to know what you know. This is a question to you from the Senate. You tell me you know the answer to my question, but you think it might be more appropriate if I ask someone else. But, since you tell us you already know, I am asking you. What is the answer?

Mr Faulkner—Can I put it this way. I am aware of certain information. I do not know how comprehensive that information is and it may well be misleading to say what I happen to know. I am simply not very well informed about what the Prime Minister's department did in relation to these matters.

Senator BRANDIS—Might I say that I have not been talking about the Prime Minister's department; I have been talking about advice to government. I have referenced the statements by the Prime Minister and by Senator Evans—and there may be other ministers as well for all we know—who have confirmed on the public record that the government has received legal advice concerning the consequences of this apology in the so-called compensation issue. You

have told me know the answer to the question: ‘Has the government obtained advice from counsel?’ But you cavil at telling me what that answer is because you consider that the matter might be more appropriately directed elsewhere. But, Mr Faulkner, since you know, then you will do for me. You are the appropriate witness because you know the answer. What is the answer, please?

Mr Faulkner—I have some information about—

Senator BRANDIS—You tell us what it is, please.

Mr Faulkner—some of the consultation that PM&C was involved in which also involved me, and, as I have indicated, I was consulted by PM&C. As a result of that, I am aware of certain other aspects that did not involve me directly. Whether or not they—

Senator BRANDIS—You know, Mr Faulkner, that the hearsay rule does not apply in Senate hearings.

CHAIR—Order, Senator Brandis! Mr Faulkner, I am going to provide you with the opportunity to finish your sentences.

Mr Faulkner—I appreciate that this must sound rather difficult from your side but it does seem to me that the questions that you are putting would inevitably draw me into the kinds of issues that we have been discussing to this point and in relation to which we have said we should talk to the Attorney-General.

Senator BRANDIS—First of all, as I was in the process of saying when I was interrupted, we all know that the rules of evidence, in particular the hearsay rule, do not apply to Senate committee proceedings. So you are perfectly at liberty to tell us something you know at second hand. We know that. Let us take this one step at a time. All I am asking you—and you have already told me you know the answer—is whether advice has been obtained from counsel.

CHAIR—I would just like to provide some advice here. Senator Brandis, as chair of this committee I will interrupt you whenever and however I deem necessary in order to facilitate the smooth running of this committee. Under the Senate standing orders, ‘An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy’—and it is true that has not been asked—but ‘shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.’ My understanding is that Mr Faulkner has referred to the minister the questions that you have repeatedly asked him. The minister has now provided advice about where this matter is going to go. I am putting to this committee that we will wait for Minister Ludwig’s response from the Attorney-General’s Department and that we should proceed with other questions on this matter.

Senator BRANDIS—With the greatest of respect, Madam Chair—

CHAIR—Are you dissenting from my ruling, Senator Brandis?

Senator BRANDIS—No, I am not. With the greatest of respect, Madam Chair, you are wrong because the question I am now asking has not been referred to the minister. Two questions have been. This has not been.

Senator Ludwig—What I was going to say when silence prevailed and allowed me the opportunity of intervening was that, having now listened to those questions and in particular the last two questions, I will also take them on notice and seek advice from the Attorney-General this evening as to whether he can provide an answer. If you recall, I did ask if there were any other lines of questioning in respect of this matter that I could refer, and I take it that those two are. Are there any further?

Senator BRANDIS—Yes, there are.

Senator Ludwig—Maybe you could put them on the record.

Senator BRANDIS—Senator Ludwig, it is very obvious to me that you, no doubt under instructions from the Prime Minister's office, are here to stonewall. I do not criticise you for that—

Senator Ludwig—No, I am here to assist. I am here to actually try to find answers to your questions and to take them on notice. I do not know the answer to them and I am certainly keen to find out.

Senator BRANDIS—That is true, Minister, and I appreciate your candour. But the rather peculiar situation we find ourselves in is that we have an officer beside you at the table who tells us that he does know the answer. Now why it would be thought appropriate to take a question on notice when an officer at the table has said that he can provide the answer, but then cavils at doing so for a reason we have not really had an opportunity to explore, puts this case a little beyond the usual, does it not?

Senator Ludwig—He has indicated the answer, that it may be a matter for another department to answer, and I think that is one way forward. In this instance what I have said is that I will seek an answer from the Attorney-General. That is the most direct way.

Senator BRANDIS—It is obvious we are not going to get anywhere and it is obvious as well that the government's game is plain for all to see. Rather than delaying any further on this topic, let me give you the questions, which no doubt you will take on notice. In addition to the questions I have already asked, if advice has been obtained from counsel, I would like to know the name of the counsel. I would like to know what the instructions to the counsel were—in other words, I would like the question concerning which counsel's advice was sought to be identified with particularity. If advice was obtained from the Australian Government Solicitor, I will direct the questions to them a little later, but nevertheless they are within the capacity of the Attorney-General to provide. I would like to know what the instructions to them were. I would like to know if the advice was obtained from a private law firm and what the instructions to them were. I would like in each case to know whether the advice was provided in documentary form. And, assuming that the answer to that question is yes, I would like to know in each case the date of the document and I would like to know in each case the name of the custodian of the document. Finally, in each case I would like to know the substance and effect of the advice to government. I can anticipate, having regard to what Mr Cornall has said previously, that the last question at least will be objected to. Perhaps the others will as well. Nevertheless, those are the questions I would like answered.

Senator Ludwig—Thank you, Senator Brandis.

Mr Cornall—Madam Chair, there is another issue here that I think we should flag. My recollection is that in the past, where there has been clearly a responsible department, and other departments have some peripheral knowledge of matters, it has been accepted that the responsible department should be the department that answers the detailed questions. In this case we have clearly indicated that the responsible department is not this department but the Department of the Prime Minister and Cabinet, and in the way these matters have been conducted in the past it would be accepted that the questions would be directed to them. I just bring that to your attention and ask whether you consider that that is an appropriate way for us to continue in future.

CHAIR—We will take that on advice, I think.

Senator BRANDIS—Mr Cornall, I am sure that you exclude from the observation that you have just put to the chair so much of my question as is directed to your own department. Mr Faulkner has told us he was the principal officer within your department and within agencies under the jurisdiction of your department including the Australian Government Solicitor, who was consulted, to use his word.

Mr Cornall—Yes. I accept that, with one exception. We may frequently, for example, be a member of a task force or an interdepartmental committee where we are providing a small amount of advice in relation to a much bigger matter. In that situation I still think it is appropriate for the principal department which has the conduct or the chairmanship of the interdepartmental committee to be the principal respondent to questions.

Senator BRANDIS—That may, as a matter of form, be appropriate. Whether or not it is a rule is a different question. We are just interested in ascertaining what the advice was, and anybody who knows is welcome to tell us. May I add to the questions you have been good enough, Minister, to take on notice. In respect of each of the different categories of advice I have identified, could the date of the request for the advice as well as the date of the advice itself be included.

Mr Cornall, are you aware that in the House of Representatives last Tuesday evening the Leader of the House, Mr Albanese, in the course of a debate concerning the constitutionality, in particular having regard to the requirements of section 39 of the Constitution, of the arrangements for sittings of the House of Representatives on Fridays with no quorums, no divisions and no question time, indicated that the government had obtained legal advice in relation to that matter?

Mr Cornall—No, I am not.

Senator BRANDIS—Mr Albanese did so and indicated that the advice would not be revealed. In an article by Mr Salusinszky in the *Weekend Australian* on Saturday, responding to concerns raised by me—both in relation to the stolen generations legal advice and in relation to the House of Representatives procedural legal advice—Mr Albanese is quoted as saying the advice would not be released, hence confirming its existence:

... because legal advice is given to the Government on the basis that it is advice to the Government ...

That is a penetrating remark, I dare say. Was the advice, the existence of which Mr Albanese has disclosed, concerning constitutional aspects of the sittings of the House of Representative on Fridays provided to the government by the Attorney-General's Department or its officers?

Mr Cornall—We provide advice generally to the government in respect of constitutional aspects of issues that arise, so it may well be that we were involved in the constitutional aspects of that advice.

Senator BRANDIS—Do you know whether, in fact, your department was involved in this case?

Mr Govey—I think we are going to very quickly go down the same track as we did a moment ago. Both Mr Faulkner and I were involved in relation to that matter, but I think it would be difficult for us to take it any further.

Senator BRANDIS—So you were, to adopt Mr Faulkner's word, consulted—is that right?

Mr Govey—I think 'involved' is a better word on this occasion.

Senator BRANDIS—Well, you were not serving the tea in the Prime Minister's office, were you?

Mr Govey—Can I suggest that we also refer this matter to the Attorney-General?

Senator BRANDIS—It seems to me that this is quite a different issue. If, as Mr Albanese has told us, this advice was obtained—and we know from Mr Govey that the Attorney-General's Department was involved in the matter—this is advice about the privilege of the parliament. Surely you do not maintain, Mr Cornall, that the 'Butler rules' apply to advice concerning the privilege of the parliament. How can a government withhold from the parliament advice about the rights of the parliament?

Mr Cornall—In view of the statements made by Minister Albanese, that would have to be a matter dealt with by the Attorney-General and the minister—not by me.

Senator Ludwig—I will indicate again that I am happy to seek advice from the Attorney-General in respect of this matter. I think that is only reasonable in these circumstances.

Senator BRANDIS—You see, I was rather moved last Tuesday by the Governor-General's promise on behalf of the new government that there would be a new dawn of transparency and disclosure. Yet all we have heard from you, both this afternoon—no doubt on instructions from the Prime Minister's office—and all last week are reasons to withhold from the public legal advice on matters of great public interest, in the case of the stolen generation, and of interest to the parliament about the privileges and prerogatives of the parliament itself.

Senator Ludwig—That is a very interesting statement. I reject the contentions that you make.

Senator BRANDIS—Well, produce the advice!

Senator Ludwig—As I have indicated, I am here to assist. I will seek—

Senator BRANDIS—If you reject the statement, produce the advice!

CHAIR—Senator Brandis! Order!

Senator Ludwig—As I indicated, I will seek advice from the Attorney-General as to whether that advice can be provided to the committee.

Senator BRANDIS—In relation to each of the different categories of advice, delimited by the source of the advice that I asked about—the suppressed stolen generation advice—can you also apply those categories to the suppressed parliamentary privilege advice?

Senator Ludwig—We will see what we can do.

Senator BRANDIS—Will you take that on notice? Thank you.

CHAIR—Before we go the next lot of questioning, I want to remind people present—particularly senators at this committee—that it is not unusual to ask officers if advice has been provided but not the nature of that advice, but I want to remind people that the relevance of questions at estimates hearings is that questions should go to the operations or the financial positions of the departments and agencies which are seeking funds in the estimates for the relevant portfolio. We are considering portfolio additional estimates, and I would remind senators that questions should go to the relevance and the purpose of the estimates hearings.

Senator BRANDIS—Madam Chair, with all due respect, since we are talking about legal advice, I have seldom heard of ‘free’ legal advice. It plainly goes to a question of government expenditure.

Senator BARNETT—Through you, Chair, I would alert the chairs to the fact that the Clerk of the Senate has written extensively about the possible range of questions to be put at a Senate estimates hearing, and that letter makes it very clear that the type of questioning that Senator Brandis has been running here is entirely within the purview of the Senate committee.

CHAIR—That might be your opinion, Senator Barnett, but I have quoted extensively from those advices this afternoon and I think we have now left the matter with Senator Ludwig to come back to us, having had those questions put on notice.

Senator BRANDIS—I wonder, Senator Crossin, what your constituents in the Northern Territory would think of you in being a party to suppressing advice about the rights of the stolen generation.

CHAIR—Senator Brandis, if you want to dissent from the ruling of the chair, I am happy to have a private meeting.

Senator BRANDIS—I am not dissenting from a ruling of the chair.

CHAIR—Let’s just move on with questioning then. If you have further questions in this area, it would be appreciated.

Senator BRANDIS—Let me turn to the question of the bill of rights. Mr Cornall, we read from a press report in the *Weekend Australian* on 5 January 2008 under the by-line of a Rick Wallace that the Attorney-General has held talks with constitutional experts on creating a national charter. Can you, or any of your officers, inform us, please, which constitutional experts the Attorney-General has consulted concerning the possibility of a bill of rights?

Mr Cornall—If we are talking about discussions that the Attorney-General has had with constitutional lawyers, that again would be a matter that we need to refer to the Attorney-General.

Senator BRANDIS—Why? I am just asking who has been consulted. I am not even asking what has been said.

Senator Ludwig—The question you asked went to the Attorney-General. He is not at the table, so we can take that on notice. I can seek advice from the Attorney-General as to whether he is able to answer that question.

Senator BRANDIS—Thank you, Minister, but it may well be—I do not hear you objecting to it on any procedural ground—that there are officers here who are aware of these consultations.

Senator Ludwig—That is a different question.

Senator BRANDIS—Let me rephrase the question.

Senator Ludwig—You may be prepared to reframe the question, but the question you did ask was directed to the Attorney-General and what may be within his knowledge, not Mr Govey's knowledge.

Senator BRANDIS—I suspect this is not an issue of the same sensitivity as the last one. I am asking for confirmation of these reports that there have been consultations by the new government with constitutional law experts concerning the possibility of a national bill of rights. Is anyone able to tell me about that?

Mr Cornall—We are not aware of all the discussions that the Attorney has had on this issue. We do not know what discussions he has had. We would have to refer the question to him to ask for details of the answer to your question.

Senator BRANDIS—May I take it from your answer, Mr Cornall, that there has been no formal working group of constitutional lawyers constituted?

Mr Cornall—Yes.

Senator BRANDIS—Has there been a working group—and please do not pin me to the very term 'working group'; you know what I mean: has there been a body of some type formed within the Attorney-General's Department to look at this matter?

Mr Govey—We have obviously had discussions within the Attorney-General's Department, but I would not describe them in any more formal terms than that. We have not formed a specific group of officers, for example.

Senator BRANDIS—All right.

Mr Govey—There are officers who would, in the ordinary course of events—in the course of their duties—be responsible for this topic, and we have had discussions about it in that framework.

Senator BRANDIS—So there is no specifically defined task force or work group at the moment?

Mr Govey—That is correct.

Senator BRANDIS—It is also reported that Mr McClelland has had discussions with Professor George Williams concerning this matter. Are you able to tell us whether Professor George Williams has been retained as a consultant to the government in any capacity concerning this matter?

Mr Govey—I am not aware of that having occurred.

Senator BRANDIS—Do you know, Mr Cornall?

Mr Cornall—No.

Senator BRANDIS—If he had been, would you expect that you would know?

Mr Cornall—Yes, I would imagine we would have retained him on behalf of the Attorney.

Senator BRANDIS—And that has not happened?

Mr Cornall—No, Senator.

Senator BRANDIS—Thank you. Mr McClelland has also indicated that he proposes to embark on a round of community consultation concerning a possible national bill of rights. Has the Attorney-General's Department been tasked to put together a round of national consultations?

Ms Lynch—The department has provided advice to the Attorney on options for how the consultation might take place and has been asked to provide some further work, but we have not actually set up a round of consultations—if that is the gist of your question.

Senator BRANDIS—So far as you are aware, has any decision been made by government, either at a ministerial or at a cabinet level, about the round of consultations or is this a work in progress at the moment?

Senator Ludwig—I think you should rephrase the question in respect of what you can ask about cabinet. I think you are fully aware of the rules that relate to that. I am sure you are aware of the rules, Senator Brandis.

Senator BRANDIS—Of course I am, Minister. From the point that we have been told that advice has been provided, all I want to know is whether a decision has been made. I am not going to ask about cabinet discussions or anything like that. In other words, I just want to know whether the advice has been acted upon. Are you able to tell me that?

Ms Lynch—From the department's perspective, it is still a work in progress.

Senator BRANDIS—I see. So no consultations have been set up yet?

Ms Lynch—No.

Senator BRANDIS—Who is it contemplated will be consulted? Which categories of persons is it contemplated will be consulted?

Ms Lynch—I think the position is that the Australian community would be consulted. How that actually happens is still a matter that is being planned and considered within government. But, as I understand it, it is intended to be a broad consultation.

Senator BRANDIS—It is not intended to be restricted to human rights lawyers, for instance?

Ms Lynch—Not that I am aware.

Senator BRANDIS—Over what period of time is it contemplated that this process of community consultation will take place?

Ms Lynch—They are all matters for the government's consideration at present.

Senator BRANDIS—Minister, I do not know how close to this you may be, but is it, for example, anticipated that these community consultations will be finished by the end of this calendar year?

Senator Ludwig—The answer to the question was that this matter really rests with the Attorney-General and decisions by the Attorney-General as to how he proceeds with that. I am not familiar with the document that you have in front of you which you are reading from. If there is a range of questions that you want to put, I am willing to take them on notice and seek advice from the Attorney-General about the questions that you ask in respect of this matter.

Senator BRANDIS—For the time being—and we can revisit this in the May estimates—it will be sufficient for my purposes to know the time frame of this process of consultation, the categories of persons whom it is expected to consult and, we should add for good measure, the places—that is, how widely this consultation will take place around both city and regional Australia. If no such decisions have yet been made, then of course there is nothing you will be able to tell me for the time being.

Senator Ludwig—That is insightful of you.

Senator BRANDIS—I am in particular interested in knowing whether any decisions have been made to retain consultants and, if so, who they are.

Senator BARNETT—Just to finish on that particular matter, could I ask—through you, Minister Ludwig, to the Attorney-General—if we have for the record a clear position from the Attorney as to his support for a bill of rights and the nature and extent of that bill of rights? There are various bills of rights all around the world and we would like to know, and the Australian public would like to know, exactly what he envisages for us.

Senator Ludwig—I think that is a matter for the whole of government. As I indicated, I will take Senator Brandis's questions on notice and the answers to those might shed light on it further. I will certainly ask whether the Attorney-General wants to comment on the question you have put.

Senator BRANDIS—Minister, you sit in a cabinet. May I take it that no decision has yet been made to progress this matter?

Senator Ludwig—That is what I want to find out from the Attorney-General.

Senator BRANDIS—Weren't you listening? You sit in cabinet. What I really want to know is whether the decision has yet been made.

Senator Ludwig—Senator Brandis, I have taken the question on notice and I will get back to you in due course.

Senator BRANDIS—Thank you. I will now move on to the question of judicial appointments. You may or may not remember, Minister, that when she was the shadow Attorney-General, Ms Roxon, in opposition, announced that it was the view of the opposition at that time that the membership of the High Court should be increased from seven to nine. Is that still the position of the government?

Senator Ludwig—I am not sure that I actually recall that. I am not going to dispute what you say she may have said at the time but I can certainly ask the Attorney-General his view on the matter.

Senator BRANDIS—It is pretty simple: all I want to know is whether the government has any plans to seek to increase the size of the High Court.

Senator Ludwig—As I said, I am happy to take that matter on notice.

Senator BRANDIS—Thank you. Perhaps you were there—in fact you were; you were in the acknowledgements—to hear the Attorney-General’s speech at the Gold Coast yesterday morning to the Queensland Bar Association conference on judicial appointments. Are you familiar with that matter?

Senator Ludwig—To the extent that I listened to the speech, yes.

Senator BRANDIS—Senator Ludwig, you are the second person acknowledged in the formal parts of the speech, so I am sure you listened to that much at least. The Attorney-General announced some decisions concerning the recruitment and selection of members of the Federal Magistrates Court. I think I paraphrase him fairly if I say that he also goes on to say that this will be regarded as a test to see whether the same or similar principles will be applied to the recruitment and selection of members of higher federal courts. Just reading from the Attorney-General’s speech, he says at paragraphs 45—I should have got a copy of it for you, Senator Ludwig—

Senator Ludwig—Although I do carry speeches with me I did not bring that one with me today. You could provide it to me.

Senator BRANDIS—It is not a very long quote. He said:

I will establish a selection panel to assess applications and nominations against certain stated criteria.

Mr Cornall seems to have a copy at hand. The quote continues:

The selection panel will be made up of:

- The head of the court or an experienced member of the court
- A retired judicial officer, and
- A senior official from my department.

You will see from the copy that has now been provided to you that in the previous paragraph there are a series of criteria set out. In settling upon this process, this new method for recruitment and selection of appointees to the Federal Magistrates Court, was the Chief Federal Magistrate consulted?

Senator Ludwig—That is a matter that I would certainly have to take on notice.

Senator BRANDIS—Mr Cornall, do you know the answer?

Mr Cornall—I am not sure.

Senator BRANDIS—Do any of your officers who are in the room know the answer?

Mr Cornall—The appointment of judges and the process of appointment of judges has been the subject of a lot of discussion over a long period of time. What precise discussions the Attorney-General has had with the chief justices and the chief magistrate we are not sure

because we are not present at all of those discussions. So to give you an accurate answer, we would need to refer it to the Attorney.

Senator BRANDIS—I understand that. This is not like the bill of rights, something that the Attorney-General has suggested the government is going to look at. This is a decision that has actually been made by the new Attorney-General to have a new system of appointments for the Federal Magistrates Court which involves, as you would be aware, the placement of advertisements and the convening of this selection panel. We know that the public advertisements, which are the first step in the process, appeared in the *Australian Financial Review* on 1 and 2 February and in the *Australian* on 1, 2 and 9 February. May we take it that the decision to change the mode of judicial recruitment and selection for the Federal Magistrates Court was a decision made by the Attorney-General at some unspecified time prior to 1 February?

Mr Cornall—To some extent that process reflects the process that has been in place for some time in terms of advertising magistrates positions, calling for applications, reviewing the applications, preparing a short list and making recommendations to the Attorney. Much of what has been said in this speech and what is presently in train in relation to magistrates is not greatly different from what has occurred in the last few years.

Senator BRANDIS—Tread warily, Mr Cornall, because, if you read the speech, the Attorney-General seems to think this is a brand new thing. He announces it with much evident pride.

Mr Cornall—There was a different panel for the consideration of the applications and so forth. But the fact of the matter is that there have been advertisements for magistrates before.

Senator BRANDIS—That is fine.

Mr Cornall—And the department has been involved in sorting through those applications and assisting in putting forward recommendations to the Attorney.

Senator BRANDIS—Would I not be right in saying that there have been no prior attorneys-general under whom, in the systematised way that the new Attorney-General announced yesterday, this process has been undertaken?

Mr Cornall—Certainly the former Attorney reserved the right to make appointments as he saw fit, and that did not always follow the process I have just outlined.

Senator BRANDIS—I am not saying there were not consultations. Every government consults. I am sure even Mr Whitlam consulted somebody before he made Lionel Murphy a High Court judge. This is a publicly declared and systematised system of procedure, and that is new—is it not?

Mr Cornall—In the past, we have advertised for magistrates and so on but we have not advertised for every position. The Attorney reserved the right to make appointments as he saw fit. That is, I think, a difference in the speech as put forward by the Attorney.

Senator MARSHALL—How often did that occur?

Mr Cornall—I would have to check. It was a regular thing for us to advertise for magistrates, but not all appointments of magistrates came through that process.

Senator BRANDIS—I have asked whether, prior to making the decision announced in his speech yesterday, the Attorney-General consulted the Chief Federal Magistrate. Could you also please advise me whether the Attorney-General consulted the relevant officers of the Law Council of Australia, the Australian Bar Association and the law societies and bar associations of each of the states and territories and whether he consulted any representatives of the Australian law schools, women lawyers organisations, the National Association of Community Legal Centres and legal aid bodies? In each of those seven categories, I would like to know if there were consultations with relevant people and the dates of those consultations.

Mr Cornall—Obviously I will have to refer that to the Attorney-General.

Senator BRANDIS—I understand.

Mr Cornall—I should also say that I think this speech was by way of outlining the Attorney's thinking and calling for consultation and comments from the recipients of the speech and anyone else who cares to receive it and express views. So I think it in many ways indicates the Attorney's thinking about the future, but I think he clearly says that he is not wedded to the things outlined in this speech and he is open to suggestion from other bodies.

Senator BRANDIS—Indeed. But, Mr Cornall, the people who respond to the newspaper advertisements we have discussed—

Mr Cornall—For the magistrates, yes.

Senator BRANDIS—I am only talking about magistrates; none of my questions so far have been directed to any level of federal judicial office other than magistrates. The people who respond to those advertisements and might be interested in being federal magistrates are, may I suggest to you, put fairly on notice by the Attorney's speech that that is the process by which their application will be determined. That is fair, isn't it?

Mr Cornall—I think that is fair, yes.

Senator BRANDIS—The Attorney-General's says, in the paragraph I read to you before:

The selection panel will be made up of:

- The head of the court or an experienced member of the court
- A retired judicial officer, and
- A senior official from my department.

Will it be up to the Attorney-General to decide, under this system, whether it is the head of the court or an experienced member of the court who is the court's representative on the panel, or will that be a matter for the head of the court to depute to an experienced member of the court?

Mr Cornall—It is not stated, Senator.

Senator BRANDIS—No, it is not; that is why I am asking.

Mr Cornall—I do not know the answer, and there may well be circumstances where, for example, the head of jurisdiction may be absent, may be overseas, may be ill.

Senator BRANDIS—Indeed. And in those circumstances, because there are a lot of federal magistrates, what I am wondering is if the Attorney-General can then cherry-pick a

particular magistrate and say, 'You are the relevant experienced member of the court to sit on this selection panel.'

Mr Cornall—We can refer that to the Attorney, but my expectation is that that would be a matter for the head of jurisdiction. One obvious situation that could exist is that, if you have a head of jurisdiction who is based in Melbourne or Brisbane or Sydney, they may not be aware of the calibre of the people available for appointment in Perth or Darwin or Hobart. So appointing a member of the judiciary from those jurisdictions would be, one would think, a sensible way to proceed.

Senator BRANDIS—All right. The second member of the panel is to be a retired judicial officer. Is it to be a retired member of the Federal Magistrates Court or a retired member of any court?

Mr Cornall—The Attorney has not made that clear yet.

Senator BRANDIS—All right. And who will choose the retired judicial officer—the Attorney?

Mr Cornall—I would imagine he would have to either choose the officer or appoint a panel of potential officers for the purpose.

Senator BRANDIS—From among whom he would choose?

Mr Cornall—I am imagining that that is how he would proceed.

Senator BRANDIS—The third member of the selection panel is to be a senior official from the Attorney-General's Department. Who will choose that senior officer? Will it be you, Mr Cornall, or will it be the Attorney-General or somebody else?

Mr Cornall—Once again, the Attorney has not spelt that out. In the past it has been a matter of who was available from the relevant division of the department, which is the Civil Justice Division.

Senator BRANDIS—All right. But ultimately, I presume, it is the Attorney-General who has to sign off on the choice of the senior official from the department.

Mr Cornall—One would imagine, yes.

Senator BRANDIS—The reason I press you on this is that although this shiny brand-new system is set out at paragraphs 45 and thereabouts of the Attorney-General's speech, when he gets to discussing appointees to higher courts he actually doubts the utility or wisdom of that mode of appointment because, as he says among other things at paragraph 68:

There may well be as much controversy associated with selecting the selectors as with the judicial appointments themselves.

Perhaps you are not able to answer this—perhaps it is a policy question—but perhaps you can respond with some helpful observation, Mr Cornall. If it is no good to use this system for higher courts because selecting the selectors can be as much a matter of controversy as the selection itself, why is it good enough to use it for the Federal Magistrates Court? If this system meets the desiderata of transparency and meritocracy, which the Attorney-General identifies as the criteria, why is a method for one level of the judiciary not suitable for any other level of the judiciary?

Mr Cornall—Senator, we are just trying to find the exact expression the Attorney used. You are referring to, I think, a copy which has—

Senator BRANDIS—I am referring to paragraph 68 of the speech.

Mr Cornall—The copy I have does not have numbers.

Senator BRANDIS—I am sorry. It is the—

Mr Cornall—What is the heading?

Senator BRANDIS—It is just above ‘Conclusion’. It says:

There may well be as much controversy associated with selecting the selectors as with the judicial appointments themselves.

Senator Ludwig—Whilst Mr Cornall looks for that, you might have been interested in the debate that was in fact had about judicial appointments. I could refer you to the—

Senator BRANDIS—Senator Ludwig, my friends at the bar in Queensland have been telling me today about this very interesting debate, but I do not want to progress along those lines because I have a very clear view of the questions I want to ask. I have always, as you know, Senator Ludwig, been of the view—as in a former life were you—that these are committees in which the senators ask the questions and the people at the table answer the questions; they are not seminars.

Mr Cornall—The paragraph you are referring to, Senator, is in the section of the speech dealing with a judicial appointments commission. Under a judicial appointments commission, as I understand the United Kingdom system, the commission itself makes the selection of the appointees.

Senator BRANDIS—But the point is a general one though, isn’t it, Mr Cornall?

Mr Cornall—No.

Senator BRANDIS—If there can be as much controversy about the selection of the selectors as about the ultimate appointment, why doesn’t that apply to the selection of the selectors of the federal magistrates?

Mr Cornall—Because the people who are on the panel will put forward recommendations to the Attorney-General of people who are qualified for appointment. The Attorney will in fact be the selector. And as I understand the system proposed by the Attorney, he will always reserve the right to appoint outside that panel, even though he would expect to appoint from within it.

Senator BRANDIS—Mr Cornall, correct me if I am wrong, but the system contemplates that the selectors will present the Attorney-General with up to five names.

Mr Cornall—That is my understanding.

Senator BRANDIS—And there is, as you have just said, an expectation that the Attorney-General will appoint one of those five people.

Mr Cornall—Yes.

Senator BRANDIS—So I am a little at a loss to understand why the selection of the selectors is any less acute an issue because they come up with five names rather than one. I

am not of course reflecting on Mr McClelland, who I know is a very honourable man, but let us say, hypothetically, that we had a very bad Attorney-General who was corrupt. By this process, by the choice of the selectors, he could dictate the short list in a way that was both not transparent and not meritocratic.

Mr Cornall—The point is that the Attorney-General would still retain the executive right to make the appointment.

Senator BRANDIS—But that means your default position is the status quo. The default position in a reform should not be the status quo; it should be a corrective measure.

Mr Cornall—I think ultimately the appointment of judges has to be an executive decision. What the Attorney is proposing to put in place is a process which makes it, firstly, open to all to nominate or to be nominated for consideration; then to have a process of selection on merit, against nominated criteria, to have a panel of five names put to him or her; and to then, in the normal course, select from that panel. That is a different process to the one that exists at the present time, and the Attorney's view is that that is a more transparent and open process and allows people broadly to be considered who may not otherwise have been considered. It also gives the courts a significant say in the people who are under consideration. But ultimately, no matter what you say, the Attorney-General has to reserve the right to make whatever appointment he or she thinks is appropriate, and I think that is perfectly proper because that is the proper role of the executive.

Senator BRANDIS—I agree with you about that. Lastly, in paragraph 44, the criteria—about halfway through the speech—who came up with these criteria?

Mr Cornall—The department would have had input into these criteria and the Attorney would have approved them.

Senator BRANDIS—There are some, like legal expertise and decision-making skills, which go without saying, but others—for example, interpersonal skills and tact—would exclude some of the most distinguished judges Australia has ever had—as you well know, Mr Cornall.

Mr Cornall—That calls for an expression of opinion, Senator.

Senator BRANDIS—But not as a matter of policy, Mr Cornall. But, seriously, surely these criteria are not going to be rated with any notion of equivalence. We are talking about the capacity to perform excellently as a judge, are we not?

Mr Cornall—We are.

Senator BRANDIS—And whether or not the person is touchy-feely and tactful or very, very rude should not really by the issue, should it?

Mr Cornall—I think if they are very, very rude it is an issue. But, firstly, this is one of nine criteria, and those criteria, within that nine, include integrity—

Senator BRANDIS—Yes, that goes without saying.

Mr Cornall—impartiality, tact and courtesy. So, putting those all together, it is only an element of a number of criteria.

Senator BRANDIS—I would be very interested in knowing—and you will have to take this on notice—who other than the Attorney-General's Department came up with this remarkable list of judicial attributes. Madam Chair—where are you?

ACTING CHAIR (Senator Barnett)—It is me, Senator Brandis—I am the acting chair.

Senator BRANDIS—Mr Acting Chairman, I have a lot more questions but perhaps it would suit the committee if I were to pause for a moment and let somebody else have a go for a while.

Senator ABETZ—It would suit me!

ACTING CHAIR—I am sure it would suit the committee. I have been itching as well, but I know Senator Abetz has some important commitments so I will pass to Senator Abetz.

Senator BRANDIS—Can I make it clear that there are other matters I wish to return to.

ACTING CHAIR—Indeed there are, Senator Brandis. That is important.

Senator ABETZ—I appreciate that. The first question is to Senator Ludwig. There was a request made of the Attorney-General—I understand a letter was written to him by some Tasmanians—asking the federal government to ban lawsuits that they claim were designed to stifle assent. Are you aware of what I am talking about?

Senator Ludwig—No, I am not.

Senator ABETZ—All right. Allow me to try to assist further. There were some people from—using a broad description—the environmental movement in Tasmania. They have written to the Attorney-General asking for laws to stop companies suing protesters, and it is reported that Mr McClelland said he would examine the proposal once he received the letter. So my question, given that background, is: has he received the letter?

Senator Ludwig—I am not aware of that. I can certainly take that on notice.

Senator ABETZ—I thought you were the fount of all knowledge, but it looks as though Ms Leigh might be able to assist us.

Senator Ludwig—If there is someone that can assist it would be very helpful for them to do so.

Ms Leigh—The correspondence that is referred to has been received by the Attorney and it is under consideration at the moment.

Senator ABETZ—I dare say you will not be telling me what the Attorney's predisposition to it is, but I have a hope that it might be in a certain direction. I ask the Commonwealth—as I understand it, this is the right area to ask—when legal actions are taken against the Commonwealth and there is an issue of pursuing costs when there has been a success in the courts, what are the considerations that apply? That is a neat follow-on, because the protesters do not want legal action taken against them and they want protection, but of course they want to have carte blanche without costs following the event by them taking a legal action.

Dr Popple—The Legal Services Directions which apply to Commonwealth agencies deal with the circumstances in which costs should be sought.

Senator ABETZ—For example, the minister for the environment, is currently before the courts on an issue to do with the dredging of Port Phillip Bay. I do not want to prejudge that outcome but would it be up to the department of the environment to decide whether or not costs were pursued or would the Attorney-General's Department have oversight for the whole of government in relation to the way it undertakes its legal proceedings?

Dr Popple—The answer is that the relevant arm of government—and in that example it might be the minister for the environment—would have an initial responsibility but the Legal Services Directions have a role for the Attorney as well, as first law officer. So, for example, under paragraph 3 of the Legal Services Directions, the FMA agency would be required to notify the Attorney or the department if a matter, claim or litigation was a matter which, for example, raised sensitive legal, political or policy issues. Once that matter was raised, of course, the Attorney-General or the department or both would have an interest in and a role in that matter.

Senator ABETZ—When you say 'an interest or role in it', at the end of the day, with whom does the buck stop?

Dr Popple—The carriage of the matter usually would lie with the relevant department, but there are circumstances in which the Attorney can make directions about the conduct of litigation and those are set out—

Senator ABETZ—Which override the department?

Dr Popple—In extreme circumstances, yes.

Senator ABETZ—Right.

Senator BRANDIS—Will they ever be able to override the model litigant rules?

Dr Popple—No, the model litigant rules are one of the examples of the rules in the Legal Services Directions which go to the conduct of—

Senator BRANDIS—So there is no way in which such a directive could override the model litigant rules?

Dr Popple—I do not think so, Senator, no.

Senator ABETZ—But what about were we have a plethora of cases, let us say like Dr Brown's personal Wielangta court decision, which has been appealed and is now going to be appealed further—and I do not want to go into the merits of that—and we have the Wilderness Society, the investors for Tasmania, all peas in the same pod incurring huge expense to the Australian taxpayer with what some of us would suggest might be frivolous cases. But, once again, that is for other people to determine. What is the Commonwealth's attitude going to be in relation to costs?

Mr Cornall—Senator, I think we should be clear that in the great majority of cases these are issues for the department that is responsible for the litigation, not this department. They are required to abide by the Legal Services Directions. There are some judgement issues about when you do and when you do not pursue costs, not the least of which is whether you are likely to get any payment as a result of that additional litigation, and it does not come down to us to make those decisions.

Mr Govey—It might also be useful to mention that the Financial Management and Accountability Act has a role in that respect. That obligation is referred to in a note in the Legal Services Directions where it says that the Financial Management and Accountability Act imposes obligations on chief executives concerning the recovery of amounts owing to the Commonwealth. It says amounts should generally be recovered but it may in some circumstances be appropriate to consider compromise for a lesser amount—and so it goes on. And there is also a reference—

Senator ABETZ—Sorry to interrupt, but would you see that as applying to the seeking of legal costs in cases where the other side would argue that there was—albeit tenuous—some public interest matter at stake?

Mr Govey—That would be my understanding, that it does concern the seeking of costs orders. I was going to go on and mention that under the particular appendix—that is appendix B, which outlines the Commonwealth's obligation to act as a model litigant—there is a reference to the fact that the model litigant obligation does not prevent the Commonwealth from enforcing costs orders or seeking to recover its costs. That is the level of guidance which is given in the Legal Services Directions and the associated notes.

Senator ABETZ—You have been most helpful; thanks a lot. And thank you to the committee.

Senator BARNETT—In terms of the two per cent efficiency dividend, can you advise the committee the extent of that? Secondly, what are the consequences, and for what programs, for your department?

Mr Cornall—The information is on page 28 of the portfolio additional estimates statements, in the middle of the page. The implications for this year are a reduction of \$940,000; and for next year, \$4,258,000. That has to be considered in the light of a total budget of over \$200 million. It is 0.46 per cent of our total budget, so it is not a huge amount in terms of the current financial year.

We are presently doing our mid-year financial review to see where we up to against our budget. As in all budgets, there will overs and unders. In addition to that, we would expect that there will be, in the normal course of business, staff losses as people take other positions or are promoted and so on in the course of the rest of this year, and that that will give us the flexibility to accommodate this amount in our total budget for the balance of the year.

Senator BARNETT—Are there any particular programs which you have identified that will be cut?

Mr Cornall—No, but we have not done our mid-year review yet. But, in a total budget of \$200 million, I would not expect that sort of amount to have a dramatic impact. We would rather have the money, but we should be able to accommodate that without it having a dramatic impact on any particular program.

Senator BARNETT—I turn to the issue of homeland security and the view that was expressed before the last election in terms of its future. Before the last election Labor promised to create a large scale department of homeland security. However, in an article in *The Australian* of 28 January—just last month—the Minister for Home Affairs indicated that

this proposal would be scrapped. I have the article with me. It is titled 'ALP cans homeland security promise'. Can the department advise the committee if the minister has requested a brief on the creation of the department of homeland security? Has that been provided and what information has been exchanged?

Mr Cornall—We have had discussions with the Attorney, obviously, about a whole range of issues that affect the department, including this. But the fact of the matter is that the government has announced that it intends to have an inquiry into this issue with a view to the inquiry reporting by 30 June on the desirability of a department of homeland security or other amendments or changes to our homeland security arrangements. I do not believe that the details of that inquiry have yet been finalised and announced by the government, but I think that that is imminent, that there will be an inquiry, that it will report to the government by 30 June and that the government will then make decisions about homeland security changes in the light of that report.

Senator BARNETT—So what we do know is that the government plans to have the department of homeland security. What we do know is that there will be an inquiry for report by 30 June this year, when the government will presumably consider its recommendations in terms of how it is set up and established. Is that correct?

Mr Cornall—No. My understanding is that the whole issue is open for the review to consider.

Senator BARNETT—The issue as to whether the government actually has a department of homeland security—is that your view?

Mr Cornall—That is my understanding, yes.

Senator BARNETT—So it is your view that the promise of and commitment to a department of homeland security is now in doubt?

Mr Cornall—My understanding is that the issue is the subject of this review. I think that is all on the public record in various places and that there will be a recommendation about that by 30 June.

Senator BARNETT—Can you describe or explain to the committee the terms of reference for the inquiry, who will undertake the inquiry and the timing apart from having a report by 30 June?

Senator Ludwig—They are matters for the government and they will be announced in due course.

Senator PAYNE—Does that review or inquiry also include the vaunted review of the antiterrorism laws? Is that part of the same review or inquiry process? Or is that a different one?

Mr Cornall—Yes.

Senator ABETZ—How many reviews, plans, plans to review and inquiries are the department confronted with as a result of election promises made? I asked for a checklist from the Department of the Prime Minister and Cabinet, and I was unfortunately told I might

have to go to each portfolio because they do not seem to have a record of all these promises. Can we have a list please?

Mr Cornall—Senator Minchin did write a letter asking for a range of information from the Leader of the Government in the Senate. My understanding is that the aspect of that letter dealing with election promises was to be dealt with centrally on a whole-of-government basis by the Prime Minister's department.

Senator ABETZ—That is the exact opposite of what I was just told by the Department of the Prime Minister and Cabinet. So, in the event that that does not occur, could the department do it for its jurisdiction please?

Mr Cornall—We will take that on notice.

Senator ABETZ—Thank you.

Senator PAYNE—Mr Cornall, on the question of the review of the antiterrorism laws, can you advise us of its current status?

Mr G McDonald—There is a COAG review due in 2010 that goes some time back. There is no other review that I am aware of.

Senator PAYNE—Is there no review in terms of an election commitment by the now government, Mr McDonald?

Mr G McDonald—I am not aware of any plans for a review.

Senator Ludwig—For clarification, do you have the wording of the election commitment you are referring to, Senator Payne?

Senator PAYNE—Amongst the 97 reviews that were announced, Minister, I am not sure that I have the specific wording on that one, but I will try to find it and come back to you.

Senator Ludwig—That would be helpful.

Senator ABETZ—There have been a lot more since.

Senator PAYNE—Yes—and those that have been announced subsequently.

Senator Ludwig—We intend to do our election commitments—

Senator PAYNE—I am not sure if it is the COAG review—that is why I was seeking advice from Mr McDonald.

Senator Ludwig—We will undertake to do the election commitments that we have promised. I wanted to establish that it is one that we promised.

Senator BARNETT—Can the department advise as to whether you have set up a committee or a working group to consider the merits of the different types of homeland security departments or any such similar entity within the department?

Mr Cornall—We have not. We have a lot of experience in this area and views to input into the matter when the review is undertaken. That is how we would expect those matters to be carried forward.

Senator BARNETT—Are you drafting the terms of reference?

Mr Cornall—No.

Senator BARNETT—Are you waiting for further advice from the minister?

Mr Cornall—It is a matter for the Prime Minister's department.

Senator BARNETT—Thank you. I have finished on homeland security and I am ready to move to the next topic.

Senator PAYNE—Concerning my previous point, Minister, I think the reference in particular is a media statement from the previous shadow minister, Mr Bevis—I think it was on 5 October last year—which referred in broad terms to a so-called counterterrorism white paper which may constitute the review of antiterrorism laws that I am thinking of. Given that you are a minister in the government, perhaps you can clarify that for me.

Senator Ludwig—What I was trying to establish is what you were alluding to earlier—election commitments—

Senator PAYNE—I think they are linked.

Senator Ludwig—I am not sure. I can certainly find out for you.

Senator PAYNE—Could you?

Senator Ludwig—It certainly was not my portfolio at the time.

Senator PAYNE—No, but it is a matter in which you have had an ongoing interest. I understand that was to explore an assessment of the threat that we face as a nation, to provide a coordinated approach for a whole-of-government response and to form the basis for future strategic planning. It would be interesting to know where that is up to.

Senator Ludwig—I will take that on notice and get back to you.

Senator PAYNE—Thank you.

Senator ABETZ—Was it the Minister for Home Affairs who was the minister responsible for diverting the *Oceanic Viking* from its scheduled trip of patrolling the Southern Ocean on 8 January this year to undertake the whale watch exercise?

Mr Cornall—I do not know the answer to your question, and I do not know whether the department would know. Customs would deal directly with the Minister for Home Affairs in relation to its matters.

Senator ABETZ—I thought we heard this morning that Customs did not do this of their own volition. It was as a result of a government approach, and they, quite appropriately, responded to that government approach. If it was neither the Minister nor the Department of Home Affairs, who would have made the request?

Senator Ludwig—I think you are entitled to put a question to Mr Cornall as the Secretary of the Attorney-General's Department, and he can respond to that accordingly. If there was a question you wished to put to Customs in respect of that matter, then by now you would need to put it on notice.

Senator ABETZ—It is not Customs. They told us that it was not their idea—they just put the machinery into place for the whale watch exercise to be undertaken. I was told it was not extraordinary to have ministerial involvement in certain things, so I want to know which

minister it was. I would have thought it would be the Minister for Home Affairs, because he was the one that got all the glory—showing us those gory videos.

Mr Cornall—The Minister for Home Affairs is the minister responsible for the Australian Customs Service and they would deal directly with him in relation to matters affecting their operational activities. The department would have no need to be involved in it, so we cannot answer your question.

Senator ABETZ—Who made the decision—you do not know who made the decision?

Mr Cornall—No, Senator.

Senator ABETZ—The Minister for Home Affairs, the minister who is in charge of Customs, is unable to assist us as to who diverted the *Oceanic Viking* asset from its normal patrols to whale watching.

Senator Ludwig—I think that the question, as well meaning as it is, is being put to the wrong place. I certainly can take it on notice and see if I can get a response for you. I think you may have missed your opportunity in putting that to Customs or—

Senator ABETZ—No. Customs were very specific this morning that they were responding to a government request and it would be, I would imagine, from the Minister for Home Affairs.

Senator Ludwig—We will not imagine; I will take it on notice and get back to you.

Senator ABETZ—But it is passing strange that the department is unable to know whence the instruction came or from whom the instruction came to divert the *Oceanic Viking*.

Senator Ludwig—I cannot answer on behalf of the department or your view about these matters.

Senator ABETZ—No; you are the minister. It was a government decision, which I accept—

Senator Ludwig—They can take questions. I am not sure that was a question other than a comment.

CHAIR—Do you have a question, Senator Abetz?

Senator ABETZ—Minister, are you saying that you are unable to assist this committee as to which minister made the decision?

Senator Ludwig—What I said was that I will take it on notice—I am wishing to assist the committee. It certainly was not in the portfolio that I look after that that decision was made.

Senator ABETZ—Why was Mr Debus reported as saying that he did not know what to do with the evidence gathered if he is not the relevant minister responsible for the information that was gathered? He was the minister, wasn't he, that in fact sent the *Oceanic Viking* down there? He dined out in the public limelight of showing the video and then when he was asked the embarrassing question of 'What are you going to do with these videos?' he had no idea. So are we going to be given some assistance by the new officer at the table on this?

CHAIR—So what is your question, Senator Abetz?

Senator ABETZ—Why did Mr Debus involve himself in the public discussion about what was going to be done with the evidence gathered?

Senator Ludwig—I can take that question on notice and ask Mr Debus if he wants to provide an answer in respect of that matter to you.

Senator ABETZ—Only if he wants to. So, if he does not want to, he will not.

Senator Ludwig—I can put the question to him. I cannot do any more than that, as you can appreciate.

Senator ABETZ—I thought there was going to be a new era of openness, transparency and comprehensive answers, but it looks as though we are not experiencing that. But that is fine.

CHAIR—Senator Abetz—

Senator Ludwig—I think in respect of that—

CHAIR—Order!

Senator ABETZ—Who was still examining what legal avenues to pursue—

CHAIR—Senator Abetz! Order! With all due respect, Minister Ludwig has said he will seek an answer. Perhaps you can come to the conclusion you have just stated based on whether or not you get your answer. So let us just give Senator Ludwig a chance to ascertain that information for you first.

Senator ABETZ—What I want to know is: is Mr Debus examining what legal avenues to pursue with this evidence that we do not know whether he asked for or not?

Senator Ludwig—Similarly, I can put the question to Mr Debus, so I can take it on notice.

Senator ABETZ—I would have thought any court action that might flow as a result of this gathering of evidence would have been—

Senator Ludwig—Is there a question in that?

Senator ABETZ—Yes. I would have thought that before one sent off the *Oceanic Viking* on an exercise of obtaining evidence, one would have had an idea as to what legal avenues might be pursued with that evidence. So are we led to believe that the *Oceanic Viking* was sent off to gain evidence without having any idea what we might do with that evidence?

Senator Ludwig—Is the question whether the Attorney-General's Department is aware of any legal advice in respect of that matter? It is usually a policy of government and successive governments to comment on whether advice has been received or obtained or what that advice is. I am certain that you would also be very familiar with that particular position, but you did miss your opportunity to put those matters to Customs.

Senator ABETZ—Absolutely not, because Customs do not determine what legal avenues are to be pursued. Or are you telling us now that Customs would be prosecuting any case in the international courts? I do not think so.

Senator Ludwig—That is a different question, again.

Senator ABETZ—No, it is not. I have been asking quite consistently about the Minister for Home Affairs, Bob Debus, saying that he did not know what to do with the evidence gathered by the *Oceanic Viking*.

Senator Ludwig—In respect of that matter, I indicated that I would take it on notice. It seems to be that you are asking the question of Mr Debus. Mr Debus is clearly not at the table. As I have indicated, I will take it on notice and put it to Mr Debus.

Senator ABETZ—Who would be the minister responsible for determining what legal avenues will be pursued with this evidence? Would it be the Attorney-General?

Senator Ludwig—It is a matter I will take on notice and get back to you.

Senator ABETZ—Come on, really!

CHAIR—Mr Cornall, I am wondering if these questions are best asked in output 1.4?

Mr Cornall—Probably.

Senator ABETZ—I did ask the committee secretariat, and I was told that general questions was the appropriate place to ask them. Will different officials be sitting in the back of the room for 1.4?

Mr Cornall—Yes, Senator. The whole whaling issue is really a matter that is under consideration by the whole of the government. I think that is very clear. We have a role to play in some aspects of it, but you keep asking questions about what Minister Debus thinks, or what Minister Debus said and we will have to refer those to him because we do not know the answer to these questions.

Senator ABETZ—But you are the department, and Senator Ludwig is the minister representing Mr Debus here. I would have thought he might have been briefed, given the notoriety of Mr Debus's comments of 10 or so days ago that he did not know what legal avenues to pursue. You are saying it is whole of government, so can I ask in Families, Housing, Community Services and Indigenous Affairs about this as well, or where should I be going to get the answer?

Mr Cornall—No; I mean that these are cabinet-level decisions.

Senator ABETZ—So, back to Prime Minister and Cabinet on this?

Mr Cornall—No. If you want to ask specific questions of Minister Debus, we will put them to Minister Debus and see what he says.

Senator Ludwig—I think that is plain. What we have been suggesting—

Senator ABETZ—What it is suggesting is obfuscation on a pretty grand scale because surely, if it was a cabinet decision, you, Minister, sitting in cabinet, must be aware of who took that decision. Were you part of that cabinet decision? Did it go to cabinet?

Senator Ludwig—As you well know, Senator Abetz, if these matters are related to that, I will not answer. What I will do is take the matter in respect of your question to Minister Debus, and see if he can provide an answer.

Senator ABETZ—So, if cabinet did make the decision to send the *Oceanic Viking*, we will not be told. Is that right?

Senator Ludwig—As I have said, I will take your question on notice and I will see what Mr Debus can provide in answer.

Senator ABETZ—You sit in cabinet, you must know, but you told me that you would not tell us. That is fine.

Senator Ludwig—As you understand, and successive governments understand, matters that are cabinet deliberations are for cabinet only, and that is where they stay.

Senator ABETZ—But all I am asking is who made the decision. I am not asking for any—

Senator Ludwig—And the answer to that specific question is that I am happy to take that on notice and provide an answer.

Senator ABETZ—But isn't the normal procedure to only take questions on notice if you do not actually know the specific answer now? You sit in cabinet; you must know.

Senator Ludwig—As I said, I am happy to take that on notice. You started your first line of questioning with Minister Debus.

Senator ABETZ—That is right. And I have since changed because we were told it was a whole-of-government, ephemeral sort of thing that I could go and ask every minister about. I want to pinpoint it. Who is responsible?

Senator Ludwig—In respect of that matter, I will take it on notice and provide an answer.

Senator ABETZ—So the Customs Service, under this department, sent a vessel whale watching without being able to tell this committee who actually made the decision to send it off. That is right—you do not know who made the decision.

Senator Ludwig—That is a matter that you could put to Customs, or you could put it on notice and put it to Customs. In respect of the primary question, as I indicated, I will take it on notice and get back to you.

Senator ABETZ—Very poor start, Senator Ludwig.

Senator MARSHALL—I think that judgement could be made by others.

CHAIR—It has been a matter of course in the past that cabinet deliberations have not been made public in the past. I am not sure why we would change that precedent. As I understand it, we are still dealing general questions at this stage.

Senator PAYNE—Madam Chair, I have one other question in the general area. This is for either the minister or Mr Cornall. In July last year the now Prime Minister made an announcement about an Office of National Security in an address to the Lowy institute. I wonder what involvement this department has in the development of the Office of National Security.

Mr Jordana—The Office of National Security is something which I understand already exists. Questions about its operation and its formation should be directed to the Department of the Prime Minister and Cabinet, because that is where it sits.

Senator PAYNE—So this department has no input in the implementation of the proposal from Mr Rudd about integrating our national response to the 'complex, overlapping and multidimensional nature of Australia's emerging threat environment'?

Mr Jordana—Could you repeat that quote? I am not sure what the context of that quote is.

Senator PAYNE—I was using the description that was applied at the time to the creation of an Office of National Security. It was about integrating our national response to the ‘complex, overlapping and multidimensional nature of Australia’s emerging threat environment’. To that end I thought that this department might have some engagement in that, particularly in relation to matters of counterterrorism.

Mr Jordana—We do. We have a role, obviously, in the whole issue of national security and counterterrorism. All I was saying was that the Office of National Security is something which is located within the Department of the Prime Minister and Cabinet.

Senator PAYNE—I understand that. I was trying to get a better understanding of whether this department had any role in the developments in this area. Perhaps the minister can help me more.

Senator Ludwig—That is a matter that I could only take on notice.

Mr Jordana—The whole issue of national security and counterterrorism is obviously an issue which entertains the attention of a number of different departments—Prime Minister and Cabinet, us, the Department of Immigration and Citizenship, the department which handles transport matters, and obviously some of the agencies which have also been questioned here today. So there is an apparatus that currently exists for consideration of national security and counterterrorism issues and we are a participant in that process.

Senator PAYNE—So if I can just get that clear: notwithstanding an announcement of the creation of a specific new office, Mr Jordana, you are telling me that that already existed and that there is no particular input required from this department or, one imagines, others into a new process with regard to the Office of National Security.

Mr Jordana—The Office of National Security did not exist under the previous government.

Senator PAYNE—I am sorry; I am confused then. I thought that is what you said to me at the beginning of your remarks.

Mr Jordana—The Office of National Security is a part of the Department of the Prime Minister and Cabinet. It is a physical—

Senator PAYNE—In the new iteration?

Mr Jordana—It is new. It is a physical entity that exists.

Senator PAYNE—Thank you. What are the links then between, say, this department and the Office of National Security? How does it actually work in terms of communications, engagement, meetings and so on?

Mr Jordana—In a range of areas, the Prime Minister’s department takes a lead and it has, as part of its operational mandate, to pull together, depending on the issue, other departments and agencies to sit with it and discuss particular issues. Some issues are issues on which we as a department take the lead, but on a range of them the Department of the Prime Minister and Cabinet itself takes a coordinating lead.

Senator PAYNE—Does your department, for example, second any staff into the Office of National Security?

Mr Jordana—Earlier in the proceedings there were some discussions—I think with the AFP and ASIO—and I think the secretary mentioned that there was some financial contribution that was provided from us, the AFP and ASIO to assist in the establishment of the Office of National Security in PM&C.

Senator PAYNE—Can you tell us what that is?

Mr Jordana—On page 28 of the portfolio additional estimates statement document, you will see the figures for the Office of National Security establishment and the figures for the department. Going across the page, you will see \$48,000, \$68,000, \$104,000 and \$105,000. As the secretary mentioned earlier, they are equal figures, taking account of rounding, that you will find as against the AFP and ASIO as well.

Senator PAYNE—Does that include any staff that may be engaged as well from your department?

Mr Jordana—That is just money.

Senator PAYNE—In addition to that, are there any staff?

Mr Jordana—No.

Senator PAYNE—Is it envisaged that there will be any staff from the Attorney-General's Department placed in or seconded to—whatever turn of phrase is appropriate—the Office of National Security?

Mr Jordana—Not as it currently stands, no. There are times, and there have been times in the past, where some secondment arrangements occurred. With respect to the establishment of the Office of National Security and the questions you have been asking, the answer to that is no.

Senator BARNETT—I have two areas for questions. One area we touched on earlier today regarding security for culturally sensitive schools. One of your officers was not here at the time, so I am hoping we might be able to deal with that now. The second area concerns questions I put to the Australian Federal Police and ASIO about the progress of that \$20 million announcement on 10 January by the Deputy Prime Minister. Can you now provide a progress report on how that announcement is progressing?

Ms Blackburn—My recollection is that your questions were about progress in implementing the secure schools program. The department has been working with a number of agencies on developing proposals as to how that funding might be distributed, what would be the criteria for selecting schools and, indeed, what organisations or bodies might be consulted with or involved in that selection process. That is still going forward. At this stage, no decisions have been made by the government as to either the process of the selection or the particular criteria. We would expect when that is done that those matters would be published to the community and through the website.

Senator BARNETT—Do you know when this decision will be made?

Ms Blackburn—No, I do not know when and I would not like to predict. The department is developing these proposals. There are a number of agencies involved in that. A recommendation will be put to the minister as soon as possible for his consideration.

Senator BARNETT—Are the schools likely to be assessed by ASIO or the Australian Federal Police?

Ms Blackburn—The question of how you determine which schools ought to receive assistance under this program is one of the issues which are under consideration.

Senator BARNETT—Can you provide the committee with the terms of reference or the criteria that apply to the schools?

Ms Blackburn—No, the government has not yet made decisions on that matter.

Senator BARNETT—We have achieved about as much as we can this morning. Thank you for your feedback. Finally, I have a question for the department. Correct me if this is in the wrong area but in 2004 a Chinese student Zhang Hong Jie was murdered in Canberra. Her body was not found until early 2005. In March 2005, Zhang Long surrendered in China to the authorities and he is due for trial. Can you advise and provide an update on this matter—is he still in custody, when is the trial, has Australia provided evidence for the trial and can you provide any further particulars?

Ms Jackson—Australia has provided all possible assistance to the Chinese authorities. There was a suggestion in the media that the trial may commence in February, but we have not received any official notice of the trial date. I believe he is still in custody in China.

Senator BARNETT—Have you made any inquiries as to when the trial may be or are you simply waiting for information?

Ms Jackson—The Australian Federal Police are in regular contact with the Chinese police authorities. They are being updated and are keeping the department informed.

Senator BARNETT—So it is your expectation that you would be advised with due notice prior to the trial?

Ms Jackson—Yes.

Senator BARNETT—Are you at least aware of the trial and being present at it or having a representative either from the embassy or the department?

Ms Jackson—From either the embassy or the AFP.

Senator BARNETT—Where would be the trial be held?

Ms Jackson—I am not sure where the trial is being held. Can I take that on notice?

Senator BARNETT—Thank you.

Ms Jackson—It is in China.

Senator BARNETT—It is in China, but it is the location in China I am interested in. Can you take on notice where he is currently being held?

Ms Jackson—I will take that on notice too.

Senator BARNETT—How long has he been in custody?

Ms Jackson—I will have to take that on notice too.

Senator BARNETT—Have you been given advice of possible outcomes of such a trial: worst-case, best-case scenario?

Ms Jackson—No.

Senator BARNETT—Could you take that on notice and provide advice as to the possible best-case, worst-case scenarios?

Ms Jackson—Yes.

Senator BRANDIS—I wonder if, unless other senators have questions for them, it might be convenient to—if Mr Cornall and his officers do not mind—allow the Australian Government Solicitor to give evidence briefly now because I am sure they could be disposed of before the dinner break.

CHAIR—First of all, I understand we do not need the Insolvency and Trustee Service Australia—thank you for your attendance but you can have an early mark. My understanding, Senator Brandis, is that you were hoping to have the Australian Government Solicitor for about 10 minutes and I was going to call them to the table at 6.20. But you want them earlier, do you?

Senator BRANDIS—Whatever is convenient to the majority of people. If we could bring them on now, it might be longer than 10 minutes. It probably will not be.

CHAIR—I am going to suggest we keep going with general questions and call the Australian Government Solicitor at 6.15 and hopefully deal with them before we go to the dinner break. Then they will be able to go home for the evening.

Senator BRANDIS—I turn to the issue of same-sex entitlements. The former government received the Human Rights and Equal Opportunity Commission's report. It is my understanding, Minister—I do not want to verbal you—that the new government is disposed to adopt and seek to implement those recommendations. Where are we with that?

Ms Lynch—The department in the human rights branch has done a considerable amount of work in relation to the report and has also been undertaking an audit of Commonwealth legislation to identify potential provisions that discriminate against same-sex couples. We are in the process of finalising that and providing advice to government.

Senator BRANDIS—Minister, does the government have it in mind to deal with this matter this year?

Senator Ludwig—I will have to take that on notice. What you have heard is that the matter is in hand. I am unaware of the timing. I can certainly ask the Attorney-General if he has a view about timing.

Senator BRANDIS—Forgive me if I trespass on ground that Senator Payne may have covered in relation to terrorism. I referred earlier in the day to reported remarks of the Attorney-General that Labor intends to 'change the tone' of public discourse on terrorism. Are amendments to the current suite of antiterrorism laws in prospect?

Senator Ludwig—There are two issues, firstly. Do you have the actual comments that you refer to there?

Senator BRANDIS—Yes, I do. They were in the *Weekend Australian* of 26 January 2008. The words are, in both direct and indirect speech:

Labor will “change the tone” of the public discourse on terrorism to rebuild bridges with marginalised Islamic communities, Mr McClelland said.

That is, again, over the by-line of Mr Paul Maley. That is as before—the ability to contextualise the question. Does the government have it in mind to change in this parliamentary year the current suite of antiterrorism laws?

Senator Ludwig—The Attorney-General’s Department is not aware of any.

Senator BRANDIS—Thank you. Now to you, Minister: does the government intend to change the current suite of antiterrorism laws?

Senator Ludwig—In respect of that matter, I am happy to put that to the Attorney-General and see what advice he can provide you with.

Senator BRANDIS—All right; thank you. I turn then to the question of the resourcing of federal courts. I am aware of views held by some in the legal profession that there is a misallocation of resources between the Federal Magistrates Court and the Family Court. The complaint that has been made to me is that the Federal Magistrates Court, which deals with 87 per cent of family law matters and has a much more significant case load than the Family Court, is in both absolute and weighted terms less well resourced.

We might have to come back to this after dinner, but can you provide for me either now or after dinner this information, please: the number of federal magistrates currently sitting and the number of Family Court judges, including appellate judges, currently sitting; the number of contested proceedings commenced in the last year in the Family Court; and the number of contested family law related proceedings commenced in the Federal Magistrates Court. In each case, please provide the number of such proceedings disposed of. Perhaps you can tell me this now: the aggregate budget allocation in the last year for which the figures are available for the Family Court and the aggregate budget allocation in the last year for which figures are available for the Federal Magistrates Court.

Senator Ludwig—By way of assistance, the types of questions you ask I do recognise. Those questions could, if you so desired, be put on notice to the Federal Court, the Federal Magistrates Court or the Family Court, depending on which court you wanted to inquire of. They do keep statistics on a range of matters, from my recollection. They also—

Senator BRANDIS—I might do that, but I wanted to engage in a comparative exercise.

Senator Ludwig—Let me finish. They can also provide information in their annual report which they can take you to in answer to some of those questions. But I am happy if the Attorney-General’s Department can more broadly answer your questions now. The more specific data are usually available directly from those relevant courts.

Senator BRANDIS—Indeed, but I want to agitate the matter here.

Senator Ludwig—I will ask the chair to consider the usual way the committee has worked, and whether it is appropriate to ask specific questions that relate to agencies here during general questions or whether those questions would be better left to be asked when the agency appears. General questions by their very nature are broad and across the Attorney-

General's portfolio. We do not have the particular agency, or the registrars from the Family Court, the Federal Court or the Federal Magistrates Court, at the table to be able to respond.

Senator BRANDIS—That is a fair point, and perhaps those officers from those two courts who are waiting can anticipate that I will direct the same questions to them and would expect them to have the answers. Mr Cornall, can I nevertheless invite you to respond to the general point, which I will rephrase this way: as the jurisdiction in relation to Family Court matters of the Federal Magistrates Court has expanded to the point at which it now deals with the vast majority of family law matters, the comparative resourcing of that court vis-a-vis the Family Court is now out of balance. The Federal Magistrates Court is under-resourced by comparison with the Family Court.

Mr Cornall—There are now 53 magistrates and 46 judges of the Family Court, including Court of Appeal judges. In respect of those magistrates, some of them are obviously directed to Federal Court business as opposed to Family Court business. The magistracy has grown dramatically, I think it is fair to say, over the last few years and now has the largest number of judicial officers of the federal courts.

Senator BRANDIS—I think that is correct: there are 50 Federal Court judges, aren't there?

Mr Cornall—My colleagues are confirming that that is correct. Obviously, from the start there is an issue of finding and sharing resources with other courts. We need to constantly monitor the balance of the sharing of those resources, and it is not always easy.

Senator BRANDIS—Are you conscious of the fact that this is becoming an acute issue among, in particular, practitioners and, I would not be surprised, federal magistrates themselves?

Mr Cornall—Yes, I am aware it is an issue.

Senator BRANDIS—Thank you, Mr Cornall. I will ask the more particular questions of the courts themselves.

CHAIR—We are going to stop there and go to the Australian Government Solicitor.

Mr Govey—Senator, as of a few seconds ago, I am not sure that the chief executive had arrived here. A message has been given to her that questioning was hoped to commence. We might need to continue until that point, and there was one matter that I could refer to, going back to amplifying an earlier question.

CHAIR—All right, we will cover that.

Mr Govey—Thanks very much. Senator Abetz asked a series of questions concerning recovery of costs in legal proceedings, and Dr Popple and I referred to the Legal Services Directions and the FMA Act provisions. We should also have referred to a guidance note that the Office of Legal Services Coordination in the Attorney-General's Department has issued quite specifically on this issue. It is guidance note No. 6 of 2006 entitled 'Recovery of costs'. It provides further criteria and further explanation about the issue of recovery of costs. I could table that, if that would be of assistance.

CHAIR—It most likely would be, so thank you very much. While we are doing a few housekeeping matters, I need to advise the committee that the National Capital Authority and aspects of the previous Territories portfolio have now been moved into Attorney-General's, specifically outcome 3, assisting regions to manage their own futures. Under that, I am advised that 3.2, the natural disaster relief and mitigation output, is being handled now by Emergency Management Australia, which comes under output 2.4 of Attorney-General's. So it has been put to me that if senators on this committee, or senators in general, have questions under output 3.2 on natural disaster relief and mitigation they might consider doing them under output 2.4 of A-G's at the same time.

Senator Ludwig—Chair, I have an answer to a question taken on notice by the Australian Federal Police. I had said I would see if I could obtain an answer to that from the finance department and I can table that answer. Given the shortness of time I will not read it out.

CHAIR—Thanks. While we wait for the appropriate officers from the Australian Government Solicitor, do you want to proceed with general questions, Senator Brandis?

Senator BRANDIS—Yes, I will.

CHAIR—That is fine. It would be perfectly reasonable for AGS not to expect to be hiked up the program so early, so I hope someone is getting the message to them that if they are not on by 6.30 they can take their time.

Senator Ludwig—I did indicate earlier today that it would be helpful to understand the program from then from the committee.

CHAIR—Before we break for dinner we are trying to ascertain where we might be at with the agencies, but I still have an indication from senators that they are wishing all of the agencies to remain.

Senator Ludwig—And I am not cavilling with that question; I am really only trying to ensure that the committee is best served and the officers of the agencies are available.

CHAIR—That is right.

Senator BRANDIS—I want to put these questions that I have just addressed in general questions to the relevant officers of the Federal Magistrates and Family courts. I have questions in relation to output 2.2 about extradition and the Patel matter and I have general questions, which I would rather not start right now because they are quite extensive, about government legal services and the Attorney-General's announcements about slashing the legal costs of the Commonwealth. Those three areas of questions, along with the question about the suppressed legal advice which I want to put to the AGS are the only areas that I am proposing to explore this evening.

CHAIR—Senator Payne, do you have any other general questions?

Senator PAYNE—No. I have some questions for HREOC, which I am happy to do now if you want me to.

CHAIR—I don't think there is any point in starting them for nine minutes. Senator Brandis, do you have general questions still to pursue?

Senator BRANDIS—I do, but they are quite extensive, and it is quite a complex matter. I think that it would be better to take them at one go for the sake of efficiency.

CHAIR—Perhaps I should suggest that we all break for dinner now, if that is the case.

Proceedings suspended from 6.23 am to 7.47 pm

CHAIR—It is beyond the time we had designated to start. Senator Payne is here and she has questions for the Human Rights and Equal Opportunity Commission. So, in the absence of any other senators, I will ask HREOC to come to the table if that is possible.

Senator Ludwig—If you did want a response in respect of the issue of the legal advice, I note that Senator Brandis has now arrived, so we might be able to undertake that now.

CHAIR—Senator Brandis is here so perhaps we might pursue general questions rather than get HREOC, if that is that case.

Senator PAYNE—If they just broke a hamstring trying to get in, we apologise!

Senator Ludwig—Only to the extent that I indicated that I would take on notice two matters—that is, the Hicks and the apology questions that Senator Brandis asked—and seek the view of the Attorney-General. The view of the Attorney-General, as communicated to me, in respect of both matters is that it has been the practice of successive governments not to reveal whether legal advice has been sought or provided on a particular matter, nor the content of any such advice. My understanding is that that position has been adopted by this committee in the past and it continues to be the view expressed by the Attorney-General with respect to those two matters.

Senator BRANDIS—With respect, Minister, that is completely disingenuous because it does not apply to this case. In the case of the stolen generation's suppressed legal advice, your own leader, Senator Evans, said in the Senate on 13 February:

We have indicated that we have legal advice that compensation is not payable as a result of the apology. We have made that public ...

So the question is not whether or not legal advice was taken. The government has already revealed that legal advice was taken. It has in a metaphorical though not a technical sense waived its privilege in that regard. It has waived its capacity to decline to respond to that question by putting out in public that it has taken legal advice. Mr Albanese last Tuesday evening did the same in relation to the legal advice about Senate procedure. Given that the government—not the Attorney-General himself, but his senior ministerial colleagues—have already published to the Australian public the fact that legal advice was taken, it is too late to take that objection. The government has already announced that fact.

Senator Ludwig—In respect of the issue of whether they provide the legal advice: it is a matter for government and, in this instance, they do not intend to provide it.

Senator BRANDIS—I understand that the government is taking the position that it will not provide the legal advice. But you will remember, Minister, that all but one of my questions were not in relation to the content of the legal advice but circumstances surrounding the legal advice: by whom it was provided, in what form it was provided, on what date it was sought, on what date it was provided and the instructions that were given to the provider of the legal advice. I understand your objection to providing the substance of the legal advice,

but it is beyond the capacity of the government now to say ‘We will invoke what is said to be a convention not to respond to questions about whether or not there was legal advice,’ because the Prime Minister, Senator Evans—and in relation to the House of Representatives procedural advice, Mr Albanese, the Leader of the House—have already waived that point.

Senator Ludwig—As I have said, I put those matters and the response is that they are not going to provide the legal advice.

Senator BRANDIS—That is fine, but that is not responsive to all of my questions. I asked the series of questions that I have just recited—and I will not detain the committee by reciting them again. That is a response to the last question I asked: ‘What was the legal advice?’ What about the other questions?

Senator Ludwig—In respect of those questions, we are not going to provide a response to those as well.

Senator BRANDIS—On what ground? You have waived the capacity to—

Senator Ludwig—No, we have not waived—

Senator BRANDIS—Let me finish. You have waived the capacity to invoke the convention that you say exists: that the government will not confirm or deny whether it has taken legal advice. The government has announced that it has taken legal advice. This is an admitted fact. As well as the question about the substance of the legal advice—the ultimate question, which I will not for the moment press—I asked a series of other questions. You cannot—with respect—in good faith or honesty, decline to provide answers to those questions, when the government has already conceded the existence of the legal advice, and indeed conceded the topic to which the legal advice was directed.

Senator Ludwig—It did not go to all the issues that you raise. What I undertook to do, Senator Brandis, was to put those matters to the Attorney-General. I have done that and I have provided a response.

Senator BRANDIS—I do not want to embarrass you, Senator Ludwig, because you are in the hands of the Attorney-General in relation to this matter. I understand that, but all you have told us is that none of the questions that you took on notice would be answered on the basis of the convention that the government would not admit to or confirm the existence of legal advice. As I have explained to you, it is beyond that because the government has already done so.

Senator Ludwig—That might be—

Senator BRANDIS—I will acknowledge that that does not constitute a waiver of the asserted right not to provide the substance of the legal advice—that is an issue that we can argue about in another place. Every other question I asked was not about the substance of the legal advice but about matters incidental to the admitted legal advice: who provided it, on what date, on the basis of what instructions, and so on. The Attorney’s response—mediated through you—does not meet that point.

Senator Ludwig—It is to the extent that that is the answer that the Attorney has provided and the extent that the Attorney wishes to provide an answer to your question.

Senator BRANDIS—Senator Ludwig, it is not a question of whether the executive government wishes to provide an answer to the parliament. The executive government is obliged to provide an answer to parliament. The question is whether the executive government chooses not to observe its obligations to the parliament. It is very clear from the response that the Attorney-General has given to the questions you have taken on notice that the executive government has already decided—in this second parliamentary week of the new parliament—that it will defy the proper interrogative function of the Senate.

Senator Ludwig—Well, you have an answer; is there a question there?

Senator BRANDIS—No, I do not have an answer; I have a refusal to answer.

CHAIR—Senator Brandis, the minister has provided the answer from the Attorney-General—

Senator BRANDIS—No, he has not provided an answer; he has provided—

Senator Ludwig—It is an answer from the Attorney-General.

CHAIR—Senator Brandis, the minister has provided an answer from the Attorney-General. It might not necessarily be the one you want or like. If you are dissatisfied with that, you will now need to take it up in the Senate. So let's move on with other questions.

Senator BRANDIS—Senator Crossin—

CHAIR—And please stop interrupting me!

Senator BRANDIS—Senator Crossin, please do not tell us that black is white, when we have the minister at the table saying: 'The Attorney-General declines to provide an answer to your question,' and invokes an irrelevant ground to characterise that as an answer to the question.

CHAIR—It is an answer to the question. It might not be the answer you want or like. If that is the extent of the answer that you are going to get from the minister and if you are dissatisfied with that on the grounds you stated, you will need to now take it up in the Senate.

Senator BRANDIS—Senator Crossin, if you think that a statement 'I refuse to answer your question' is an answer, then you have an unusual understanding of the English language.

CHAIR—That may be so, but Senator Ludwig has provided you with an answer—

Senator BRANDIS—No, he has not. He has told us on instructions from the Attorney-General that he will not answer.

CHAIR—and he is not going to pursue your request further, so let us move on now with further questions.

Senator BRANDIS—Is the Australian Government Solicitor here?

CHAIR—Are you now moving to the Australian Government Solicitor rather than moving through general questions?

Senator BRANDIS—No, I have general questions, but—as we discussed both privately and on the record before the dinner adjournment, Madam Chair—I want to dispose of this issue of the suppressed legal advice by putting to the Australian Government Solicitor the

questions that Mr Cornall suggested I should put not to his department but to the Australian Government Solicitor, and I will see how I go.

Mr Cornall—Senator, could I mention one matter about the Australian Government Solicitor before you question the officers? The Australian Government Solicitor is a government business enterprise. It is competitively neutral, it gets no budget allocation and it is in competition, in accordance with the policies of the previous government, with private enterprise firms such as Blakes, Mallesons, Minters and so on. None of those firms come before this committee and none of those firms are questioned about the advice—

Senator BRANDIS—That is because they are not agencies of the Commonwealth.

Mr Cornall—That is quite true. The point I want to make is: if they are put in a disadvantaged position in terms of being able to give confidential advice to government agencies then a simple solution for government agencies would be not to brief the Government Solicitor but to go to other private firms who are not required to answer questions before this committee. I think that is an issue that should be borne in mind.

Senator BRANDIS—Mr Cornall, you may take it that before formulating my questions I have made myself aware of the consequences of the questions. Might I also remind you, with respect, that it was you who suggested to me in an exchange earlier in the afternoon that a certain line of questioning I wish to pursue was, in some respects at least, more appropriately directed to the Australian Government Solicitor than to you.

Mr Cornall—Yes, Senator.

Senator BRANDIS—May the officers from the Australian Government Solicitor come to the table, please.

CHAIR—Senator Brandis, I am chairing this committee. We were going to have the Australian Government Solicitor before dinner to expedite their questioning so they could get home before the dinner break. There is no need now for us to bring the AGS earlier than expected. We can simply deal with them when we get to them on the program.

Senator BRANDIS—Madam Chair, I can dispose of the Australian Government Solicitor, as I indicated to you before, within 10 minutes. I do not see why these good people should be inconvenienced.

CHAIR—That may well be so, Senator Brandis, but I am chairing this committee—

Senator BRANDIS—You are displaying all the arrogance of the Rudd Labor government, if I may say so.

CHAIR—We do not now need to deal with the AGS expeditiously, because they have missed the opportunity to get home before the dinner break. So I am saying we will go through the program, and we are dealing with general questions.

Senator BRANDIS—All right. I have some general questions. Mr Cornall, you would be no doubt aware of a number of press articles that appeared in both the *Australian Financial Review* and the *Australian* on 8 February in relation to an announcement by the Attorney-General that the expenditure of the Commonwealth on legal services would be slashed by the adoption of certain measures. Are you familiar with the issue of which I am speaking?

Mr Cornall—I am aware of the issue; yes, Senator.

Senator BRANDIS—According to the reports, the principal ground that is advanced for this measure is what is said to be a blow-out of legal costs between 2005-06 and 2006-07 from \$349 million to \$413 million. Can you verify those figures?

Dr Popple—Those figures are inaccurate and the mistake was ours. The Office of Legal Services Coordination made a mistake.

Senator BRANDIS—Please tell me what the right figures are.

Dr Popple—The correct figure is \$338.7 million for 2005-06 and \$388.9 million for 2006-07.

Senator BRANDIS—That is an increase of—

Dr Popple—It is about 15 per cent.

Senator BRANDIS—That is not an increase of almost \$100 million but an increase of about \$50 million. Would you agree with me that that only constitutes a blow-out in legal costs, if the volume of legal services purchased by the Commonwealth were constant?

Mr Cornall—Yes.

Senator BRANDIS—Was the volume of legal services purchased by the Commonwealth constant?

Mr Cornall—There is no central record that would enable us to answer that question.

Senator BRANDIS—Whether there is a central record or not, isn't there an office called the Office of Legal Services Coordination?

Mr Cornall—Yes, there is.

Senator BRANDIS—Help me here, Mr Cornall: do they come under your department?

Mr Cornall—Yes.

Dr Popple—That is in my division.

Senator BRANDIS—Is that not a whole-of-government agency that coordinates the purchase by the Commonwealth of legal services?

Dr Popple—It is a branch within the department that looks after policy and other things in relation to legal services. We do not coordinate legal services in the way that you suggest.

Senator BRANDIS—So, although it is called the Office of Legal Services Coordination, it does not coordinate legal services?

Dr Popple—No. We coordinate the policy and are responsible for legal services directions but we do not coordinate each individual piece of litigation.

Mr Cornall—As Dr Popple says, we are responsible for the legal services directions, for advice to agencies about legal service matters, for setting fees for counsel in contested matters, for referring requests for increased fees to the Attorney-General and for a range of matters of that nature. The ultimate responsibility for legal fees is devolved to the heads of agencies, as are all the other expenses that they incur in the course of their business.

Senator BRANDIS—Who was it who recalculated the figures you have just given me—that is, the \$338.7 million and the \$388.9 million?

Dr Popple—We did. As soon as the error was brought to our attention, we recalculated it.

Senator BRANDIS—That is what I thought. If it was within your capacity to calculate the aggregate value of legal services purchased by the Commonwealth across two financial years, would it not be equally within your capacity to calculate the aggregate volume of legal services purchased by the Commonwealth across two financial years?

Dr Popple—No, it is not. The reason we are able to provide the figures we have provided, but not the ones you mention, is that the legal services directions require FMA Act agency heads to publish information about the amount of money they have spent on legal services in their annual reports and on their websites et cetera. We collect that information. They are not required to provide the sort of volume information that you are talking about. We do not have that information.

Senator BRANDIS—When you say they are not required to, does that mean that they have or you apprehend that they would, were you to inquire of them, decline to answer your request for that information?

Dr Popple—I have never thought about that, so I do not have any apprehension about that.

Senator BRANDIS—Perhaps you might do this for me. Perhaps you might take this question on notice and ask them and see how you go. In each of those two financial years, I am interesting in knowing the volume of legal services purchased by the Commonwealth across the same agencies from whom the value of legal services you have given me has been derived. I think you have already agreed with me that it is a simple proposition: there is no blow-out in the cost of the services unless the volume is constant and the price is greater. If the volume varies proportionately with the cost, there is no blow-out, is there?

Dr Popple—Before you go any further with your question, my concern is twofold. First of all, there are about 100 agencies we need to approach to find out that information—

Senator BRANDIS—The same hundred agencies you got the last two figures from.

Dr Popple—The difference is that those agencies prepared those figures during those financial years to report to the public, and we collated that. It might be very difficult for any or all of those agencies to go back through their records. It would be a very time-consuming and expensive exercise for them to go back through their records to determine the volume, if you like, of legal services that underlie those figures that we reported. I suppose the other part of my concern is: what does ‘volume’ mean? Is it simply a number of cases, advices et cetera—

Senator Ludwig—Complexity of the case and whether it is a solicitor or barrister.

Senator BRANDIS—I would have thought at the very least it would comprehend litigation, advice and transactions. There may be other categories as well but those are the three obvious ones that suggest themselves. It is all very well—anyone can grandly proclaim, ‘We are going to slash legal costs,’ and they will get a cheer from everybody in the country who uses lawyers, particularly the worthy readers of *Australian Financial Review*, who chose to make this their page 1 story on 8 February 2008. But the concern I have is that, as you have

already been good enough to tell us, the claim was based on figures that are wrong, the difference in the cost between the two comparative financial years is substantially less than was claimed, and you have not been able to tell us that the volume of services produced between the two comparative years was a constant. And we are agreed—it goes without saying—that, unless it is constant, it is not a true comparison.

Mr Cornall—That is an accurate statement.

Senator BRANDIS—Can you tell me—and, if you cannot, please take it on notice—in each of those two aggregates, the \$338.7 million and the \$388.9 million, what proportion of that represents services provided by the Australian Government Solicitor; what proportion represents services provided by in-house government lawyers working for agencies but not the Australian Government Solicitor; and what proportion of it represents fees charged by either private counsel or private law firms?

Dr Popple—The short answer is I cannot give you all that information. I can give you some of it because some of the agencies report on the amount of money that is paid for external legal services as opposed to internal, which would cover the in-house lawyers you mentioned. We do not have any disaggregation in relation to AGS or other law firms, but I can tell you for those two years the amounts that were reported for internal and external legal expenditure.

Senator BRANDIS—Yes, please.

Dr Popple—Before I do, these numbers will not add up to the total, but that should not alarm you, because in some cases the various reporting agencies did not disaggregate their totals. I can give you the total amounts declared, if you like, for internal and external for each of those years. The secretary just reminded me that the AGS figures will be available from their annual report.

Senator BRANDIS—Yes indeed, they would.

Dr Popple—So I shall tell you that for 2005—

Senator BRANDIS—Tell me what you can tell me and please take the rest on notice. Eventually, when we are allowed to ask the AGS some questions, we will ask them about it as well.

Dr Popple—I am happy to do that but I am not sure what else will be left to take on notice. If the AGS is able to answer that, I think it will cover it. For 2005-06, external \$198.5 million, internal \$102.9 million; for 2006-07, external \$260.8 million and internal \$126.5 million.

Senator BRANDIS—As Mr Cornall in a different context was at pains to explain to us a moment ago, the Australian Government Solicitor competes on a commercial basis with private practitioners and private providers of legal services. So, if this system is working well, there should be competitive neutrality between the Australian Government Solicitor and private providers of legal services. Is that correct?

Mr Cornall—Yes, except there are some elements of work which are tied to either the department and/or the AGS.

Senator BRANDIS—I was leaving out in-house or agency lawyers.

Mr Govey—Did you want to know the categories of work that are tied to the Australian Government Solicitor?

Senator BRANDIS—You may as well tell us so it cannot be said that we are missing any relevant integer in this analysis.

Mr Govey—This work is tied to government providers including AGS. It is: national security work, international law work, cabinet work and constitutional work.

Senator BRANDIS—That would be negligible, wouldn't it?

Mr Govey—I think it is in the order of about five per cent of AGS's work.

Senator BRANDIS—Perhaps not negligible, but very small. And none of the aforementioned categories of work would be briefed to private counsel or contracted out to private law firms.

Mr Govey—Very little of it goes to private law firms; some does go to counsel because, of course, counsel are often used in constitutional and other cases involving the Commonwealth.

Senator BRANDIS—The lion's share of that five per cent would not be work which would involve private practitioners?

Mr Govey—Indeed, that five per cent I am referring to is five per cent of AGS's work. That is a further illustration of the point you are making; it is very small.

Senator BRANDIS—So it is getting towards negligible. For the purposes of a relatively broadbrush discussion in this forum it would not distort the picture if we were to put that to one side and disregard it. Would you agree?

Mr Govey—Yes.

Senator BRANDIS—Allowing then for the exception that Mr Govey has quite properly pointed out, and which we agree we may put to one side, the principal of competitive neutrality ought naturally to apply as between private providers of legal services and the AGS. Is that correct?

Dr Popple—Yes.

Senator BRANDIS—If that assumption is correct then I am struggling to see why it is that, in an environment of competitive neutrality, the diminution of the proportion of legal services obtained from the private sector would reduce costs. Do you agree with that proposition—that if, in an environment of competitive neutrality, you increased or decreased the proportion between the private and the public sectors, if I may use those omnibus expressions, it would not have a bearing on aggregate costs?

Mr Cornall—There is always an argument about whether an in-house law firm or an in-house lawyer is cheaper than a private law firm.

Senator BRANDIS—With respect, that is question begging. We are assuming, as we are told that we may, competitive neutrality.

Mr Cornall—Departments can have their own lawyers on their own staff as well.

Dr Popple—You do understand, Senator, that the external figures that I have just quoted to you would include money paid to AGS. AGS is not internal for these purposes.

Senator BRANDIS—Yes, I understand that. Assuming competitive neutrality between the internal and external figures, why would a change of those proportions change the aggregate cost?

Mr Cornall—A change in the proportions may not of itself change the aggregate costs but a more strategic management of legal services may well reduce the cost.

Senator BRANDIS—But, with respect, that strategic management could just as easily take the form of, for example, more strategic instruction of particular private sector law firms or more strategic instruction of particular counsel—

Mr Cornall—Yes, it could.

Senator BRANDIS—as more strategic employment of resources within the public sector.

Mr Cornall—Is that what is suggested, though—that it needs to be more employment of resources in the public sector?

Senator BRANDIS—I am merely putting that proposition to you. I gather you are agreeing with me.

Mr Cornall—I believe, for example, the AGS's fees are competitively on the same level of private law firms. So if you took business away from a private law firm and gave it to the AGS, I would not see that there would be any significant difference.

Senator BRANDIS—Yes. In fact, it is the case, isn't it, that the Commonwealth of Australia is the largest consumer of legal services in Australia?

Mr Govey—I suspect that is right, but we do not have any figures on which to base that.

Senator BRANDIS—Therefore, as any high-volume bulk user of a good or service, the Commonwealth of Australia, through its various agencies, is in a better position than any other purchaser of the good or service to extract volume discounts from the providers of those services?

Mr Govey—Except that in relation to the engagement of solicitors it is, as we pointed out before, a matter for each agency to do that, and that is done without any involvement of a central agency.

Senator BRANDIS—I understand that, but surely it would be the case that agencies—albeit not themselves departments of the Commonwealth—which engage private legal services providers would be in a position, at least to an extent, to derive the benefits that come with being a crown agency.

Mr Govey—There may be benefits of being a crown agency for a whole lot of reasons, including the fact that it is the Crown, but I do not think we are aware of any evidence that it includes being able to exercise the market force that would come if purchases were occurring through a single agency.

Senator BRANDIS—But that is what the Office of Legal Services Coordination is meant to do, isn't it?

Mr Govey—No. As Dr Popple pointed out earlier, there is no role for the Office of Legal Services Coordination in purchasing solicitor services on a whole-of-government basis.

Senator BRANDIS—No, that was not what I was suggesting. What I understood Dr Popple to be saying when he talked about the office's role in policy making is to encourage the agencies which acquire legal services to operate in a more strategic manner. Is that right?

Mr Govey—Not in relation to the purchase of legal services; that is a matter for them. They do that in a variety of ways, including by direct purchase from law firms, by establishing legal panels, by having in-house lawyers and so on. The strategic role comes from dealing with whole-of-government issues at a more general level; for example, in developing the Legal Services Directions on model litigant policies and on other issues that are dealt with in those Legal Services Directions.

Senator BRANDIS—Gentlemen, may I provide copies to you of this document, which is published on a joint website of the then Department of Finance and Administration and the Treasury called Election Commitment Costings. I can show you the webpage if you like. This document is an emanation of the exercise undertaken by the Department of Finance and Administration and the Treasury in fulfilment of their obligations under the Charter of Budget Honesty to cost election promises. They put the costings up on their website during the course of the election campaign.

Now, if you follow the document through with me you will see that it is dated 21 November 2007, or that is the operative date from which the document speaks. The person requesting the costing of the policy was the Leader of the Opposition, Mr Kevin Rudd, as the Prime Minister then was, and the name of the policy was: 'Reduce spending on legal services purchasing'. You will see that there is in the various sections of the document, which is in a tabular form, a summary of the policy, a statement of its intention and then, about two-thirds of the way down the first page it says:

What are the estimated costs each year?

Are these provided on a cash or fiscal basis?

The costing by DOFA and Treasury is:

The impact on the underlying cash balance will be a saving of :

- Nil in 2007-08—

But that does not matter because the policy is not meant to start until 1 July 2008. Then it goes on with an estimate of \$15.2 million in each of the three subsequent fiscal years. I am interested in the first dot point in the next box, which says:

What assumptions have been made in deriving the expected financial impact in the party costing?

The first dot point says:

- Net savings of 10% of total external legal expenditure can be achieved.

I am interested to know, just dwelling on that dot point for a moment, whether you are able to tell us—and I interpolate to say that this is what the bureaucracy makes of a political document so it may be that you are not able to tell us—on what basis the 10 per cent figure is derived, or whether it is just a nice round number.

Mr Govey—I do not think we have any information about how that figure was derived.

Senator BRANDIS—Senator Ludwig, you are now a minister of course, but you were at the time an important panjandrum in the Labor Party—are you able to tell us?

Senator Ludwig—In respect of that particular matter, I cannot answer.

Senator BRANDIS—You were the shadow Attorney-General at the time, as I recall. This is probably your policy.

Senator Ludwig—I can seek to ask the Attorney-General whether he has got any advice he can provide you with respect to that.

Senator BRANDIS—Hang on a second, Senator Ludwig, with all due respect, and do not be too modest, you were the shadow Attorney-General at the time of this document. This is your policy document. I suspect Mr McClelland, who was then the shadow foreign minister on 21 November—

CHAIR—Finance and Administration—

Senator BRANDIS—was little concerned with slashing government legal costs. This is your baby, Senator Ludwig: where does the 10 per cent come from?

Senator Ludwig—As I have indicated, I am happy to take it on notice and ask the Attorney-General if he could provide—

Senator BRANDIS—But I am asking you. You are the man who knows. If anybody knows, you must know, because this was your shadow portfolio responsibility on the date the document bears.

Senator Ludwig—The document relates to an area that I said I would be happy to take on notice and provide an answer on.

Senator BRANDIS—I put it to you that this 10 per cent is just a nice round number and there is no further derivation of it.

Senator MARSHALL—Whose document was it again?

Senator BRANDIS—It was the Australian Labor Party's policy on reducing expenditure on legal services purchasing.

Senator MARSHALL—I thought you said it was off a joint website from DOFA and Finance Administration.

Senator BRANDIS—Yes it is.

Senator MARSHALL—So it is a DOFA and—

Senator BRANDIS—No, Senator Marshall, you misunderstand. Under the Charter of Budget Honesty the government and the opposition are obliged to put their policies to these departments for costing, and the department is obliged to cost them. I think it is accepted that what this document, in which the then Leader of the Opposition who, you probably will not disagree with me, was Mr Rudd, has requested is a costing of his document, 'Reduce spending on legal services purchasing'. So you cannot tell me, Senator Ludwig?

Senator Ludwig—As I said, I am prepared to take it on notice and get back to you.

Senator BRANDIS—Thank you. Let me articulate my question precisely. What are the assumptions on the basis of which the projected annual saving of 10 per cent are based? Whoever the appropriate officer is, I do want in particular to know—even though you say it will take quite a bit of work to do it—the other side of the equation here in relation to this claim that legal costs had blown out by an indication of the volume of legal services purchased by the Commonwealth in each of those two financial years.

Dr Popple—We have taken that on notice and we will certainly do our best. I say again we would have some difficulty, particularly in relation to past years, because it would be quite a lot of work for the departments.

Senator BRANDIS—If, as I suggest to you, you are likely to find that the volume of legal services increased proportionately with the cost of legal services, then in fact there was not a cost blow-out, was there? The government just needed more legal work done. I see you nodding.

Mr Cornall—Yes, I agree with that.

Senator BRANDIS—Do any of you gentlemen have a role in instructing law firms or briefing counsel—even on the higher end of the scale matters, obviously, for senior public servants at your level? Do any of you have a role in that?

Mr Govey—Not normally, in my case.

Mr Cornall—There are issues in respect of which I need advice. I will often seek that advice from the Government Solicitor.

Senator BRANDIS—The reason I ask is that I just wonder whether, from your impressionistic or anecdotal evidence, it is your experience that the fees charged by the law firms and the barristers did inflate significantly over the last two financial years.

Mr Cornall—I think in terms of some of the fees that barristers have sought to charge the Commonwealth, they have increased. But the Commonwealth also seeks to impose a very low level of fees compared to the current commercial rates for senior silks, and this is an area of contention which the Office of Legal Services Coordination has to deal with on a regular basis.

Senator BRANDIS—I know from my own experience when I used to be briefed by the Commonwealth that the usual standard rate for counsel was about 60 per cent of the commercial rate, but we were honoured to take the briefs. It is still about that, isn't it?

Mr Cornall—It depends on which fees you are talking about. I have heard of senior barristers charging \$13,000 a day. If you took that fee as the top upper limit, we are certainly not paying 60 per cent of that.

Senator BRANDIS—But there would be no tariff of fees marked by the Commonwealth or any Commonwealth agency for senior counsel at \$13,000 a day.

Mr Cornall—No.

Senator BRANDIS—It would be right to say, would it not—

Mr Cornall—But you mentioned the figure of 60 per cent, and I said that it depends what you are taking the 60 per cent of.

Senator BRANDIS—I am sorry, I misunderstood your answer. You were suggesting that that was the top private sector rate.

Mr Cornall—Yes—we are not paying 60 per cent of that.

Senator BRANDIS—I have heard of even higher daily fees by some senior counsel. But, no, I was suggesting to you that the rule of thumb is that in a case in a particular jurisdiction that would ordinarily be charged by a middle-of-the-range silk or a middle-of-the-range junior counsel, the Commonwealth fee is usually regarded as about 60 per cent of that—‘about 60 per cent of a fair thing’, as people used to say.

Mr Cornall—Under the legal services direction, unless there are special arrangements, the highest fee that can be paid for senior counsel is \$5,000 a day inclusive of GST, and with the Attorney-General’s approval.

Senator BRANDIS—Well, they certainly have not gone up by very much at all, because eight years ago the highest fee that was paid to senior counsel was \$4,500 a day. So over eight years that is probably less than the rate of inflation. I will leave that topic there. Those are the last of my general questions, although I do have some questions on output 2.2.

CHAIR—Before we go to any further questions, I have received a letter from the Australian Federal Police wanting to correct the evidence they provided today in relation to the delivery of Commissioner Keelty’s speech that was provided to the Sydney Institute. The AFP have provided a letter to this committee, through me as chair. I will table that for the public record.

Senator TROOD—This is in the nature of a clarifying question, because I am not absolutely confident, Mr Cornall, that this is a matter for the Attorney’s department, but I sense that it might be. I am interested in the security vetting of new Commonwealth employees who may come into ministerial offices or any other position in government during the course of the change of government. My sense is that perhaps the Attorney’s department has a role here.

Mr Cornall—We do. We are responsible for the *Protective Security Manual*, which sets out a whole range of protective security obligations for the Commonwealth. We also conduct the Australian Security Vetting Service, which is a vetting agency providing vetting services to departments and agencies in respect of staff. But there are also other agencies that do that as well.

Senator TROOD—So you are the lead agency—is that correct?

Mr Cornall—Given our responsibilities for the *Protective Security Manual*, that would probably be a fair assessment.

Senator TROOD—Which output is relevant there—is it 2, perhaps 2.6?

Mr Cornall—It is 2.5.

Senator TROOD—I guess you have had quite a lot of activity in recent months in this area.

Mr Cornall—There is a great deal of activity in relation to security vetting all of the time, as either new staff come into Commonwealth agencies or as they transfer to another agency and, in that new agency, they want to confirm their level of security clearance.

Senator TROOD—Is it possible to disaggregate the figures into those who might have already been in the system and perhaps been promoted to a higher level and those who have come into new positions, perhaps in ministerial offices?

Mr Studdert—I am head of the Protective Security Coordination Centre, and the Australian Security Vetting Service is part of our division. I should just make the point that for staff in Parliament House—ministerial staff or members' staff—the responsibility for arranging the clearance is with DOFA, the Department of Finance and Administration, specifically the MOPS area, but some of those clearances may be done by the Security Vetting Service.

Senator TROOD—Is DOFA the primary lead in relation to ministerial staff? Is that what you are saying?

Mr Studdert—For arranging it, not necessarily for doing vetting itself.

Senator TROOD—How is a decision made as to which of the staff come to the Attorney's department or go elsewhere?

Mr Studdert—The department of finance makes that judgement. It is not something that we are asked.

Senator TROOD—Can you tell the committee how many requests you have received for the security vetting of ministerial staff since the election on 24 November?

Mr Studdert—I do not have those figures, but Ms Horrocks may.

Ms Horrocks—We would have to take it on notice to get the actual numbers.

Senator TROOD—If you do not have that aggregate figure then I take it that you will not have any more detailed figures on aspects of this matter—is that correct?

Ms Horrocks—Yes.

Senator TROOD—I am interested in the numbers involved. I am also interested in how much progress you have made in relation to those people whom you have been asked to vet. Have you completed all of your security vetting in relation to all of those people who have been referred to you? If not, can you give us a breakdown of how many you have completed and how many remain to be finished? Also, Mr Studdert, just to clarify: you have referred some names or some individuals to other agencies. Is that correct?

Mr Studdert—No, the department of finance has referred the names.

Senator TROOD—So all of the individuals that have been referred to Attorney's are those for whom you have primary responsibility, and it is your responsibility to undertake the completion of their vetting. Is that right?

Mr Studdert—That is correct.

Senator TROOD—Does that include the work that might be required of AFP or ASIO, or do they go more directly to those agencies?

Mr Studdert—The other agencies that have a vetting capability may well be allocated some of the vetting tasks for ministerial staff.

Senator TROOD—Who is that?

Mr Studdert—I am sorry; I hope I have not misunderstood your question.

Senator TROOD—DoFA, whom you have identified as the lead agency, as I understand it, parcels out its vetting needs, some of which come to attorneys. My question is: of those that come to the department or the portfolio, or perhaps more particularly to you, are you then responsible for passing them on to some of the agencies under the portfolio—for example, AFP or ASIO? Or does DoFA, when it makes a decision in relation to vetting, make the decision that this particular individual should be vetted by, for example, ASIO?

Mr Studdert—The allocation of a parcel of vetting is made by DoFA. But then of course part of the vetting process is to seek clearances from the agencies you mentioned. But that is a normal part of a vetting process.

Senator TROOD—That is something you undertake?

Mr Cornall—What we are trying to make clear is that ASIO does not conduct a vetting service for other agencies. I am just trying to make sure that this is accurate information. We would, in the course of vetting someone for a certain level of clearance, get a clearance for that person from ASIO.

Senator TROOD—I am trying to clarify that as well, Mr Cornall. I am trying to clarify whether or not, when someone needs an ASIO clearance—if indeed they do—that is something that you direct to ASIO. Or is that directed to ASIO directly by DoFA, which is what I understood to be the original position?

Mr Cornall—The person who is responsible for the vetting will seek clearance from ASIO and will seek a police check and any other information necessary to form a view that that person is entitled to a clearance at the level that is being sought.

Senator TROOD—I see. So they might do this simultaneously? Is that what you are saying?

Mr Cornall—Yes.

Senator TROOD—An individual might have inquiries being pursued at three different agencies, or 10, as the case may be. Is that the situation?

Mr Cornall—Yes.

Senator TROOD—I see.

Ms Horrocks—They are called third party checks, if that provides any clarity for you. They are called third party referees and third party checks—an extra check.

Senator TROOD—I am delighted to have the nomenclature, but I am not sure it clarifies the process.

Ms Horrocks—Sorry.

Senator TROOD—Do you make special provision for the costs of this activity, Mr Studdert, or is that part of the ongoing costs? Have there been additional costs in relation to

the election, for example, or are these just absorbed by the department's usual costs in this area?

Mr Studdert—The vetting is done by the Australian Security Vetting Service on a fee-for-service basis.

Senator TROOD—I assume then that the fees that are being charged increase to some extent as a result of an election. Would that be a fair observation?

Mr Studdert—No, it is the same level of fees.

Senator TROOD—No, the number of security clearances presumably increased as a consequence of the election?

Mr Studdert—Certainly.

Senator TROOD—The issue then is that your fees would increase, or the costs of those vettings would increase as a consequence of the increased number.

Mr Studdert—The total volume of revenue taken in?

Senator TROOD—Yes.

Mr Studdert—Yes, that increases because there is more vetting, but the cost of each individual vetting does not increase.

Senator TROOD—I understand that there might be a cost for individual vetting, but I am interested in the cost to government of the overall consequence, for example, of an election and the fact that there is an influx of staff who may need to be vetted. Does that affect the budget of your particular branch—or is it a division?

Mr Studdert—It is a section within a branch.

Senator TROOD—Does it affect your section costs, then? Do you need to seek a supplementation of funding for this?

Mr Studdert—No.

Senator TROOD—So the cost is absorbed in the usual work of the section. Is that right?

Mr Studdert—We do the work and we are paid for the work that we do.

Senator TROOD—I am not sure whether this is your task or not—you said that you cannot give me any numbers but can you give me any vague idea at this stage as to the numbers of individuals we are talking about? Are we talking about 50, 100 or 10 perhaps?

Ms Horrocks—I would prefer to give you some accurate information once I have deciphered it for you so that I do not mislead the committee.

Senator TROOD—Thank you for that. In relation to the level of vetting, do you vet to specific levels or do you vet to top secret, for example? I am, frankly, not sure of the categories, but if an individual is requested for vetting do you undertake to vet at a certain level or do you vet to a standard level?

Ms Horrocks—The department requesting the applicant for vetting would decide the level of clearance that was required, and that would be on the basis of the level of information that

that applicant would be accessing as part of their role and their duties. The security clearance levels are top secret, confidential, restricted and non-national.

Senator TROOD—When you are providing those statistics for me I would be grateful if you would disaggregate them in terms of the levels at which the clearances are required so that I know which levels they are. I take it from what you have said that not all of these security clearances of people who are in offices have actually been completed at this stage. Would that be a fair observation?

Ms Horrocks—They are in progress.

Senator TROOD—Is it a logical assumption from that that there may be people working in sensitive positions around the Commonwealth whose clearances have not been completed?

Ms Horrocks—I am not sure. I would not be able to quantify that.

Mr Studdert—The clearance process takes some time, particularly for the higher levels of clearance. There is a mechanism—it is called a provisional clearance—whereby a member can provide a certain level of information and on the basis of that information a level of clearance can be provided. Clearly, for certain ministerial staff positions it is important that they have that provisional clearance, so that is the mechanism that we use to fill that gap between the submission of information and a full clearance to a high level.

Senator TROOD—That is on the basis of the information provided by the individual who is to be cleared; is that right?

Mr Studdert—That is correct.

Senator TROOD—And you run a keen and close eye over that information, do you?

Mr Studdert—That is part of it but there are other checks that are conducted—and Ms Horrocks will correct me if I get this wrong—and they are a police check and I believe an ASIO check for a provisional clearance.

Ms Horrocks—We would also check the supervisor and check the previous history of employment just to determine suitability to access classified information.

Senator TROOD—How long would that take?

Ms Horrocks—Providing the applicant completes the full vetting pack and provides us with all of the information, we can normally turn that round in about 48 hours.

Mr Studdert—The other thing that we do on top of those checks is to brief the individuals on protective security matters.

Senator TROOD—I was going to ask about that. I am interested in that process. The plot is thickening as we go along, Ms Horrocks, so you may need to provide an additional category of information to me—that is, those people who have been provisionally vetted. In relation to those people, having been provisionally vetted—for example, you said that perhaps they have had an ASIO clearance of some kind—would it then be expected that there would be a further, more detailed and more comprehensive ASIO investigation of that individual or would that have cleared the ASIO dimension of clearance?

Ms Horrocks—That would have cleared the ASIO dimension.

Senator TROOD—So ASIO would then be regarded as having fulfilled its responsibilities or, so far as the check would be concerned, you would be satisfied and you would not need to go back to ASIO. Is that right?

Ms Horrocks—Agreed.

Senator TROOD—We have various levels of clearance, we have people at various positions in the clearance process and we have provisional vetting. Is there any instruction to ministerial offices—advice—as to how one handles the situation of people who may only be provisionally vetted or whose vetting has yet to even begin in relation to sensitive matters that might come before them? Is there any standard instruction that is given to ministerial offices about that?

Mr Studdert—There is the briefing that I referred to earlier. The relevant staff will be briefed on protective security matters and they will be briefed on the requirements of the *Protective Security Manual*, which is the source of the information on this. That will be one-on-one briefing.

Senator TROOD—Is that for the individual who is being cleared or is that in relation to the minister who has responsibility for the individual?

Mr Studdert—It is for the individuals.

Senator TROOD—I see. Is that a lengthy briefing, or is it something that can be dispatched in 10 minutes?

Mr Studdert—As an estimate, it is 40 minutes to an hour, depending on the level of interaction and the background they may have in the subject matter, those sorts of things. It is a very comprehensive briefing.

Senator TROOD—Are all individuals who may be in sensitive positions requested to attend that kind of briefing, including those who may yet to be fully cleared or whose briefing has yet to begin?

Mr Studdert—An appointment is made as part of the provisional briefing process or, if it goes straight into a full process, an appointment is made and the briefings are conducted.

Senator TROOD—Could you provide me with further details as to the people who have had a briefing of the kind you are speaking about, Mr Studdert? Have there ever been, to your knowledge, any circumstances where a provisional clearance has been given and, on subsequent investigation, it is clear that there was an error and the clearance has had to be withdrawn?

Mr Studdert—Not that I am aware of.

Ms Horrocks—Not to my knowledge.

Senator TROOD—How long have you been in your position, Mr Studdert?

Mr Studdert—Just short of two years.

Senator TROOD—In that two-year period, you have never had experience of that kind of situation?

Mr Studdert—That is correct.

Senator TROOD—Ms Horrocks, how long do you think it will be before you can provide this information to the committee? Is it something—

Ms Horrocks—We will start working on it straightaway and get it to you as soon as we possibly can. I am not sure how long it will take to gather the information, but we will certainly make it a priority.

Senator TROOD—Madam Chair, that concludes my questions in this area.

[8.48 pm]

CHAIR—We will now move to outcome 2: Coordinated federal criminal justice, security and emergency management activity for a safer Australia and output 2.1. Are there any questions in this area?

Senator BARNETT—No.

[8.49 pm]

CHAIR—We will now move to output 2.2. Senator Brandis has questions.

Senator BRANDIS—I want to ask some questions about the Jayant Patel extradition. I was wondering if the appropriate officer might enlighten us on the rather sorry state of the Jayant Patel case, which in my state, Queensland, has been a matter of complete embarrassment to the state government. What is the current position in relation the extradition of Dr Patel?

Ms Jackson—It is longstanding government policy to not reveal the details of possible extradition matters before an arrest has been made and an extradition process has been initiated to avoid alerting the fugitive—

Senator BRANDIS—I do not think that you need worry about alerting the fugitive. He has been on the front page of the *Courier Mail* more times than you have had hot breakfasts, so do not worry about alerting Dr Patel that he is of interest to the Queensland authorities.

Ms Jackson—The Australian request is with US authorities.

Senator BRANDIS—I want to tie down a few dates, please. Correct me if I am wrong, but my understanding is that the engagement of the Attorney-General's Department first occurs when there is a communication to the department from the state prosecuting authority seeking its assistance with an extradition request. Is that right?

Ms Jackson—That may sometimes be the case. There might be informal contact from police investigators beforehand.

Senator BRANDIS—In the case of the Dr Patel extradition, the initial engagement of the Commonwealth was in response to a request from the Queensland Director of Public Prosecutions. Is that right?

Ms Jackson—Yes.

Senator BRANDIS—What was the date of the initial Commonwealth engagement?

Ms Jackson—June 2006.

Senator BRANDIS—What date in June 2006.

Ms Jackson—The second.

Senator BRANDIS—So it was on 2 June 2006. I am not going to ask you to reveal its contents in any detail, but can you describe to the committee, please, the character of the document which initiates the request from the DPP to the Commonwealth.

Ms Jackson—The documents we received in June were draft affidavits.

Senator BRANDIS—Did those draft affidavits accompany a letter of request from the relevant Queensland authority to initiate extradition proceedings?

Ms Jackson—The formal request from Queensland came considerably later, but I cannot at the moment pick the date out, unfortunately.

Senator BRANDIS—You are obviously reading from a document that gives you some sequential information about the progress of the case. Can you, please, take us in brief through the sequence from the point at which the Commonwealth's engagement commenced to the present?

Ms Jackson—Most of the communication between us and Queensland resulted from the requirement for the US extradition process to show probable cause. Therefore, there was considerable communication between the US Department of Justice, us and the Queensland authorities to ensure that the documents met that standard.

Senator BRANDIS—I take it the communications were between you and the United States authorities, and you and the Queensland DPP. There was no direction communication between the United States authorities and the Queensland state authorities—is that right?

Ms Jackson—There was some direct communication between Queensland and the US authorities, but the bulk of the communications were through our department.

Senator BRANDIS—Because you had the carriage of the matter from the point of view of extradition?

Ms Jackson—Yes.

Senator BRANDIS—What was the character of the limited communication directly between the American and the Queensland authorities, please?

Ms Jackson—This concerned the question of the difference between negligence and recklessness in establishing dual criminality with the US.

Senator BRANDIS—Without prejudging any ultimate conclusion that the American courts might reach, it is fair to say, isn't it, that it is the issue of dual criminality that has been the principal issue of concern here—is that right?

Ms Jackson—I think that is a fair statement.

Senator BRANDIS—Where is the process in the American system at the minute? At what stage in their extradition process does it lie?

Ms Jackson—Our understanding is that it has been referred by the US Department of Justice to the authorities in Oregon.

Senator BRANDIS—When you say the authorities, do you mean the prosecuting authorities in Oregon or the courts?

Ms Jackson—The District Attorney.

Senator BRANDIS—That is the equivalent of the prosecuting authority, isn't it?

Ms Jackson—Yes.

Senator BRANDIS—When did that happen?

Ms Jackson—On 30 January this year.

Senator BRANDIS—Have you received any indication from the American authorities as to when they expect the issue of dual criminality is likely to be resolved by?

Ms Jackson—Our understanding is that the prosecutor will refer it to the District Court in the very near future, but then it will depend on the arrest of Mr Patel in the US for it then to go through their judicial process.

Senator BRANDIS—Who makes that decision within the United States?

Ms Jackson—They have a very similar—

Senator BRANDIS—Who issues the warrant, in other words?

Ms Jackson—The court.

Senator BRANDIS—The court, not the policing authority.

Ms Jackson—No.

Senator BRANDIS—And the court issues the warrant for Dr Patel's address consequent upon its determination of the dual criminality issue?

Ms Jackson—I am not sure of that, Senator. I would have to take that on notice.

Senator BRANDIS—Would you, please. What I want to establish is: what is the character of the issue which the American court adjudicates as a preliminary to the issue of the arrest warrant? Or to put it in other language: what is the question upon an affirmative answer to which the issue of the arrest warrant depends? You are not able to assist me tonight?

Ms Jackson—No, I will have to take that on notice.

Senator BRANDIS—Are you able to tell me how far away we are approximately from the adjudication of that question, whatever the question might be?

Ms Jackson—It is our understanding from communications from the US that it will be quite soon.

Senator BRANDIS—I do not want to take you any further than you feel it appropriate to go in this forum, but has the apparent slowness of this matter—the fact that we still have not had an adjudication on the question of whether Dr Patel may be arrested almost two years after your department was first engaged in the matter by the Queensland authorities—been at least in part in consequence of the lack of satisfaction by the American authorities with the material provided to them by the Queensland authorities?

Ms Jackson—I do not feel in a position to answer that. There has for an extended period been communication between the US authorities and us but since the request was made there have not been issues of significance that have delayed the process.

Senator BRANDIS—So the American authorities have not said to you, ‘We are not satisfied with the material that you have provided to us sourced from the Queensland Director of Public Prosecutions’?

Ms Jackson—There was just one small issue that has been resolved in that time.

Senator BRANDIS—What was that issue?

Mr Cornall—Ms Jackson is saying to me that she is concerned that this is an issue that goes to details of the matter, which she does not feel comfortable putting on the public record.

Senator BRANDIS—That is fine, Mr Cornall. Ms Jackson, if you feel it is not appropriate to respond to that question, I will not press that question. But let me ask you a question relating to it which will not involve revealing the matter about which you are expressing proper circumspection: on what date—or if you do not have the date in front of you approximately what date—did the American authorities indicate to you that they were dissatisfied with the Australian material in relation to this issue?

Ms Jackson—On 19 October.

Senator BRANDIS—Which year?

Ms Jackson—2007.

Senator BRANDIS—And when was that issue resolved—and by resolved I mean the Americans indicated to you that they were now satisfied that that particular issue was not a problem for them?

Ms Jackson—In early January.

Senator Brandis—Early January this year. That does not seem an overly long period of time, particularly given the season. I do not want to put words in your mouth but do I understand you to be telling me that 19 October 2007 was the first and only occasion on which the American authorities told you that there was some issue about the Australian material, which caused a delay from their point of view?

Ms Jackson—That was the only occasion after the formal request was made. There had been draft documents with the US before then.

Senator BRANDIS—Are you able to tell me when the formal request was made? That was the question I think you were not in position to answer a little while ago. Are you able to do better?

Ms Jackson—It was received in the US on 2 October.

Senator BRANDIS—2007.

Ms Jackson—Yes.

Senator BRANDIS—On 2 October 2007, and there has only been one formal request—that was the one and only?

Ms Jackson—Yes.

Senator BRANDIS—Why then was there a delay from the first provision to you of the draft affidavits on 2 June 2006 of 16 months before the formal request was made?

Ms Jackson—As I said, many draft documents were sent to the US for consideration before then.

Senator BRANDIS—But I must say that 16 months seems to be a very long period of time to pass especially in a serious criminal matter for the prosecuting authorities—and by that of course I do not mean you, I mean the Queensland Director of Public Prosecutions—to get their act together.

Ms Jackson—I am not a position to comment about that.

Senator BRANDIS—In the period between the first receipt by you of draft documents on 2 June 2006 to the lodgement of the formal request with the American authorities on 2 October 2007, in that period of 16 months had there been a variety of iterations of draft documents?

Ms Jackson—That is correct.

Senator BRANDIS—About how many, roughly, if there were lots and lots?

Ms Jackson—About half a dozen.

Senator BRANDIS—Were these draft documents reworked versions of earlier documents?

Ms Jackson—Yes.

Senator BRANDIS—It sounds to me what you are in a properly circumspect way telling us is that for a period of 16 months it took the Queensland authorities six goes to get the draft documents into a shape in which the Americans were prepared to accept a formal request for extradition or, indeed, for your department to feel it appropriate to lodge one—is that right?

Ms Jackson—Yes, it was an iterative process.

Senator BRANDIS—Thank you.

CHAIR—As there are no other questions on 2.2, we will move on to output 2.3. There are no questions for that?

Senator BRANDIS—I do not have any more questions for the department.

CHAIR—There are no questions for output 2.4, it would seem.

Mr Cornall—Chair, that also includes 3.2, I think.

CHAIR—Yes, I did indicate that it included 3.2. We will move to 2.6, Human Rights and Equal Opportunity Commission, because I know that Senator Payne has questions for them.

[9.09 pm]

Human Rights and Equal Opportunity Commission

CHAIR—I welcome officers to the table.

Senator PAYNE—Does the application of the two per cent efficiency dividend which has been announced apply to the Human Rights and Equal Opportunity Commission?

Ms Roberts—Yes, it does.

Senator PAYNE—What approach is the commission taking in order to effect a dividend?

Ms Roberts—The commission has not worked out yet where the savings are going to be made to enable the dividend. We imagine that the impact will be that we will have to rephase some of our activities as a result of it.

Senator PAYNE—Would that be across the board? For example, would that include your international activities?

Ms Roberts—It may.

Senator PAYNE—When do you think you will have some specificity around that?

Ms Roberts—I would imagine in the next couple of months.

Senator PAYNE—Do commissioners get to make bids for their programs?

Ms Roberts—Sometimes.

Senator PAYNE—Which leads me to say, Ms Broderick, welcome to estimates. It is nice to see you here—the Sex Discrimination Commissioner.

Ms Broderick—Thank you.

Senator PAYNE—How is your listening tour going?

Ms Broderick—It is going very well. I have been to South Australia, Tasmania, Victoria, New South Wales and the ACT. We are heading off to Western Australia, the Northern Territory and Queensland next month.

Senator PAYNE—Are you just doing capital cities or do you have a regional focus as well?

Ms Broderick—We are doing regional areas as well, and through the Northern Territory and Western Australia we are doing remote locations.

Senator PAYNE—By the time you conclude your listening tour, aside from having heard a lot, how many locations across Australia do you envisage you will have visited?

Ms Broderick—I am not sure of the exact number of locations but we will have been very extensively through each of the capital cities and also to remote areas.

Senator PAYNE—Is that your current priority as the Sex Discrimination Commissioner?

Ms Broderick—That is our current priority. We will be using that process to set the agenda for the next five years.

Senator PAYNE—Do you have any other major inquiries under way?

Ms Broderick—At the moment that is our major project that we are conducting.

Senator PAYNE—Which commissioner is responsible for the recently announced inquiry into parental leave?

Ms Broderick—We are also making submissions in relation to that.

Senator PAYNE—Mr Calma and Mr Innes, what are your particular focuses at the moment?

Mr Calma—Taking race first, we are progressing a number of the initiatives that started last year in developing relationships between Muslim communities and the police and general

society. We are taking a capacity building, information sharing, social inclusion type of approach to those matters. One of the projects is specifically working with the police.

Senator PAYNE—The Australian Federal Police or all police?

Mr Calma—All police in all jurisdictions. We are building bridging relationships with the Muslim communities. We have a significant African and African Muslim communities project, which is looking at trying to identify the issues that are affecting those communities across Australia.

Senator PAYNE—Mr Innes, in the human rights area and more broadly speaking, I notice that the additional estimates statements have a note about the resourcing which was committed to HREOC for workplace relations reform matters, and what I would describe as a slightly changed status in that regard. How many complaints do you have before the commission at the moment that pertain to that area?

Mr Innes—I do not deal with the complaints.

Senator PAYNE—What volume of work is involved in that particular area at the moment, where the budget has been removed?

Mr Innes—I think Ms Roberts should answer that.

Ms Roberts—We do not have specific stats that relate to the complaints that that funding was connected to. We have a large number of employment related complaints, but we have never identified a body of complaints as being ‘workplace relations’ complaints.

Senator PAYNE—Notwithstanding that that was the point from which the funding was derived?

Ms Roberts—That is right. We have experienced a significant increase in our complaints in the last two years.

Senator PAYNE—What would you describe as significant?

Ms Roberts—A 50 per cent increase in our employment related complaints. Those complaints are not just what could be termed unfair dismissal complaints; they relate to all forms of employment conditions.

Senator PAYNE—And discrimination, given the nature of the work of the commission.

Ms Roberts—Indeed.

Senator PAYNE—So there has been a 50 per cent increase in workplace complaints—am I characterising them correctly?

Ms Roberts—We refer to them as employment related complaints.

Senator PAYNE—What approach does the commission take to dealing with what I suppose I would call that resourcing ‘removal’?

Ms Roberts—The announcement of the removal of that funding was only made about 10 days ago. We are still reviewing the impact of it. We are committed to maintaining an effective and efficient complaint-handling process and we will certainly be reviewing our budget to ensure that we are able to do that.

Senator PAYNE—Will the removal of that funding lead to staffing changes within the commission?

Ms Roberts—Not in the short term.

Senator PAYNE—What about the medium or the long term?

Ms Roberts—Possibly, yes.

Senator PAYNE—How does that sit with the assurances, as I understood it from Mr Tanner and other ministers, that these decisions would not have staffing impacts?

Ms Roberts—That may be a matter for the department.

Senator PAYNE—Or even the minister, perhaps?

Senator Ludwig—I wonder if you could quote or provide a source for the statement that you made of what Mr Tanner is alleged to have said. I am not sure that is precisely what he said. Just in the interests of accuracy, it may be helpful.

Senator PAYNE—The speech at the National Press Club, Minister.

Senator Ludwig—I am familiar with that speech and that is not the phrase that I recall coming from that speech.

Senator PAYNE—No, I was listening of course with great interest to Senator Brandis but was reading it earlier this evening at the same time, Minister. I think the assurance that the minister endeavoured to give in his Press Club speech was that the intention of the first round of cuts was not to result in removals of staff positions where they could not be addressed through a redeployment process, as I recall.

Senator Ludwig—That is not my recollection.

Senator PAYNE—Perhaps you could assist me by taking the question on notice then, Minister, to correct me. I would be very happy to be corrected.

Senator Ludwig—It is a matter for you the question that you ask, but if you are seeking to rely on what Mr Tanner—

Senator PAYNE—The question is whether there will be an impact on staffing numbers at the commission in relation to this particular cut and in dealing with what is apparently, according to Ms Roberts, a 50 per cent increase in employment related complaints, which I would have thought the government took seriously.

Senator Ludwig—I am happy to take that on notice, or you can direct that question as reworded to the commission.

Senator PAYNE—I will have a look at that; and if you would take the part that applies to the government, as opposed to the commission, Minister, I would be grateful.

Senator Ludwig—I will.

Senator PAYNE—Mr Innes, if we can go back to the work in your particular area, I had asked the other commissioners what their current focuses were. Yours is currently in which particular area?

Mr Innes—Human rights and disability discrimination.

Senator PAYNE—I am sorry, I meant in terms of inquiries.

Mr Innes—We are not conducting inquiries at this stage but doing work in a range of areas in both my areas of responsibility. We are looking at some further issues impacting on sexuality issues, on people in same-sex relationships, or following on from some of the input that we received from the *Same sex: same entitlements* inquiry.

Senator PAYNE—Is that assisting the government with the work that they are doing in this area in examining areas of discrimination in same-sex relationships?

Mr Innes—My understanding, from the answer to that question from the department, is that there was some work being done on the implementation of our report. We are not involved in that work. This is looking at issues facing transgender people, possibly some issues on homophobia and some of the other issues that came out of submissions which were tangentially related to the inquiry, which we completed last year, in relation to same-sex couples. We are also looking at and have just released a paper on homelessness as a human rights issue, which is particularly relevant to the government's white paper in that area. We are looking at some increased efforts in the impact of discrimination against people on the grounds of criminal record. I am giving a presentation in two days time to a conference on corporate social responsibility, looking at the relevance of human rights in that area. And of course we are doing some work on developing material on a charter or bill of rights.

Senator PAYNE—That might be of interest to Senator Brandis.

Senator BRANDIS—I did want to ask one question about that, and that is about the extent of consultation with HREOC by the government in relation to the possible charter or bill of rights. Have you been consulted and what are the terms of your remit arising from any such consultation?

Mr Innes—We do not have a remit at this stage. My understanding from previous answers is that the government has not yet commenced its activities formally in that area, but obviously, because of the central relevance of a charter or bill of rights to the human rights commission, we would expect to be involved in any process which was designed or developed.

Senator BRANDIS—That is understandable, and I assume that the Human Rights and Equal Opportunity Commission would in general tend to be in favour of the bill of rights, or do you not have a position as yet?

Mr Innes—I think both the president of the commission and I are on the record supporting the development of a bill of rights, but of course it is very difficult to be in favour of or against a bill of rights unless you are clear about what such a bill might contain. It really oversimplifies the issue to say that you are in favour of or against a bill of rights, and I guess any process which may be conducted—I do not know details of any such process—would be to draw out from the Australian community what its views might be in that regard.

Senator BRANDIS—Indeed.

Senator PAYNE—Mr Innes, would you envisage the commission playing a significant role in that process in terms of consultation nationally and that sort of thing?

Mr Innes—Yes, I would expect the commission would play a significant role in such a process. We are finalising some resource material in the area, which we will make available in the sense of informing people about some of the issues around a bill of rights or a charter of rights. There are a range of ways in which we could participate further in the process and I guess they will fall out when the government determines and announces the process that it wishes to undertake. But, yes, I would expect our role would be significant.

Senator PAYNE—Finally, in relation to the question of consultation, Ms Roberts, was the commission consulted in relation to the resourcing changes relating to employment related complaints?

Ms Roberts—Do you mean consulted—

Senator PAYNE—Were you asked by government if that was an area you would like to see cut?

Ms Roberts—No, I do not believe we were.

Senator SIEWERT—I would specifically like to ask the Social Justice Commissioner some questions around the NT intervention but also, since we have not had a chance to ask you questions around your last social justice report, I would like to ask the some questions around that as well. I think it was back in the inquiry we had into the NT intervention bills last year that we were asking some questions around the Racial Discrimination Act and the issues around special measures. My understanding is that the current government has made some comments in the past and during the debate on the issue of exemptions from the Racial Discrimination Act. Can the legislation be put right so that it is not exempt from the RDA, and how would you go about doing it if, in your opinion, you think it could be put right?

Mr Calma—We expressed a concern at the Senate committee about whether the legislation conformed with both the Racial Discrimination Act and the special measures elements of it. We were concerned that on face value it appeared not to be the case—we are still concerned about that. I believe it can be overturned. My 2007 social justice report looks very closely at the NT intervention. I cannot go into it in any detail, because it is now being transmitted to the Attorney-General on 11 February. What I can say is under privilege but within that report it highlights a number of areas in which the Minister for Families, Housing, Community Services and Indigenous Affairs particularly can exercise her powers under the legislation to make changes. Basically, it relates to whether the exemption was a just exemption or whether we should have racially discriminatory practices in Australia that contravene the Racial Discrimination Act.

Senator SIEWERT—I appreciate the issues around the 2007 report. I look forward to its release hopefully imminently. You said you had issues around the special measures—have you looked into it in more detail since the legislation has been put in place and seen whether the special measures do meet the requirements of being special measures?

Mr Calma—Our analysis is that it does not. There is a process that needs to be followed to determine whether they are special measures and, as far as we can establish, that process and that assessment have not been undertaken. Unless and until it is then they are not likely to meet the special measures criteria.

Senator SIEWERT—Again, I appreciate the fact that the information is now privileged, but would your preference be to see the exemption removed from the act completely or would you rather see the process gone through to see if it complies with the special measures provision?

Mr Calma—The first principle is that the federal Racial Discrimination Act, the Northern Territory Anti-discrimination Act and the Queensland Anti-discrimination act, which are all currently exempted through that legislation, should all be reinstated and that we should, as we have federal legislation, apply that to all citizens of Australia. If a special measure is determined, then it should be tested against the criteria and if it meets the criteria, so be it, it is a special measure; if it does not, then it is not a special measure.

Senator SIEWERT—I would like to move on to the intervention in particular and I want to ask some specific questions. My first question is: have you been looking into the implementation of the NT intervention and, if you have, what aspects have you looked into and what is your view to date?

Mr Calma—It is a complex area. The concerns that we expressed to the Senate inquiry still apply. I have had staff travelling throughout the Territory. We have met with a number of delegations and been advised by people of their impressions and experiences of how the legislation and the measures are being applied throughout the Territory. We can say that in some areas we are seeing some positive outcomes; in other areas, it is still too early to say whether there are any positive outcomes. But we are being advised that people across the Territory are experiencing hardships, and in fact there have been a number of negative impacts out there that are still of concern.

Senator SIEWERT—Let us start on the positives first. Can you tell me what some of the positives have been to date?

Mr Calma—The child protection authorities in Alice Springs and the task force were discussed earlier. They seem to have had reasonable success. They are taking the approach of working and developing relationships with the communities to get some intelligence so they can move forward. That is seen as a positive and progressive action. The increased number of police in communities, although temporary, has had some positive impact. There are concerns as to the longevity of the placement of some of the police officers. But that has been seen as positive as well.

Senator SIEWERT—You talked about hardships. Could you explain what some of those hardships are?

Mr Calma—The main one that has been expressed is in relation to the quarantining of funding. A simple one is that where 50 per cent of their income has been quarantined that does not give them the financial capacity to maintain some of their loans and other financial commitments. In the past, they have had to manage their meagre incomes to be able to maintain those expenditures—and some of them relate to mobile telephone bills; others relate to vehicle repayments. We have had a number of examples discussed with us. That is probably the most significant impact. That will have a long-term impact if it is not addressed in the near future—particularly on people's ability to maintain a credit rating that is acceptable.

Senator SIEWERT—I do not know if you are aware of this, but last week in this room we had delegates from the NT from communities affected. One of the issues that they raised with us, as well as telling their stories and concerns about some of the other issues, was the fact that they are not getting any financial counselling. Quarantining is occurring and we were told last week that they are not getting financial counselling and assistance. Have you come across this issue?

Mr Calma—That is one of the significant issues in relation to money management. The way that quarantining has been applied across the board without exemption has meant that people who have had a saving regime or a financial relationship with an institution have suddenly had that capacity restricted. Over 800 people in the town camps of Alice Springs, through Tangentyere, were participating through Centrepay, a voluntary system of quarantining, you could say. That capacity has suddenly been withdrawn from them. What we have seen is a process of disempowering people and making them less able to manage their own lives. That is a significant concern and is one that has to be addressed. There has not been enough promotion of the voluntary Centrepay system. There has not been enough support for programs like the FIMS program, which is a financial management program, or for programs like The Money Story or programs that the Fred Hollows Foundation is working on—capacity development type programs to empower people to manage their own lives. What we have is a situation in which people's incomes are being managed for them. The concern in the longer term is that, if the quarantining is lifted, people will not have learnt how to manage their money.

Senator SIEWERT—Has anybody approached you to try to get an exemption from the quarantining?

Mr Calma—Not me directly. I believe being able to lift that is one of the powers the minister has, so they may have gone to Minister Macklin.

Senator SIEWERT—My question was to see if they were coming to the commission to see if they could get assistance. Secondly, are you aware of anybody that has been exempted to date?

Mr Calma—No, I am not aware of any individuals. People come to my office because they understand that my position as Social Justice Commissioner is to raise with the parliament issues that impact on the enjoyment of human rights by Indigenous Australians. It is in that context that people come to me, and I then raise the issues either through my social justice report or through dialogue with the ministers.

Senator SIEWERT—Can I move on to some of the issues that you raised in the 2006 report. You once again raised the issue of models around representative bodies. Have you progressed that any further beyond your 2006 report?

Mr Calma—I have. It was a follow-up item that I put to my office to do—to raise with government some models of what a national representative body might look like. I have progressed it by doing some research myself and I have commissioned some research that I expect to get back in a couple of months time, which will be combined with my own office's work so a number of options can be taken to government for what they might consider for a national Indigenous representative body.

Senator SIEWERT—So you have commissioned some research outside the commission?

Mr Calma—Outside the commission to supplement the work that we have done and our own experiences.

Senator SIEWERT—I presume too that research consultation has been carried out with Indigenous members of the community.

Mr Calma—Yes, there will be a number of focus groups held. We have asked that as part of the consultancy, but it is also to compile what has already been done. Since the abolition of ATSIC a number of national meetings have been held by Indigenous peoples to look at various models, and we need to get that evidence of what has already been discussed amongst Aboriginal and Islander peoples to complement the work that I have done.

Senator SIEWERT—And you said the time frame was a couple of months.

Mr Calma—It will be a couple of months before we get the research back and then we will have to put that into a report that we will put to government.

Senator SIEWERT—Will that be released publicly?

Mr Calma—I suspect it will. It is a report that I am offering to government and in the normal course it would go up on our website.

Senator SIEWERT—Also in your report you made a recommendation around ICCs. You suggested commissioning a survey of staff to look at what the current issues are. Was that progressed?

Mr Calma—Not to my knowledge. There were concerns by members of Indigenous coordination centres across Australia in relation to the way projects and policies were being applied. So my recommendation was that the Australian Public Service Commissioner's office conduct a confidential survey of all officers in the Indigenous coordination centres and that that report be sent to government to provide government with another source of advice as to how Indigenous affairs might be applied throughout Australia and some of the lessons learned by people on the ground who have been working in Indigenous affairs—often for the majority of their lives.

Senator SIEWERT—Do you know if that is being undertaken?

Mr Calma—I could not say.

Senator SIEWERT—Following the apology last week, more and more of the focus will be on the *Bringing them home* report and the implementation of the recommendations. Have you done an audit of the implementation of the recommendations?

Mr Calma—I have not. But I received advice today that we have sold more *Bringing them home* reports today than we have in the past year. So that is a good outcome, although it is only a meagre income for the commission. I have not had a comprehensive look at the recommendations and how they have been applied, but in the past the Ministerial Council for Aboriginal and Torres Strait Islander Affairs, MCATSIA, have had the responsibility to do that. They have done a number of reports, and last year I was in communication with the chair, Jay Weatherill, from South Australia, and I encouraged them to do an ongoing report.

MCATSIA is all the states as well as the federal government meeting together, so they are in the best position to do it.

Senator SIEWERT—My recollection from discussions I was involved in with one of the other committees last year is that MCATSIA was not carrying out the review that changed the way they were reporting. My understanding from the feedback I had had from community members is that they were not very happy with the way that the reporting process had changed. In fact, there is no overall official audit now of the implementation of the recommendations, which is why I was asking if somebody else had been doing it.

Mr Calma—I think there is definitely a need for a cross-government look at what is happening and for reporting back to government on how and what of the 54 recommendations have been implemented by the states and by the federal government and on what needs to be done.

Senator SIEWERT—Do you think MCATSIA is the best body to do that?

Mr Calma—They have had that responsibility in the past. Whether it is them or whether a specific task force is set up to do that is something that government needs to look at. Maybe that will come out of the COAG committee that has been established to look into Indigenous affairs.

Senator SIEWERT—Thank you.

Senator MARSHALL—Ms Roberts, I want to come back to the employment related complaints. You talked about a 50 per cent increase over the last two years. What is that numerically?

Ms Roberts—The workload has increased from an average of 1,200 to 1,800 complaints per year and from 10,000 to 17,000 inquiries per year.

Senator MARSHALL—Can you break those figures down? I think you mentioned that they are not all unfair terminations. Do you categorise them in any way?

Ms Roberts—No, we do not have that information.

Senator MARSHALL—How do you progress them? How many of those complaints are resolved? Do you have a measurement to say whether they are successfully resolved or are resolved without success or are endlessly ongoing?

Ms Roberts—I will ask our Director of Complaint Handling to answer that question.

Ms Toohey—In the last annual report we reported that we had resolved 38 per cent of all the complaints that we received, and that has been consistent until the end of 2007.

Senator MARSHALL—Does that mean the others are not finalised and are unresolved or are still being resolved?

Ms Toohey—No, they are finalised in other ways.

Senator MARSHALL—Which means?

Ms Toohey—They may be terminated because we are unable to resolve them or terminated on the grounds that they lack substance. There is a breakdown in the annual report that I am happy to provide you.

Senator MARSHALL—Okay. In terms of complaints that you are prepared to accept, does that number you have given me include complaints that have been made that do not fall under your remit?

Ms Toohey—We do not call them complaints. Written inquiries to us that do not fall within the jurisdiction are measured in what we call the inquiry area. Anything that does not reach the threshold of a complaint is considered an inquiry until enough information is made, and then it is accepted as a complaint.

Senator MARSHALL—All right. You cannot tell me which ones are actually related to unfair termination?

Ms Toohey—Because in our legislation we do not have a ground of complaint to do with unfair termination—our complaints are about discrimination rather than unfair termination—we do not measure our complaints in that way. We have previously provided a chart to the committee which has a breakdown of employment related complaints. I have not brought an updated version of that with me but we would be happy to provide that.

Senator MARSHALL—I was interested to know how many complaints would have been made on the basis of unfair termination where the reasons given for unfair termination were not matters of unlawful discrimination but other employment reasons and the complainant believed it was in fact discrimination.

Ms Toohey—Again, because unfair termination is not a ground of complaint under our act, it is not something we report on or record. The complaints—

Senator MARSHALL—Well, it is if it is for discrimination, isn't it?

Ms Toohey—Yes, but I guess it is not equivalent to the unfair termination in terms of IR jurisdiction. It may also be that the complaint raises other issues so it is recorded under a different issue. I could potentially give you a breakdown of the employment complaints that we received that are resolved, that are not resolved or that are declined on the grounds of substance. That is probably really as much as our reporting system would allow.

Senator MARSHALL—Unfair termination was removed for the majority of Australian workers, except they still had the protection if they were terminated for discrimination. But it would have to be a fairly foolish employer that wanted to dismiss someone for an unlawful, discriminatory reason and actually said so. They would terminate them for—in fact, you do not have to give a reason. But people may feel that they were in fact terminated for discriminatory reasons, which is unlawful in every case. I was just trying to get a feel for how many cases you deal with, but you do not think you would be able to give me that information.

Ms Toohey—We just do not record to that level of detail on the database. I would also just note that we do not determine whether discrimination has occurred. All we do at a complaint level is assess whether there is substance in the complaint. Matters have to go to court to determine whether discrimination has occurred.

Senator MARSHALL—No, indeed. That would still be a useful set of figures for me, but that is all right.

Senator BARNETT—I have a couple of areas for questions. Firstly, in regard to the *Same-sex: same entitlements* final report of 2007, I wanted to ask if HREOC has received advice from the government or has provided further advice with respect to whether or not the recommendations have been accepted.

Mr Innes—No, we have not received advice on that from government in any detail. The government prior to the election committed to addressing the 58 laws which discriminate against same-sex couples, which are set out in our report. But as yet we have not received any advice as to the progress of that.

Senator BARNETT—Have you received any communications from the new government with respect to the 58 recommendations?

Mr Innes—Sorry, that is what I was talking about. The then opposition prior to the election committed to rectifying the 58 discriminatory laws which we set out in our report. Since the election, we have not had any further formal communication from the government as to the process by which they propose to act on that commitment.

Senator BARNETT—Thank you. That was what I was seeking to ascertain and you have answered it very well; I appreciate that. My second question relates to the ACT civil unions proposed legislation. Have you considered it and do you have advice on it or support for it? Does HREOC have a position?

Mr Innes—Clearly, we are aware of that issue; it is something that has been in the public arena. But we would not normally provide advice to government on territory legislation and we have not done so in this case.

Senator BARNETT—I guess that is one of the reasons I was asking if the department or the minister has sought your advice with respect to that legislation.

Mr Innes—No, we have not been asked for advice on that legislation.

Senator BARNETT—Perhaps I could ask Mr Cornall the same question concerning the department's advice to the minister with respect to that legislation.

Mr Cornall—I will have an officer answer that question for you.

Ms Leigh—You asked about the advice the department had given in relation to that legislation. Could you explain specifically the information that you are requesting.

Senator BARNETT—The history of the ACT's civil union legislation is that under the previous government it was knocked back twice. The ACT government has put forward the legislation again. Liaison and meetings have been held between the relevant attorneys-general. Have you provided advice to the new government on the constitutionality or the merits of that legislation?

Ms Leigh—In the normal course, we have provided assistance to the Attorney on that issue, yes, but the specifics of it—

Senator BARNETT—The microphone cut out. Could you repeat what advice you provided and/or the timing of that advice?

Ms Leigh—As in the normal course, we have provided ongoing policy advice to the Attorney on that issue.

Senator BARNETT—Is your advice that that legislation mimics marriage legislation?

Ms Leigh—I do not think it is appropriate for me to convey the advice we have given to the Attorney.

Senator BARNETT—You have given advice to the Attorney?

Ms Leigh—In the normal course, we have given advice on that matter, as we do on all matters that are the responsibility of the Attorney.

Senator BARNETT—Specifically on that matter?

Ms Leigh—On the ACT bill, yes, we have given policy advice to the Attorney.

Senator BARNETT—When did you do that?

Ms Leigh—Continually since the Attorney has been the Attorney. It has been an ongoing issue.

Senator BARNETT—Thank you.

CHAIR—Senator Siewert, you have a question for HREOC.

Senator SIEWERT—I have a few questions. One area concerns issues around coordination and a whole-of-government approach to the delivery of services to Aboriginal communities and the audit that was released a little while ago. Have you looked at that ANAO report and have you provided any advice to government in that regard?

Mr Calma—We have not provided any advice to government about that audit. I am familiar with the audit. The National Audit Office raises similar concerns about coordination and delivery of services to those I have raised in my social justice reports over the last couple of years.

Senator SIEWERT—I must admit that from my reading of the ANAO report I thought they were saying similar things to what you had said in your last two reports. Will you be providing further advice to government given the ANAO report?

Mr Calma—Not specifically about the ANAO report. My social justice report is the report to parliament and the issues covered in that report relate generally to the delivery of services and programs to Indigenous communities.

Senator SIEWERT—I was thinking outside of your specific social justice report.

Mr Calma—At this stage, I have not had any opportunity to meet with the minister to talk about issues other than issues relating to the apology.

Senator SIEWERT—In terms of strategies around tackling violence and abuse in Aboriginal communities, particularly in relation to children, which is what the intervention is supposed to be about, is there a national strategy around those specific issues?

Mr Calma—I have not been able to identify a national strategy as such. It has been discussed and the intervention was to address a whole range of issues. But the intervention is very broad ranging and specific issues have yet to be identified. You may recall that last year I convened a meeting in the parliament to talk about strategies and then, in last year's social justice report, I also covered a whole range of issues and the work that HREOC has done in the past five years to bring to the attention of government issues relating to family violence

and child abuse. The 2007 social justice report is again going through a whole range of issues relating to child abuse and family violence, including, I think, we are looking at 19 or so case studies of successful programs around Australia that will identify lessons that should be considered in the formulation of any policy or strategy.

Senator SIEWERT—The next obvious question from there is: in your opinion, do you feel there is a need for a national strategy, presumably not reinventing the wheel, but based on the evidence available about what works?

Mr Calma—I think that that has to be the next step but can I also make a plea to government that it should not be done to the exclusion of Aboriginal and Torres Strait Islander people. Unless we are party to the whole process and engagement and participation in identifying the ways forward, we are not going to see any long-term outcomes. That is going to be important. But there is a fair amount of guidance, I believe, in this social justice report to allow government to consider a range of options.

Senator SIEWERT—Do you have a timetable for when you expect the government—and I realise that I might be being a bit cheeky asking you—to release the report?

Mr Calma—They have 15 days from the date of transmittance.

Mr Cornall—Sitting days.

Mr Calma—Yes, 15 sitting days. I believe that takes us up into mid-March.

Senator SIEWERT—House of Representatives or Senate?

Mr Calma—The House of Representatives.

Senator SIEWERT—That will mean it is much quicker. I asked you a question before around whether people have come to you to ask you about taking an exemption to government. Can I qualify that question: are people coming to you on the basis that they think that they are being discriminated against because of what is happening with the NT intervention?

Mr Calma—Yes, there are general concerns and I think those concerns relate in part—a significant part—to people not really understanding the rationale behind some of the aspects of the intervention, so there needs to be, I think, a far greater amount of information provided to Indigenous people about the reasons for the intervention and what it is hoping to achieve. We will—and will continue when people approach us—provide them with information about our complaints process and introduce them to the way that they can lodge a complaint or find out more information should they wish to pursue it as a formal complaint. But I must say that it is very difficult for them to lodge a complaint when it is exempt from the Racial Discrimination Act.

Senator SIEWERT—I think I will leave it there before I get into real trouble.

Ms Roberts—Chair, I just wanted to clarify an answer that I gave before. Senator Payne asked me whether HREOC had been consulted about the reversal of funding relating to WorkChoices. HREOC and the department had discussions prior to the reversal as to the likelihood that that money would be withdrawn given that it was given to us as part of the WorkChoices funding package.

CHAIR—Thank you.

[10.00 pm]

Australian Government Solicitor

Senator BRANDIS—Ladies and gentlemen, I do not know if you were listening when earlier in the evening or earlier in the afternoon there was an exchange concerning the suppressed legal advice which the government has received in relation to two issues of interest to me. One is the potential liability of the Commonwealth to compensate members of the so-called stolen generation in consequence of the apology last week and, secondly, the legal advice obtained by the government in relation to the privileges of the parliament, more specifically the House of Representatives, arising in relation to the arrangements for sitting the House of Representatives on Fridays without division or quorum arrangements and without question time.

So you understand, the government has announced that it has obtained legal advice in relation to both of these matters. The Prime Minister and Senator Evans, among others, announced that fact in relation to the stolen generation's legal advice. Mr Albanese, the Leader of the Government in the House of Representatives, announced the legal advice concerning House of Representatives privilege in that House last Tuesday night, so I am not inquiring of you whether any such legal advice exists; we know it does because the government has announced it. I would like to know whether the Australian Government Solicitor was involved in providing legal advice to the government in relation to either of those two matters.

Ms de Gruchy—I would respectfully ask you to consider, given the position of AGS as an independent statutory authority and government business enterprise, whether that question should be directed to AGS rather than to—

Senator BRANDIS—I am directing it to AGS at the suggestion of Mr Cornall.

Ms de Gruchy—I understand from earlier today that Mr Cornall did indicate to the committee that in the usual course it would be preferable for questions of that nature to be addressed to the agency concerned.

Senator BRANDIS—He said other things too, but let us not delay ourselves with an exchange about that matter, in view of the time and the fact that other senators have other questions to ask. It is suffice to say that I have considered the matter and I do consider the obligation of the AGS, as an agency answerable to this committee, to be the prevailing consideration.

Ms de Gruchy—Without wishing to dispute the power of the Senate, I do think it is a significant and relevant matter for the—

Senator BRANDIS—It is, and you have made the point.

CHAIR—Order! Senator Brandis, I ask for order.

Senator BRANDIS—Madam Chairman, I have a point of order. Madam Chairman, you must take my point of order immediately.

CHAIR—Senator Brandis, I have asked for order.

Senator BRANDIS—You are out of order yourself, Madam Chairman, in refusing to accept a point of order.

CHAIR—Senator Brandis, I have asked for order.

Senator BRANDIS—I have a point of order.

CHAIR—I have asked for order, Senator Brandis, and I am going to wait until you are silent so that I can tell you that I would like you to kindly let the witnesses finish at least a sentence before you have your next series of thoughts. Could you just give the witnesses that courtesy. Proceed, please.

Senator BRANDIS—I have a point of order, Madam Chairman. Your conduct of these proceedings has been partial and in breach of your obligation as the chairman of this committee.

Senator MARSHALL—Cut it out, George. Grow up and start acting like an adult!

Senator BRANDIS—I will ask my questions in an orderly manner but in a manner of my own choosing.

CHAIR—Senator Brandis, as the chair I would ask you to at least give the witnesses due courtesy, and not rudeness by interrupting them mid-sentence. Could you please provide our public servants with at least that courtesy in your questioning.

Senator BRANDIS—May I proceed to my next question, please.

CHAIR—Please proceed.

Senator BRANDIS—Please do not repeat to me what you have already told me. You have asked me to consider the matter that you have adverted to, and I have. Therefore the matter is properly before the committee—I do not think anyone disputes that—and I am asking you to respond to my question.

Ms de Gruchy—Could I just clarify whether you have taken into consideration in pressing the question that the Senate has been requested, certainly in the past, through the Attorney-General who was the Attorney-General in 1999 and 2002, that the committee should consider the inappropriateness of pressing questions that would otherwise lead to an issue of client confidentiality being breached. As I say, I accept the power of the Senate to ask questions but also, as I say, I think it is a significant and relevant matter that the then Attorney-General wrote formally to the President of the Senate on two occasions to ask that the position of AGS be given consideration, particularly in the context of matters that would otherwise be matters of client privilege, in relation to questions that relate to matters that are within the province of agencies of the Commonwealth.

Senator BRANDIS—It is not appropriate for a witness to ask a senator conducting the hearing questions other than to clarify a question they themselves have been asked. You may take it that I press this question having carefully considered all relevant matters. May I have an answer to my question, please.

Ms de Gruchy—I would not be in a position at the moment to answer your question without seeking to consult with the relevant minister, being the Attorney-General.

Senator BRANDIS—You have known this question was coming since at least dinner time, have you not?

Ms de Gruchy—I have been aware that you have asked questions of other witnesses.

Senator BRANDIS—Were you aware that I had foreshadowed that I would be putting this question to the Australian Government Solicitor?

Ms de Gruchy—Only by perhaps surmising. I have not been aware of you wishing to directly put a question to me.

Senator BRANDIS—You represent the Australian Government Solicitor here, do you not?

Ms de Gruchy—I do, Senator.

Senator BRANDIS—The government has told us that it has taken legal advice in relation to two particular matters. I have directed some questions to the secretary of the Attorney-General's Department who, among other things, has suggested that an appropriate course would be for me to inquire of agencies. For the moment I am not asking the content of the advice, by the way. We know the content of the advice in relation to the stolen generation, unless the government is lying to us, because the Prime Minister has said the advice tells him that there is no liability in the Commonwealth. So unless the Prime Minister is lying then we are aware of the content of the advice; we are aware of the fact of the advice.

The only other thing of which we are not aware is the source of the advice. So no issue of client confidentiality arises and no issue of client confidentiality can possibly arise if you were to respond to my question affirmatively. Is the advice that I have identified advice provided by the Australian Government Solicitor? If the answer is no, no question of client confidentiality can possibly arise because the assumption upon which any consideration would be based would not be present. No question of client confidentiality could possibly arise if the answer is yes when the government has already announced the advice. All I want to know is: is the Australian Government Solicitor the source of the advice?

Ms de Gruchy—Senator, before answering the question I do seek the opportunity to consult the relevant minister, which is the Attorney-General.

Senator BRANDIS—Why? Do you know the answer to my question?

Ms de Gruchy—Senator, I am not in a position to answer your question. As I understand the position, in response to questioning a statement was made by Senator Ludwig in relation to the position of the Attorney-General on this matter. In the light of that information I feel I am not in a position, without consulting the Attorney-General, to provide an answer at this precise moment.

CHAIR—Order Senator Brandis, please. Let me just provide some information for the committee. Under privilege resolution 16 I need to inform you that it provides a special rule relating to the questioning of federal or state public servants, and that is:

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—

when answering questions—

reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.

As I understand it, you are requesting that you refer your question to the minister. Can I say, Senator Brandis, if you are insisting that there be an answer provided to your question, the committee would have to have a private meeting to consider that insistence.

Senator BRANDIS—Ms de Gruchy, just so there can be no confusion about the legal advice of which we speak, let me read to you what Senator Evans told the Senate last week. He said:

We—

that is the government—

have indicated that we have legal advice that compensation is not payable as a result of the apology. We have made that public.

I have asked you whether the source of the advice there described is the Australian Government Solicitor. Do you know the answer to my question?

Ms de Gruchy—Senator, as I have indicated previously, I would like to be able to consult with the Attorney-General in relation to the answer to that question.

Senator BRANDIS—No, no, Ms de Gruchy, I am not asking you about anything other than your own state of mind, your own knowledge. I am not asking you the question now; I am asking you: do you know the answer to my question?

Ms de Gruchy—It would appear that providing an answer to that question would be simply another means of answering the question that you asked previously, which is whether the Australian Government Solicitor provided the advice.

Senator BRANDIS—No, that is not right. The answer to the question of whether the Australian Government Solicitor did provide the advice—it seems to me, pretty clearly—is either yes or no. If you tell me you that know the answer to my question, you are not revealing what the answer would be. Whether you should reveal it or not, of course, is a different issue but, for the time being, I am merely asking: do you know the answer to my question?

Ms de Gruchy—As I said, I am not in a position to—

Senator BRANDIS—Yes, you are. You know what is in your own mind. Of course you are.

Ms de Gruchy—Could I perhaps seek the indulgence of the committee to consult the Attorney-General in relation to that question.

CHAIR—The witness has the right to do that.

Senator BRANDIS—I think you are toying with the Senate, with all due respect, witness. You are telling us that you are unable to tell the Senate whether you know the answer to the question only if you ask the Attorney-General, when the Attorney-General could only give you advice if you were to tell him what I have asked you—that is, what your state of mind is. I think you are trifling with the parliament, witness.

CHAIR—Senator Brandis, order!

Senator BRANDIS—I will ask the question one last time.

CHAIR—Senator Brandis, order!

Senator BRANDIS—The question—

CHAIR—Senator Brandis, order! As the chair, I have sought order from you and I expect that. I have already given the opinion of the privileges resolution, which goes to the fact that witnesses shall be given reasonable opportunity to refer questions to either superior officers or a minister. We have a witness before us who has sought an opportunity to refer this question to the minister. I am going to rule now that that is her position.

Senator BRANDIS—You do not need to make a ruling that that is her position; she has made it very clear.

CHAIR—If this committee as a whole wishes to dispute that then we will have a private meeting. Otherwise, Senator Brandis, I am asking you to go to other questions please.

Senator BRANDIS—I will go to my next question. Ms de Gruchy, when did the Australian Government Solicitor receive instructions to provide advice to the government concerning the potential liability of the Commonwealth to compensate the stolen generation in the event of a parliamentary apology?

Senator MARSHALL—Oh, come on! That it is the same question, isn't it?

Senator BRANDIS—When?

Ms de Gruchy—Again, I seek the committee's permission to consult with the Attorney-General in relation to that question.

Senator BRANDIS—Ms de Gruchy, it is very obvious to all of us, I think, that there is no way at all that you will vouchsafe the Senate with an answer to these quite proper questions and that in response to each question I ask of you in relation to this matter you will invoke the same pretext for not answering, so I am merely setting out now, sequentially, the various matters concerning which I wish information. I anticipate that I will be met with the same response and then you will, I expect, as you have indicated you intend to, ask the Attorney-General. If the Attorney-General refuses to answer, we will just have to add that to the chapter of evasions and concealments in this episode. I would like the date on which the request for advice from the Australian Government Solicitor was received. I would like to know whether the request for advice was received orally or in writing. If it was orally, from whom, and, if it was in writing, I would like produced a copy of the document which constituted the instructions to the Australian Government Solicitor. You can either answer my question or invoke the excuse for not answering, but you have got to respond.

Senator Ludwig—Are they all of the ones that you wanted to put in series or are there any others that you also want? Maybe it will require putting them all.

Senator BRANDIS—No, there are others.

Ms de Gruchy—I would appreciate the opportunity to consult with the Attorney-General.

Senator BRANDIS—And you will come back to the committee in writing after that consultation, will you?

Ms de Gruchy—That is a matter for the committee chair.

Senator BRANDIS—No. It is not a matter for the committee chair. If you take a question on notice, under the Senate standing orders you are obliged to respond in writing. That response can either be an answer or it can be a ground of objection to answering, but nobody has the discretion not to respond to a question taken on notice before a Senate committee.

Ms de Gruchy—I will certainly respond in accordance with whatever my requirements are.

Senator BRANDIS—Thank you. My next question is: I would like to know the date on which the advice was provided by the Australian Government Solicitor to the government and I would like a copy of the advice produced. Will you take that on notice and provide a response, having consulted with the Attorney?

Ms de Gruchy—I will.

Senator BRANDIS—I would also like to know whether external counsel were briefed by the Australian Government Solicitor to provide their opinion in relation to this matter. If so, I would like the date on which counsel were briefed, a copy of the instructions and a copy of the opinion received from external counsel. Will you take that on notice?

Ms de Gruchy—I will consult with the Attorney concerning those matters.

Senator BRANDIS—I want to turn to the question of the legal advice in relation to House of Representatives privilege. This matter, you will understand, Ms de Gruchy, is quite different because it concerns advice about the privileges of the parliament itself. Any decision by the government, for which of course you are not responsible; to withhold such advice would be unprecedented to withhold from the parliament itself advice concerning the privileges of the parliament. I do not think we would have seen that since the days of the Stuart kings. Will you tell us, please, Ms de Gruchy, whether the Australian Government Solicitor provided advice to the government concerning arrangements for the proposed sitting of the House of Representatives on Fridays without divisions, quorums or question time, as Mr Albanese indicated. I should say he did not say the Australian Government Solicitor; he simply said the government had legal advice. Did the Australian Government Solicitor provide that legal advice?

Ms de Gruchy—For the same reasons that I gave in relation to the other series of questions that you asked me, I would again appreciate the opportunity to consult with the Attorney-General in relation to the question.

Senator BRANDIS—I would also like to know the date on which the legal advice in relation to that matter was sought; whether it was sought orally or in writing; if orally, by whom; and, if in writing, a copy of the letter of instructions to the Australian Government Solicitor.

Ms de Gruchy—I will take those matters up in my consultation.

Senator BRANDIS—I would like to know the date upon which the Australian Government Solicitor provided the advice to the government concerning this matter and I would like a copy of the advice to be produced.

Ms de Gruchy—Again, I will take the matters up in consultation.

Senator BRANDIS—I would also like to know whether external counsel was briefed to advise in relation to this matter. If external counsel was briefed, I would like a copy of the instructions to counsel and a copy of counsel's opinion.

Ms de Gruchy—Again, I will take the matters up in consultation.

Senator BRANDIS—Thank you. I cannot take the matter any further, Madam Chair. That is all I have for the witness.

CHAIR—So you have no further questions for the AGS?

Senator BRANDIS—No, I asked the AGS to be here—partly inspired by Mr Cornall's suggestion—because I thought that they would be responsive to these questions. Obviously, under instructions from the government, they feel unable to respond meaningfully.

Ms de Gruchy—May I please give my apologies for not being available to the committee when we were called earlier.

CHAIR—I do not think there is a need to apologise. You would not have been expecting a call at 20 past six, given the way the program was running. Thank you for your attendance this evening. I now call the High Court of Australia. There are no questions for the High Court, so we apologise for keeping you here all day. Do we have questions for the Federal Court of Australia?

Senator BRANDIS—No.

Senator FISHER—No.

CHAIR—Thank you to officers from the Federal Court of Australia.

[10.25 pm]

Federal Magistrates Court

CHAIR—We now move to questions for the Federal Magistrates Court.

Senator BRANDIS—Can you tell me please how many federal magistrates there are currently sitting in Australia? I include those who might be on leave. What is the total establishment of the court?

Mr Mathieson—There are 53 federal magistrates currently sitting or on leave. The jurisdiction of the court covers two predominant areas—one is general federal law and the other is family law.

Senator BRANDIS—Am I right in believing that 78 per cent of family law matters commenced in the Federal Magistrates Court and the Family Court—the two courts seized with original jurisdiction in this area—are commenced in the Federal Magistrates Court?

Mr Mathieson—Yes; that is correct. To be absolutely precise about that, neither of those courts that you have mentioned, the Family Court nor the Federal Magistrates Court, exercise jurisdiction in family law in Western Australia, so those percentages you referred to exclude Western Australia. That 78 per cent figure is calculated on the filings in the six months to 31 December 2007.

Senator BRANDIS—They are obviously the most recent you have and that gives us the best picture of the current state in relation to the court.

Mr Mathieson—Yes. They are the figures most recently available to me. Of course, that can vary from registry to registry, and the figure that you refer to is a national figure.

Senator BRANDIS—Am I right in understanding that the Federal Magistrates Court and the Family Court define commencements of proceedings in a somewhat different way, so that in the Family Court commencements include consent orders that were consensual from the start—property settlements, uncontested divorces and so on—whereas in the Federal Magistrates Court commencements are defined as proceedings which have been initiated which may be, though will not necessarily be, litigated at a hearing?

Mr Mathieson—Yes and no. I am sorry to put it in those terms.

Senator BRANDIS—That is fine. Am I right in apprehending that there is a different usage though between the two courts. If I am, can you explain to me what it is?

Mr Mathieson—The figures that I was referring to earlier are consistently calculated, as best we can. Perhaps this is a question that is better—in its detail—put to and answered by the Family Court.

Senator BRANDIS—I will put it to them too, but I thought, in fairness, since I am going to ask the same questions to each of you for the purposes of establishing a comparison, I should put it to you also.

Mr Mathieson—The Family Court have a separate process to deal with consent orders. Those consent orders that are dealt with in that process are excluded from the statistics that I was referring to a minute ago. To fully answer your question as accurately as I can, the percentage of 78 per cent that you have referred to excludes those consent orders.

Senator BRANDIS—These are really registry matters, aren't they?

Mr Mathieson—That is so.

Senator BRANDIS—So the exercise you have undertaken is to aggregate between the two courts all matters other than matters that are, from the start, consent orders or registry matters. We are dealing with matters that come before the court or may come before the court. And that would include initially contested proceedings that might settle on the day of the hearing or might settle during the interlocutory stage but are nevertheless potentially contentious business before the court, would it?

Mr Mathieson—As best we can, the numbers that we were both talking about moments ago are an identification of the judicial workload of the two courts. It excludes the consent orders I was referring to before, which are dealt with almost 100 per cent by registrars. It does not exclude consent orders that are dealt with in the normal run of the events by judicial officers. It also excludes other work that is done purely by registrars—and I will not go into detail.

Senator BRANDIS—I understand. Perhaps not all of us but most people would understand that distinction. You have told me that, taking that common definition of judicial, as opposed to registry, matters, 78 per cent of family law matters—apart from those in Western Australia—were dealt with by the Federal Magistrates Court in the six-month period up to the end of December last year; is that correct?

Mr Mathieson—That is correct.

Senator BRANDIS—What percentage of the Federal Magistrates Court's work in terms of magistrate days or whatever other appropriate measure you take is occupied with family law matters?

Mr Mathieson—I cannot give it to you in those terms. What I can tell you though is that, of the 53 federal magistrates who are appointed working with the court, it is estimated that the full-time equivalent devoted to family law is 36.25.

Senator BRANDIS—Am I right in understanding that in the current year the total budget allocation for the Federal Magistrates Court is, rounding to the nearest million, \$67 million?

Mr Mathieson—On one method of calculation it would be approximately \$69 million. That includes approximately \$14 million that is services provided free of charge by the Family Court. I would suggest that perhaps a more accurate figure to look at is a figure of approximately \$55 million which would exclude that component.

Senator BRANDIS—Excluding that component, that is all other aspects of the Federal Magistrates Court's budget?

Mr Mathieson—Yes.

Senator BRANDIS—Of that \$55 million, how much of the budget is for family law matters?

Mr Mathieson—I do not know that I can disaggregate that figure down to that level.

Senator BRANDIS—I know this is a little unscientific, and I do not know if Senator Barnett has a calculator on his laptop that he is able to operate quickly, but would it be right to say that 36¼ fifty-thirds of the \$55 million, representing the proportion of magistrates' time devoted to family law matters, would represent the amount of resources of that \$55 million allocated to family law?

Mr Mathieson—Unfortunately I do not think it is that simple. I think that there are a large degree of complexities in there, including in relation to the services provided free of charge which do include currently—although discussions in that respect are underway—a fairly expensive, in monetary terms, cost of the provision of family reports.

Senator BRANDIS—I do not want to get bogged down in the science of this. By whatever measure you think is the most appropriate, Mr Mathieson, allowing for the fact that it is not a perfect science, roughly what proportion of the costs of running the Federal Magistrates Court at the moment are devoted to the adjudication of family law matters?

Mr Mathieson—I am sorry, Senator. I simply could not tell you. It might be something that I could take on notice.

Senator BRANDIS—Would you, please.

Mr Mathieson—I will put the caveat over the top that I think it would be an extremely difficult—although I am not saying an impossible—task to make that calculation.

Senator BRANDIS—Do you consider that there is an insufficient investment of resources in the Federal Magistrates Court, having regard to its very substantial responsibility now for

Family Court matters—that is, 78 per cent of Family Court matters as well as all of its other matters being litigated in that court?

Mr Mathieson—I do not want to appear unresponsive but it is a matter for government to decide the level of resources that each agency should be allocated. It really is not a matter for me to say whether government has or has not underresourced this court. However, what I could say—and I think I would be joining a large throng of other agencies—is that the Federal Magistrates Court could always do with additional resources. But it is not its choice as to the resources it gets.

CHAIR—Thank you very much to the officers of the Federal Magistrates Court. We ask the officers from the Family Court to come forward.

[10.39 pm]

Family Court of Australia

Senator BRANDIS—How many judges does the Family Court have sitting at the moment, including judges who may be on leave?

Mr Foster—The figure that was mentioned by the department earlier said there were 46 judges in the Family Court, which is true in one sense. Five of those judges are actually in the Family Court of Western Australia. The actual figure of judges sitting on a daily basis in the Family Court of Australia is 41. If you like I can table a list of those judges' locations, if that would be helpful to you.

Senator BRANDIS—That would be very helpful. Are the five Western Australia judges paid for by the Western Australian government?

Mr Foster—My understanding of the funding arrangement is that the Commonwealth pays the Western Australian government for the services that that court provides.

Senator BRANDIS—You can see what I am getting to. Is it appropriate to include or exclude the Western Australian judges for the purposes of comparing the family law case load of the Family Court with the Federal Magistrates Court?

Mr Foster—The Chief Judge of the Family Court of Western Australia sits in the Family Court of Australia's full court on a regular basis. The other four first instance judges would sit very infrequently. In fact, it would be a knock-for-knock basis. If there were some reason that a Family Court of Western Australia judge—

Senator BRANDIS—A prosaic metaphor, Mr Foster?

Mr Foster—Well ... There are occasions when a judge from Western Australia might be required to sit on a matter on this side of the country, and a Family Court judge would then sit in Western Australia.

Senator BRANDIS—Do you accept the view of the Federal Magistrates Court that 78 per cent of family law matters that go before a court, as opposed to being simply consent orders filed in the registry, are now adjudicated in the Federal Magistrates Court?

Mr Foster—It is around that number. I think it would be semantic to argue with that. Perhaps it is 75-25. A year ago it was 67-33. In terms of application for final orders, excluding divorce applications and applications for interim orders, it is around that mark.

Senator BRANDIS—Around 78 per cent, give or take one or two per cent, at the moment?

Mr Foster—Yes.

Senator BRANDIS—Am I right in understanding that in the current financial year the Family Court's budget is approximately \$130 million?

Mr Foster—It is about \$140.8 million.

Senator BRANDIS—Does that include or exclude Western Australia?

Mr Foster—I am sorry; the appropriation is \$130 million.

Senator BRANDIS—Where does the other \$10.8 million come from?

Mr Foster—The total is \$140 million.

Senator BRANDIS—What is the relevant figure to work from: the \$130 million or the \$140 million?

Mr Foster—The \$140 million, as I first mentioned.

Senator BRANDIS—Does that include or exclude the Western Australian operation?

Mr Foster—It excludes Western Australia.

Senator BRANDIS—I think we may take it as a given that 100 per cent of the case load of the Family Court is family law matters.

Mr Foster—Yes.

Senator BRANDIS—Do you accept that in recent times—indeed, very recently—there has been a very significant increase in the share of family law matters adjudicated in the Federal Magistrates Court and a corresponding diminution in the share of family law matters dealt with in the Family Court?

Mr Foster—No, not exactly, because I think it is incomplete to make an assessment of workloads of the courts based purely on the application for final orders. The Family Court deals with the most complex and difficult matters. If you look at just an input volume of applications, that is not representative of, if you like, the work value.

Senator BRANDIS—Correct me if I am wrong, but the family law jurisdiction of the Federal Magistrates Court now is unlimited as to amount and almost unlimited as to topic with a couple of rather arcane exceptions like the Hague Convention proceedings and annulments. There are a couple of other even more arcane—I say that not disrespectfully to any litigants involved in them, of course, but from a lawyer's point of view—rarely litigated exclusions which only the Family Court can deal with. Is that right?

Mr Foster—It is right, but there is an arrangement between the two courts that matters that are going to be extended in length of trial will be transferred or heard in the Family Court of Australia. Putting aside the numbers of filings, you need to look at the effort required to determine the matter at trial and leading up to trial, which in the Family Court is significantly greater because of the very nature of the work that they do.

Senator BRANDIS—That is a fair point, but, whether they are a single long proceeding or a multiplicity of short sequential proceedings, we are still talking about the number of judge or magistrate days allocated, for comparison purposes, aren't we?

Mr Foster—In terms of first instance judges in the Family Court, there are actually only 33.5, because the Deputy Chief Justice is half in the full court and half in first instance work. So, in reality, in the first instance work, which is what we are talking about, there are only 33.5 first instance judges.

Senator BRANDIS—I will cut to the chase, Mr Foster. I do not want to prolong this; it is pretty obvious where I am going. This is not a court in which I have any professional experience, but it does strike me as being somewhat unbalanced that the court that deals with 78 per cent of family law matters—and that is not all its business—is funded to the tune of \$55 million, whereas the court which deals with 22 per cent of family law matters, which is all of its business, is funded to the tune of \$140 million. That is more than 2½ times more. Would you like to comment on that evident disparity?

Mr Foster—Putting aside the argument about complexity and length of trials—

Senator BRANDIS—Yes, but we assume the judges are very intelligent. The complexity merely makes the trials more burdensome for an individual judge, but it does not mean that the number of judge days is necessarily greater.

Mr Foster—With respect, Senator, I think it does. If you look at the effort needed, there are two major factors to be considered: one is the length of the trial and the other is the number of cases that actually proceed to trial. In the most complex matters, those two factors are quite significant. If you multiply those by the number of cases, you come out with a very, very different picture of work effort required to deal with the numbers. It is, in my view, quite simplistic to look at just inputs; you need to look at what is required to deliver the outputs. Those two factors become really, really important.

Senator BRANDIS—Indulge me for a moment, Mr Foster. If you are dealing with a single magistrate, who, over 20 consecutive hearing days, deals with 40 consecutive, fairly uncomplicated half-day contested proceedings, versus a single Family Court judge, who, over 20 consecutive hearing days, is dealing with one complex trial, which might be, in terms of the weight of evidence to be considered and issues of law, a much harder and more complex task, we are still dealing with the same number of judicial days over the 20 days. It is just that the throughput of cases is different. And it is the same cost.

Mr Foster—That is exactly my point. The throughput of cases in the Family Court, because of their length of trial and complexity, takes longer. Therefore, if you do some sums on that you can do a work-weighting case and it works out to be about the same with the resources that are in both courts.

Senator BRANDIS—The government is still spending approximately the same amount of money, allowing for the disparity between Family Court judges' salaries and federal magistrates' salaries. In view of that, as I say, it does strike me—and you might say it is a superficial view—that \$140 million for your court versus \$55 million for the Federal Magistrates Court is a significant imbalance in the weight of funding between those two courts in relation to family law matters.

Mr Foster—I am not suggesting for one moment that our method of calculating work effort is particularly scientific. It is an indication. To that end, we are in negotiations with the FMC as we speak, to transfer resources to that court from the Family Court of Australia. I think Mr Mathieson pointed out the \$14.9 million of resources provided free of charge, which is referred to on page 157 of the yellow book. We are now moving to transfer those resources to the Federal Magistrates Court as a matter of course. They are in relation to property costs, court room usage, chamber usage, waiting areas—and that was a best guess a couple of years ago. We have become much more structured in what we are doing in that regard. We are about to transfer another \$4.8 million on top of that \$14.9 million, plus another \$5.5 million in terms of registrar and family consultant services.

Senator BRANDIS—In relation to the first of those categories, it sounds to me that some of them—for example, physical space—may be in relation to assets that are fully written down.

Mr Foster—No, we lease our premises. The Commonwealth Law Courts buildings are leased from the Department of Finance and Deregulation, and we have to pay per square metre—whatever it is in those buildings. The intent is that, if the facility or the space is 100 per cent used by another jurisdiction, then that jurisdiction should be paying the lease payments on that accommodation, and that is what we are doing.

Senator BRANDIS—So you say that the figures you have quoted have a real economic value; they are not just book entries.

Mr Foster—I have a pie chart, if that would help. It sets out a complete break-up of our budget in terms of corporate support, corporate overheads, client service costs, family consultant costs, registrar costs, judges' support costs, judges' salaries, et cetera, expressed as a percentage of the whole. I also have a corresponding table which sets out those percentages and what services are shared out of our budget of \$140 million, plus a page of definitions about what all that means, if you would find that helpful.

Senator BRANDIS—You could not be more helpful, Mr Foster, unlike some other witnesses. Thank you very much indeed.

CHAIR—There being no more questions to the Family Court, I think that is all our agencies considered now. We will move on to outcome 1—An equitable and accessible system of federal civil justice, and output 1.1. Senator Brandis or Senator Barnett, do you have questions here? There are no questions for output 1.1. Are there any questions on 1.2? No. No questions for output 1.3—Information law and human rights? Then we will move to output 1.4—Legal services and policy advice on international law.

Senator BARNETT—I have a question regarding the Kokoda Track and the probable and proposed World Heritage nomination of the Kokoda Track. I was wondering, Mr Campbell, if you could provide a status report on that nomination proposal.

Mr Campbell—That issue is really a matter for the Department of the Environment, Water, Heritage and the Arts. I can give you some information about the process of the nomination of areas to the World Heritage List. The primary issue there is that it is up to the country in whose territory an area is located to identify areas of World Heritage status. It is also up to that particular country, in this case PNG, to identify the property for the purpose of

nominating it for the World Heritage List. Both those issues are matters for PNG; they are not matters for Australia.

Senator BARNETT—That is what I wanted to ask, Mr Campbell. Is it something which our country can support? And, if so, how? I presume this is a matter for the sovereign country of PNG.

Mr Campbell—Under the convention, it is up to PNG, as I said, to identify a property as being of World Heritage value and to put that forward for World Heritage listing. That is not to say that, in that process, another country cannot express its support for that particular course of action.

Senator BARNETT—Have we done that?

Mr Campbell—As I say, that particular question would be best addressed to the department of the environment.

Senator BARNETT—Is that what the department would envisage we would do if you were to provide that support—you would assist them in the preparation of the nomination documentation?

Mr Campbell—As I said, I am not aware of whether that is done, but that is one thing that could be done to assist another country.

CHAIR—Do you have questions for outputs 1.5, 1.6, 1.7 and 1.8, Senator Barnett?

Senator BARNETT—No.

CHAIR—We have time to go very quickly to the National Capital Authority.

[10.55 pm]

National Capital Authority

CHAIR—I welcome the National Capital Authority to the Attorney-General's portfolio. Usually we see you in Rural and Regional Affairs, in DOTARS, so can I welcome you here.

Senator NASH—I have a couple of very brief questions. At the last Senate estimates we spoke about the potential upgrade to the Lake Burley Griffin rowing course. There were a number of things that had not been ascertained at that point—and I had better declare my interest: I have a son who rows—so I wonder if you could give us a brief update. I think at the time the NCA was still looking for feedback; I do not think you had gone back to the AIS at that point. Have you spoken to the AIS—have they come back to you—and other stakeholders on the potential for it?

Ms Pegrum—From memory, the last time we spoke to you, as you described, we had completed the draft report. That report was sent to the Australian Institute of Sport and the Australian Olympic Committee, but we have not received to my knowledge a response from either of them. So at the moment the report is as stands but there is no funding availability or interest being demonstrated, to my knowledge.

Senator NASH—Nothing back from the AIS at all?

Ms Pegrum—Not that I am aware of.

Senator NASH—Was there any attempt to follow up after the initial contact with the AIS or other stakeholders? From the feasibility study and their early consultations with, I gather, those stakeholders, there seemed to be a degree of interest, so it is quite surprising that those stakeholders did not come back to you at all.

Ms Pegrum—There has been interest over the years, particularly with the local rowing fraternity, and in the period of time around the Olympics, of course, there was quite increased interest in that area. But, no, we have had no response, and I must say we have not been back to them either since providing the correspondence and the information.

Senator NASH—Will you be planning to go back to them at all, or is it now up to those stakeholders to follow up that original letter if they choose to do so?

Ms Pegrum—It is really up to those stakeholders. We have completed the report as far as we can go, but there is no funding for an extension of that report or, indeed, for the capital works programs at this time. There did need to be quite a bit of additional work done to determine which of the options put forward for the rowing course—I think there might have been three options—

Senator NASH—Two.

Ms Pegrum—Thank you; of the two options—would be the better way forward.

Senator NASH—Thank you.

Senator BARNETT—I know Senator Humphries has a special interest in this area and I want to clarify and get your response if possible to this statement in the first paragraph of today's *Canberra Times* page 2 story:

National Capital Authority chief Annabelle Pegrum has told her staff it is regrettable the Rudd Government's review of the agency was announced after substantial budget cuts and job losses, but it may resolve some problems.

I wonder if you could clarify for the record if that is your view, and provide any further explanation.

Ms Pegrum—We do see this inquiry as an opportunity. It would be less than honest for us to say that the authority would not have preferred a review prior to budget cuts, but we also accept the government's right to make budget cuts and we are implementing those cuts. But the inquiry will be an opportunity to clarify the role of the Commonwealth in the planning and development of the city, and the relationship of the Commonwealth's interest to that of the territory.

Senator BARNETT—Thank you very much.

CHAIR—As there are no further questions, the committee will adjourn. We will resume our examination of the additional budget estimates at 9 o'clock tomorrow, when we will have before us the Immigration and Citizenship portfolio. I thank everybody from the Attorney-General's Department and related agencies for your time today. Thank you very much.

Committee adjourned at 11.00 pm