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Official Committee Hansard

SENATE

STANDING COMMITTEE ON ENVIRONMENT,
COMMUNICATIONS AND THE ARTS

ESTIMATES

(Budget Estimates)

TUESDAY, 27 MAY 2008

CANBERRA

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**SENATE STANDING COMMITTEE ON
ENVIRONMENT, COMMUNICATIONS AND THE ARTS**

Tuesday, 27 May 2008

Members: Senator McEwen (*Chair*), Senator Bartlett (*Deputy Chair*), Senators Birmingham, Kemp, Lundy, Parry, Webber and Wortley

Participating members: Senators Abetz, Adams, Allison, Barnett, Bernardi, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, George Campbell, Chapman, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Heffernan, Hogg, Humphries, Hurley, Hutchins, Johnston, Joyce, Kirk, Lightfoot, Ian Macdonald, Sandy Macdonald, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, Nettle, O'Brien, Patterson, Payne, Polley, Ronaldson, Scullion, Siewert, Stephens, Sterle, Stott Despoja, Troeth, Trood and Watson

Senators in attendance: Senators Bernardi, Birmingham, Mark Bishop, Bushby, Eggleston, Fielding, Fisher, Kemp, Lundy, Ian Macdonald, McEwen, Marshall, Nash, Parry, Webber and Wortley

Committee met at 9.03 am

BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY PORTFOLIO

Consideration resumed from 26 May 2008

In Attendance

Senator Conroy, Minister for Broadband, Communications and the Digital Economy

Department of Broadband, Communications and the Digital Economy

Executive

Ms Patricia Scott, Secretary

Mr Col Lyons, Deputy Secretary, Communications

Mr Andy Townend, Deputy Secretary, Digital Switchover Taskforce

Mr Abul Rizvi, Deputy Secretary, Broadcasting, ICT, Regional Strategy and Corporate

Corporate and Business

Mr Frank Nicholas, First Assistant Secretary, Corporate and Business Division

Ms Carrie Kilpin, Media Monitoring Officer, Corporate Communications

Legal

Mr Don Markus, General Counsel, Legal Group

Finance and Budgets

Mr Simon Ash, Acting Chief Financial Officer

Ms Phillippa Mitton, Acting Assistant Secretary Budgets

Mr Robert Davey, Assistant Secretary Finance

Mr Jason Dickie, Budgets Manager

Broadband

Mr Simon Bryant, Acting First Assistant Secretary, Broadband Division
Mr Lindsay Barton, Assistant Secretary, Broadband Development Branch
Mr Rohan Buettel, Assistant Secretary, Networks Competition Branch

National Broadband Network

Mr Philip Mason, Assistant Secretary, Regulatory Branch
Ms Marianne King, Assistant Secretary, Commercial Branch

Telecommunications, Network Regulation And Australia Post

Mr Keith Besgrove, First Assistant Secretary, Telecommunications, Network Regulation and Australia Post Division
Ms Sabeena Oberoi, Assistant Secretary, Communications Security Branch
Mr Brenton Thomas, Assistant Secretary, Networks Operations and Spectrum Branch
Mr Richard Desmond, Acting Assistant Secretary, Consumer Protection and Australia Post Branch
Mr Colin Oliver, Assistant Secretary, International Branch

Regional Strategy, ICT and Research

Mr Ashley Cross, Acting First Assistant Secretary, Regional Strategy, ICT and Research
Ms Liz Forman, Assistant Secretary, Regional Strategy Branch
Mr Tom Dale, Assistant Secretary, ICT Strategy Branch
Mr Ben Utting, Assistant Secretary, Indigenous Telecommunications and Regional Telecommunications Review Branch
Dr Judith Winternitz, Assistant Secretary, Research, Statistics and Technology Branch

Broadcasting and Content

Dr Simon Pelling, First Assistant Secretary, Broadcasting and Content Division
Mr Lachlann Paterson, Acting Assistant Secretary, Content Programs Branch
Ms Ann Campton, Acting Assistant Secretary, Broadcasting Industries Branch
Ms Jacqueline Daly, Acting Assistant Secretary, Content Regulation Branch

Digital Switchover Taskforce

Mr Robert McMahon, Assistant Secretary, Digital Switchover Policy and Regulation Branch
Mr Paul Vincent, Assistant Secretary, Project Management and Technical Planning
Ms Barbara Grundy, Assistant Secretary, Taskforce Communications

Australia Post

Mr Michael McCloskey, Corporate Secretary
Mr Michael Tenace, Group Financial Controller
Mr Don Newman, Acting Group Manager, National Logistics
Ms Elizabeth Button, Group Manager, Retail Channels and Infrastructure
Mr Allan Robinson, Group Manager, Letters
Mr Stephen Walter, Group Manager, Corporate Public Affairs
Ms Catherine Walsh, Acting Group Manager, Corporate Human Resources

Australian Communications and Media Authority

Mr Chris Chapman, Chairman
Mr Chris Cheah, Member and Acting Deputy Chair
Mr James Shaw, General Manager, Strategy, Analysis and Coordination Division

Ms Nerida O'Loughlin, General Manager, Industry Outputs Division
Mr Marcus Bezzi, General Manager, Legal Services Division
Ms Dianne Carlos, General Manager, Corporate Services Division
Ms Maureen Cahill, Acting General Manager, Inputs to Industry Division
Mr Paul White, Executive Manager, Industry Outputs Division
Ms Kath Silleri, Executive Manager, Industry Outputs Division
Mr Grant Symons, Executive Manager, Industry Outputs Division
Mr Vince Humphries, Section Manager, Industry Outputs Division
Mr Richard Fraser, Acting Executive Manager, Industry Outputs Division
Mr Mark Loney, Executive Manager, Inputs to Industry Division
Mr Allan Major, Executive Manager, Inputs to Industry Division
Ms Jonquil Ritter, Executive Manager, Inputs to Industry Division
Mr Andrew Kerans, Executive Manager, Inputs to Industry Division
Mr Derek Ambrose, Executive Manager, Corporate Services Division

Australian Broadcasting Corporation

Mr Mark Scott, Managing Director
Mr David Pendleton, Chief Operating Officer
Mr Murray Green, Director, Corporate Strategy and Communications

Special Broadcasting Service Corporation

Mr Shaun Brown, Managing Director
Mr Tim Blackie, Acting Chief Financial Officer
Mr Bruce Meagher, Director, Strategy and Communications
Mr Paul Broderick, Director, Technology and Distribution

CHAIR (Senator McEwen)—We continue the examination of the Broadband, Communications and the Digital Economy portfolio in accordance with the agenda. 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 contempt to give false or misleading evidence to a committee.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has 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 of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. Any claim that it

would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis of the claim.

I welcome Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy and portfolio officers. Minister, did you wish to make an opening statement?

[9.06 am]

Department of Broadband, Communications and the Digital Economy

Senator Conroy—Yes, thank you. Before we proceed to questions, I would like to make an opening statement about the process for establishing the national broadband network. As you are all aware, the process is live. The government has issued a request for proposals. The request for proposals is a public document. The date for bonds and executed confidentiality agreements which allows proponents to be able lodge proposals was 23 May 2008.

My department and its specialist advisers are now examining documents provided by potential proponents and will be advising parties who have met the prequalification requirements about the next steps in the process. It is of critical importance, in a process like this, that integrity and confidentiality are maintained to ensure the commercial and policy objectives of the Commonwealth are not compromised. Accordingly, I do not propose to make any comments or answer any questions about the process in this estimates hearing. This is consistent with the approach taken by the opposition when they were in government.

Senator Minchin's position in government, when referring to T3, was that the estimates process should not be used to do 'anything to disrupt or damage the commercial process under way'. Senator Minchin noted the risk for inadvertent comment in the estimates process to affect the commercial process and outcome. He was of the view that the committee needed to be mindful of the process underway and that, in the T3 context, questions would be answered once this very significant float had been completed. I draw you to Hansard on Thursday, 2 November 2006 E42 and Wednesday, 1 November 2006 E78. If members of the committee would like copies of those I am sure we can provide them.

I will not be commenting, and nor will my department officials, about the number of bonds and deeds received or the identity of parties who lodge those bonds and deeds. The RFP is a public document and it clearly sets out the government's objectives for the national broadband network and establishes the criteria by which proposals will be evaluated. It is available for all interested parties to read. Further discussion in a forum such as estimates on the objectives or the criteria or speculation on the nature of the proposals or possible outcomes of the process could be misconstrued by proponents and could undermine the integrity of the process.

This brings me to the opposition's claims about the process. Mr Billson has taken the unprecedented approach of seeking the Auditor-General to examine a live process. Despite the unprecedented nature of the request, the Auditor-General has undertaken a preliminary review of the process. He has found nothing untoward at all about how it is being conducted. The government has deliberately maintained flexibility in the process by not prescribing certain outcomes in order to encourage proponents to put forward innovative proposals that meet our objectives regarding significant commercial transactions.

CHAIR—Thank you, Minister.

Senator PARRY—Could I just clarify some points with the minister?

CHAIR—Yes.

Senator PARRY—Obviously, with matters that are on the public record in relation to this process, you will answer questions on those matters?

Senator Conroy—Matters that were on the public record were prior to the bids being lodged. I am not proposing to comment on any matters that revolve around the process. Whether there has been previous comment or not, we are now in the middle of a very sensitive commercial process, there are billions of dollars at stake and we have reached a new stage in the process.

Senator PARRY—The request for proposals has closed. Is that correct?

Senator Conroy—No, the request for proposal deadline for lodging a bond has closed, so now bonds have been lodged and documents supplied. We have reached a new stage of the process.

Senator PARRY—You can answer generic things that are not going to identify any commercial-in-confidence aspects and things that are not going to go into the detail of sensitivities.

Senator Conroy—As I said when I quoted him, Senator Minchin was quite clear that he did not believe the estimates process should be used to ‘do anything to disrupt or damage’ the commercial process that was underway. He noted the risk represented by inadvertent comment. I intend to follow the same procedure as Senator Minchin, which was to answer no questions and advise my department to answer no questions.

Senator PARRY—As a compromise, if we place questions to you when you choose not to answer them because of your statement, would you then opt to answer those questions at a later time when you feel the commercial-in-confidence issue has passed?

Senator Conroy—Senator Minchin indicated that at the completion of the process he was willing to answer questions, and I would engage in the same practice.

Senator Parry—We will proceed as normal and ask questions. Those that you cannot answer—

Senator Conroy—I was not suggesting that you could not ask questions; I was simply pointing out the process I would be undertaking in answering them.

Senator PARRY—Those that you choose not to answer can be then deemed to be taken on notice and responded to at an appropriate time.

Senator Conroy—No, we can consider whether we will respond to them.

CHAIR—Thank you. We will deal with the questions as they come up and see how we go. I now call departmental officers in relation to output 1.1.

[9.12 am]

Senator BIRMINGHAM—Minister, I propose to ask some questions in relation to the national broadband network.

Senator Lundy interjecting—

Senator BIRMINGHAM—It could be a very long day, Senator Lundy, at this rate.

Senator LUNDY—You are setting the pace.

Senator BIRMINGHAM—We will see where the minister chooses to go with this. Minister, you referred in your opening statement to the inquiry by the Auditor-General. Obviously you would have seen his correspondence back to you. I note in his correspondence that he indicates that the department:

... received specialist technical advice that proponents would need at least 12 weeks to consider network dimensioning, design and costing in developing their proposals.

When did the department receive that advice and when did the department give that advice to you?

Senator Conroy—I draw your attention to the statement that I made around the process of the NBN and indicate that we do not intend to answer questions around the process. The Auditor-General's statement is plain. People can draw their own interpretations from it.

Senator PARRY—That does not go to the heart of the matter of what you raised in your statement. That is peripheral.

Senator Conroy—It goes to the processes involved.

Senator PARRY—That is a cop-out.

Senator Conroy—Senator Minchin drew a very firm line when there were live commercial negotiations.

Senator PARRY—On sensitive issues.

Senator Conroy—No, on every issue. He refused to take any questions on any aspect of it, Senator Parry. I do not think you were in this committee at the time. I know because I was sitting where you are. I thought that it was a little harsh and pursued it for a little while and then Senator Minchin indicated that they were not going to answer any questions. That was the precedent that he established.

Senator PARRY—I am sure he was not as broad-ranging as you are.

Senator Conroy—I am sure you understand it, and I am sure you do not want to jeopardise any commercial matters.

Senator PARRY—Correct.

Senator Conroy—Notwithstanding the fact that your job is to ask questions, as I did for 11½ years, you would also understand that there is a live commercial process here. I appreciate that this will not be a process that you would necessarily want to jeopardise in any way. There is \$4.7 billion of Commonwealth taxpayers' money on the table. Our job on this side of the table is to get the best possible deal for the Australian public at the lowest possible price at the fastest possible speeds. That is what we have to achieve.

Senator PARRY—You are drawing a huge net around a specific issue and, really, this question could be answered.

Senator Conroy—I appreciate your thoughts there. Senator Minchin drew a huge net around it, more on the basis, as I have described, that he was concerned about inadvertent comment. It was not the substance of the questions that necessarily concerned Senator Minchin; it was the risk of inadvertent comment by department officials or him.

Senator PARRY—I am sure you are skilled enough not to make any inadvertent comment.

Senator Conroy—I defer to Senator Minchin's judgement on this. He is a very skilled minister and MP. He has had a long period, much longer than I have, of being a minister in a government, so I defer to his perception that even an inadvertent comment innocently answered to a perfectly reasonable question could cause damage to the process.

Senator PARRY—We might review the *Hansard*. I am sure he was not as broad-ranging—

Senator Conroy—I invite you to. I am happy for us to provide copies and allow you to pick over it. Quite genuinely, I understand your desire to do that.

Senator BIRMINGHAM—It is quite remarkable. I understand entirely the commercial sensitivity relating to the identities of those who may have lodged bonds and the number of those people—that is quite clear-cut. But this was a government that promised greater transparency and accountability. This was a government that said it would set a higher standard when it came to dealing with these types of issues. You raised the Auditor-General's comments in your opening statement and you are happy to highlight those where they might be favourable to you, but you are not willing to answer very basic questions about the provision of advice to and by your department.

Senator PARRY—Good point, Senator.

Senator BIRMINGHAM—This has nothing that could possibly strike at the nature in which people may choose to construct their bids. It is a question related purely to the timing of advice to and from your department.

Senator Conroy—It goes to the process. Senator Minchin made this point many times to me. It is not a question of whether or not we want to engage in a discussion; it goes to the issues around an inadvertent slip that could damage the process. I am happy to take those questions on notice and give you an answer at the end of the process—there is no drama or difficulty about that—subject to commercial confidentiality, but in terms of answering questions specifically I am drawing on Senator Minchin's guidance.

Senator PARRY—One of the aspects of Senate estimates is to locate that inadvertent slip.

Senator Conroy—I appreciate that that is exactly why you will keep trying to ask questions, but it is also exactly why, with \$4.7 billion at stake, the integrity of the national broadband network process must be protected. We take that very seriously, as seriously as Senator Minchin took the T3 process. I engaged in questions attempting to draw from Senator Minchin inadvertent slips, but it quickly became apparent that Senator Minchin had no intention of going down that path.

Senator BIRMINGHAM—This is quite remarkable. In the request for proposal you put gag restrictions around those who may wish to lodge proposals. Now you are refusing to answer any questions here at Senate estimates. It is a remarkable display of arrogance by the

government. Are you not willing to actually engage in discussion about what is one of your hallmark public policy initiatives out of this budget?

Senator Conroy—As I indicated at the time, I welcomed the Auditor-General's involvement. The Auditor-General's report is very straightforward. It identifies a number of issues and it makes commentary. You are welcome to read all of it out, you are welcome to read parts of it out, but whether I am going to respond or not falls within the discussion of the concern around—as Senator Minchin identified—inadvertent comment.

Senator PARRY—Madam Chair, could I request a brief private meeting of the committee?

Senator LUNDY—I have some questions.

Senator PARRY—I have just asked for a brief private meeting first.

CHAIR—We can have a brief private meeting.

Proceedings suspended from 9.19 am to 9.23 am

CHAIR—Minister and officers, the committee has had a short private meeting and we will now continue with questioning. However, Minister, we request that, bearing in mind your comments about inadvertent comment, you take on notice questions from senators and, where possible, attempt to answer them in a prompt fashion. We also acknowledge that some questions that you take on notice may not be able to be answered until after the commercial process is completed.

Senator LUNDY—I would like to go to the issue of the consumer forum that was conducted on 1 May. What was the intent behind the consumer forum and what was the government hoping to achieve?

Mr Besgrove—The consumer stakeholder forum had several objectives. The first was to provide representatives of consumer bodies with an opportunity to raise a range of concerns with the minister. The minister had foreshadowed in a speech to ATUG some weeks before that he was interested in hearing first-hand some of the issues which various consumer and disability groups wished to put before him. The second objective was to see if there was interest in looking at ways to transform the current representational structures. The current arrangements for consumer representation have been in place for about 10 years and there was a strong feeling amongst the disability community and also the various consumer groups that there could be better ways to go about this and that there could be opportunities to streamline the representative arrangements. There was clearly some interest in exploring the possibility of forming a peak body. Those issues were explored extensively during the forum. The forum attracted from memory about 50 stakeholders from upwards of 30 different organisations. Following on from that, we formed a small working group comprising representatives of nine organisations. That working group has now met on several occasions and we do appear to have quite a lot of interest amongst the stakeholder community in developing a new peak body. It is not completely clear what form that will take, but we do appear to have a substantial amount of interest and a quite concerted buy-in from the various groups.

Senator LUNDY—Can you describe to the committee what effect poor consumer representation has on the market. What happens when there is not a strong consumer voice in the telecommunications market?

Mr Besgrove—You would be aware from earlier discussions with this committee that the government relies extensively on a range of industry codes which are usually registered with ACMA after going through a process of code development which is based on extensive consultation. The role of consumers and consumer and disability groups has been recognised for a long time and government has been supporting them for a long time. Over the past few years, that has become somewhat more fragmented. There is a concern that the voice of consumers has not been as concerted or as effective as it might have been. The minister was clearly interested in creating opportunities for a more focused and more effective voice. I think it is reflective of that that the different bodies involved have, if you like, leapt at the opportunity to see if they can enhance the scale and the effectiveness of that voice. I think it is also fair to say that the industry—certainly the Communications Alliance, Telstra and a number of the other carriers—appear to have welcomed the initiative and are collaborating quite closely with us. The Communications Alliance and Telstra, amongst others, were represented on the consumer forum discussions on 1 May and played quite a positive role.

Senator LUNDY—So you had carriers as well as consumer groups at the forum?

Mr Besgrove—Yes. We very deliberately tried to get a broad spread of the stakeholder groups. From memory, there were something like six or seven different industry representatives. There were groups such as ISOC, Choice, consumer law groups, several of the deaf associations, TEDICORE, CTN, which is the main consumers telecommunications network body, and ATUG. I can provide a list of them.

Senator LUNDY—Yes, please do. Also, can you tell me which nine groups are on the working party?

Mr Besgrove—I will provide that separately, but certainly CTN, ATUG, TEDICORE and SETEL, the main groups which have received funding from the department in the past, form the core of that group. But there are a number of other groups that are associated with it as well, including ISOCAU.

Senator LUNDY—What are the next steps as far as timing is concerned for that working group? How firm is the proposal to establish a national peak body for telecommunications consumers?

Mr Besgrove—I think it is fair to say that the proposal is quite firm. The final structure of the group is still evolving. The working group met on 16 May and then again on 22 May, and the department has been supporting that process. We have also engaged Ms Philippa Smith, the former Ombudsman, as a facilitator for that process. I believe that there is a third meeting of a smaller group going on some time today which is actually looking at models for the new organisation, including structures. They are now talking about a name. We have moved quite quickly. They are even looking at reserving domain names.

Senator LUNDY—Always a good sign of a serious agenda!

Mr Besgrove—It seems to be moving fairly quickly. It is our expectation that the larger group will meet again during June. That is the group that was present on 1 May and we will be reporting progress to them. On 1 May the minister requested that the group come back to him with proposals for future structures and ideas about interactions between those groups and the government. He set an end-of-July deadline for drawing all of this together.

Senator LUNDY—I do not know whether this is a question for you or the minister, but what are the foreshadowed resources for a peak group and will the existing consumer voice groups that are currently get government support continue to get government support? Has that been resolved or discussed at this stage?

Mr Besgrove—That has not been resolved. The current section 593 grants provide a total of \$800,000 a year. It is our belief that a new and reshaped entity could be effective within the existing funding envelope. You will be unsurprised to learn that they are suggesting that more money might be a good idea.

Senator LUNDY—Yes, I would have hoped so, being advocates for consumer representation in telecommunications. Minister, in terms of establishing the July deadline, does that mean that you hope to see a firm set of recommendations come to you from this process by the end of July?

Senator Conroy—That is our hope. We are keen to progress these. It is something that I think the sector seems very responsive to. I think there has been a general welcoming of this process and there was a lot of goodwill in the room. It was a very positive meeting.

Senator LUNDY—Yes. There has been a lot of frustration for a very long time.

Senator Conroy—About 11½ years. There was genuinely a positive feeling in the room. I was there for an hour and a bit and took questions from the floor. Almost all of them welcomed the opportunity to have their say and welcomed the direction that we were considering.

Senator LUNDY—There is a longstanding issue that I think builds into the process, given that you had Telstra at the 1 May meeting. One of the greatest consumer complaints that I certainly have to deal with from my constituents and from people from around Australia is that they cannot penetrate the complaints handling process within Telstra and some of the other large carriers. What is envisaged in this process to make the telecommunications carriers themselves more responsive to consumer complaints? I appreciate the purpose of the peak body, but most of the complaints handling processes say that you have to exhaust the channels within the carrier you have a complaint about first. So what sort of commitment have those telcos put on the table to facilitate resolving consumer problems?

Mr Besgrove—I think it is fair to say that the approach of the carriers on the day was extremely positive. We had invited submissions from organisations prior to the day and, for example, one of the submissions was from the Communications Alliance and another was from Telstra. They all acknowledged, in a sense, that the time was ripe to revisit some of these issues. To be fair to the industry, they are certainly approaching this from a very positive perspective.

The Telecommunications Industry Ombudsman was also present on 1 May and she was one of the first speakers. We have, for some time, been concerned about the increasing level of complaints to the Telecommunications Industry Ombudsman. The TIO and the Communications Alliance have certainly been engaged in quite serious discussions looking at ways to enhance the complaints handling processes. It should also be placed on the public record that many of the complaints that go to the TIO are resolved very quickly once the TIO raises them with industry. Broadly speaking, the TIO mechanism does seem to be working

quite well. There are sometimes issues to do with the scale of complaints. They had quite a spike of complaints back in January. That does place strains on their capacity to respond. The minister also made the comment on 1 May in relation to the mobile premium services issue that he believed that industry needed to become more responsive and to move more quickly in addressing some of these concerns. I guess the answer to your question is the creation of a peak body will help, but there is clearly a significant opportunity for industry to find ways to increase its responsiveness on some of these issues and the TIO and the Communications Alliance are working quite hard in that area.

Senator LUNDY—From memory, and please correct me if I am wrong, the first question that the TIO asks of someone making a complaint is, ‘Have you approached the carrier and tried to resolve it?’ So it stands to reason that, if carriers are responding more effectively to complaints, the TIO workload or caseload should reflect that. Have there been any commitments by the carriers themselves about reviewing their own complaints handling or updating their own internal data to be more effective in responding to consumer complaints?

Mr Besgrove—Not explicitly, but it is quite clear from the approach that was taken by the carriers on 1 May that they are very alive to the issue. They have certainly noted the minister’s statements, and we are starting to see a degree of responsiveness from them that we believe we can build upon.

Senator LUNDY—TEDICORE have particular issues that they raise, and one of them obviously is people with disabilities, including hearing impaired access to telecommunications technologies. Last time I asked questions about this, there had been some progress in the availability of new technologies to assist people with disabilities. Are you able to update the committee on progress in that regard across the industry?

Mr Besgrove—I would have to take much of that on notice, but it is fair to say that TEDICORE have certainly discussed a number of different options with us, for example advocating the potential for new technologies to enhance the service offerings for a range of disability communities. We have not made as much progress in our analysis of that as we would like. But it is fair to say we have been a bit preoccupied with the work of the consumer forum and the potential development of a new peak body.

Senator LUNDY—Do you have an indicative time frame of addressing some of those issues, or at least reviewing the next stage?

Mr Besgrove—We have indicated to TEDICORE that we would like to have a more focused discussion with the disability community later in the year. We have been talking about perhaps around September or October to have a more focused seminar. We have not yet resolved the details of that. TEDICORE have accepted that we are a little bit preoccupied with other things at the moment, but we have not lost sight of that. We do believe that new technologies, and certainly broadband enabled technologies, offer the clear potential to improve the quality of life of the disabled in Australia.

Senator LUNDY—That is the grand vision, I think, of all of the advocates. I also have some questions with respect to the regional telecommunications review. When is the committee expected to report to government?

Ms Scott—In August. I will invite my colleagues to join me in case your questions go in that direction.

Mr Rizvi—As Ms Scott has pointed out, the committee is scheduled to report in August this year. They have completed their public consultation processes and are now in the process of drawing together their report and recommendations.

Senator LUNDY—How many public meetings have been held?

Mr Cross—Twenty public meetings have been held throughout Australia.

Senator LUNDY—Regarding the public consultations now being concluded, can you still send in submissions to the review? When does that close?

Mr Cross—The chair, Dr Glasson, has advised that he is open to receive submissions from the public right until the date that the report is completed. The committee expects to finalise its report in August.

Senator LUNDY—How do people make submissions to Dr Glasson?

Mr Cross—The committee has a website which has information on making submissions and there is a hotline available.

Senator LUNDY—The government has committed substantial funding, from memory about \$400 million, to implementing recommendations arising from this review. At what point does the department get involved in providing advice to the minister arising out of the review in that whole time frame from August onwards and government response?

Mr Rizvi—As you are aware, the committee is an independent committee. We would not get into a process of advising the minister on its recommendations until it has finalised its report.

Senator LUNDY—So the independent review committee finalises its report, makes recommendations and then at that point the department gets involved?

Mr Rizvi—That is the point at which we would begin the process of coordinating a government response to the committee's report.

Senator LUNDY—Is that report going to be made public?

Mr Rizvi—I think there is a legislative requirement for the report to be tabled in parliament.

Senator LUNDY—So on the report being made public the department gets involved in advising the minister on the response to the report and that is the department's role?

Mr Rizvi—That is correct.

Senator LUNDY—Will the review committee be able to consider the outcome of the submissions to the two per cent review, which is part of the NBN process that we are not allowed to talk about?

Mr Rizvi—The minister has made a public announcement to the effect that the committee will consider those submissions in putting together its report.

Senator LUNDY—So that will be a part of it, I guess, because it is a big regional issue. Will the review committee be able to consider the outcome of the submissions to the universal service obligation review as well?

Mr Rizvi—Yes, they are able to access those submissions.

Senator LUNDY—So the review is reaching into all of the available information?

Ms Scott—I think 47 submissions have been received in relation to the USO matter and I think almost all, if not every one, of them are up on the website. I know that Dr Glasson is interested in considering those submissions before he finalises his own report. So they are interlocking.

Senator LUNDY—Is it the same with the two per cent review? Are those submissions on the website as well?

Ms Scott—The date for those has not been reached yet. I am advised the date is 30 June, so when they do become available we will have discussions with Dr Glasson and his independent review on those submissions.

Senator LUNDY—And they will be going up on the website as well on that date?

Ms Scott—Subject to commercial-in-confidence considerations, they will be made available on the website. One of the aspects of the request is to also examine what technology is available, and we may find that proposals come forward that actually contain new propositions and therefore do contain commercial-in-confidence material. But, subject to that qualifier, the information will be put up on the website.

Senator LUNDY—Can you tell me what progress has been made with respect to the USO and voice over IP?

Mr Lyons—The department last year issued a discussion paper in relation to the universal service obligation. It published the submissions that were received on its website. The USO issues may well be relevant to the national broadband network process and future decisions about the USO arrangements will be considered in that context.

Senator LUNDY—Did I just hit the same wall that Senator Birmingham hit? I think what you are saying is that—

Senator BIRMINGHAM—Don't be a slow learner, Kate.

Senator LUNDY—No, I am trying not to be. How closely linked is the consideration of the USO with the NBN process? Is it directly a factor in those considerations? If it is, I will not pursue my questions.

Mr Lyons—I would not want to speculate on the linkages.

Senator LUNDY—Okay. Then I think I will just leave that one.

Ms Scott—It is not surprising that Dr Glasson's review is interested in both the two per cent response and also the USO, because it goes to the matter of servicing in remote and regional areas. So you can see these things are going to come together very nicely towards the end of the year and the government can consider them in total.

Senator LUNDY—Yes, I appreciate that. It all seems to be converging, you might say.

Senator BIRMINGHAM—Minister, when did the risk of inadvertent comment become too great to stop you commenting on the NBN process?

Senator Conroy—As I said, we have now reached a new phase, after the bonds were lodged on Friday and that closure date. The probity advice now is that further commentary of any sort would potentially risk the integrity of the project. I am very conscious of the probity advice, but now that we have reached a new stage you will not find me doing speeches on broadband. You will not find me debating the issues at conferences, which I have done regularly over the last few months, because we have actually now reached a new stage.

Senator BIRMINGHAM—Up until Friday it was fine for you to do media interviews, give speeches, answer questions, issue press releases—all of those sorts of things—related to the national broadband network, but not since Friday?

Senator Conroy—As I said, the bonds were lodged at five o'clock on Friday. That was the closing date.

Senator BIRMINGHAM—How extraordinarily convenient, Minister, that the last working day before Senate estimates commences happens to be the time line when you decide you can stop answering questions on this issue.

Senator Conroy—I assure you that when we were working out the timetable there was no consideration given as to the bond closure date in Senate estimates.

Senator BIRMINGHAM—I am sure Senate estimates are not in your diary at all, Minister.

Senator Conroy—They are not in my diary that much, Senator Birmingham.

Senator BIRMINGHAM—Is the probity advice given to you in writing?

Senator Conroy—I am not in a position to comment on the probity advice—that falls into the category of advice—

Senator BIRMINGHAM—Oh Minister, please!

Senator Conroy—That falls into the category of advice to ministers. While you can ask one question that begins a trail that seems innocuous, it ultimately can lead into the area of inadvertent comment. I am happy to take that on notice and see if there is anything further we would like to add.

Senator BIRMINGHAM—You must know whether or not the probity advice was given to you in writing—after all, this only kicked in on Friday. I am sure it would be high in your recollection as to whether such advice was in writing to gag you from commenting from the last working day prior to estimates.

Senator Conroy—I do not want you to get your hopes up that you can get me to answer one little one and then maybe the next one and the next one. As I said, the probity advice is clear, that I should avoid commenting on the process. You now ask me to comment on the advice that I was given and in what form it came. The probity advice is part of advice to government. It is not a matter that any government has ever previously discussed.

Senator BIRMINGHAM—You are using the probity advice to avoid answering questions today.

Senator Conroy—I am following the precedent of Senator Minchin about a live commercial transaction.

Senator BIRMINGHAM—We can certainly come to that, but you are using the probity advice at present to avoid answering questions today on the government's largest current capital works program. I think you have described this as the greatest nation building scheme since the Snowy Mountains Scheme. I am pretty sure that the Snowy Mountains Scheme was subject to questions in whatever the equivalent of these estimates hearings were in those days.

Senator Conroy—I look forward to your finding a *Hansard* reference to it, and I would genuinely be interested. I am drawing on Senator Minchin's experience as a senior government minister engaged in a large commercial transaction. I am following his counsel.

Senator BIRMINGHAM—Was the probity advice to which you refer provided by the probity officer from the Australian Government Solicitor who is working on this project?

Senator Conroy—Yes, the probity adviser is the AGS, but I am happy to take other questions on notice to see if there is anything further that I want to add from the opening statement.

Senator BIRMINGHAM—Would you consider releasing that probity advice insofar as it relates specifically to your not commenting on this process?

Senator Conroy—Did Senator Minchin release his probity advice in terms of his non-answering of questions in estimates? The answer is no.

Senator BIRMINGHAM—Were you promising to be a more transparent and accountable government? The answer is yes.

Senator Conroy—I am promising to follow the advice that I have given. I am promising not to risk in any small way the integrity of a \$4.7 billion government contribution to the national broadband network. That is my responsibility as a Commonwealth minister.

Senator BIRMINGHAM—Will you undertake to look at releasing—

Senator Conroy—I can take that on notice and see if there is anything further that we would like to add.

Senator BIRMINGHAM—And preferably to actually respond to that question on notice relatively soon?

Senator Conroy—As I said, I will take that on notice and see if there is anything further that I want to add, after considering it.

Senator BIRMINGHAM—How do you rationalise comparing the NBN process, a request for proposal stage, with the Telstra sale process?

Senator Conroy—This is actually, in my view, a more serious reason to take Senator Minchin's advice. A competitive process with bidders with competing interests is probably the next level above, could I put to you, the T3 process. So I think it is actually more incumbent on me than I would have argued Senator Minchin was in a position to, but he was very conscious of not wanting to make public comments that could damage the commercial process that was T3, and I think there is even a greater concern in this instance as it is actually competing bidders.

Senator PARRY—There was a greater effect on the Stock Exchange over T3. This does not have that same impact, Minister.

Senator Conroy—You might think that, but the Stock Exchange and certain companies involved in this process could be adversely impacted by comments that I make.

Senator PARRY—Only if you release the names of those companies, which we do not expect you to do.

Senator Conroy—Unfortunately, there is a lot of speculation in the market, and speculation leads to movements in share price, and I do not intend to add to the speculation.

Senator PARRY—The speculation is already there, we want some facts on some of the issues that are peripheral to the bidders.

Senator Conroy—But that is the point. The facts could lead to impacts in the share market, and I have got no intention of adding to speculation, rumour or innuendo. If you want to interpret comments, then that is up to you, but I will not be engaged in a game where you are trying to draw me into inadvertent comments or speculating or partially commenting on quotes or public commentary from before. There is a new stage of the process that we have entered into.

Senator BIRMINGHAM—Minister, the Telstra sale was a public float clearly governed by very strict ASIC and ASX laws in relation to the way that that public float was conducted and the estimates hearing from which you quoted Senator Minchin was within weeks of the conclusion of that sale process. It does not seem comparable to say that a request for proposal where you yourself have left open the option of accepting noncompliant bids—you yourself have left open the option of changing what is actually in the request for proposal along the way—means that you suddenly shut down any and all comment on this matter.

Senator PARRY—It is a cover-up.

Senator Conroy—We have a live process, and I think Senator Minchin over a very long period—I only quoted you a couple of examples—declined questions. But the point you make is that Senator Minchin would not comment when there was a live process underway, and I am saying to you that there is a live process underway, it will be a lengthy live process, and you will not find me going out and giving speeches at conferences or debating this on the national television. I will give the same response to them that I am giving to you now, that this is a live process and I am not going to engage in debate on something when there is a competitive bid process underway.

Senator BIRMINGHAM—It is going to be a very quiet six months from you, Minister.

Senator Conroy—I am sure that I will manage to talk about Collingwood again this season.

Senator BIRMINGHAM—What is the threshold amount for such public tenders invoking this no comment approach, seeing this is obviously a new standard set by the government? You are saying this is a very large tender and very large sums of public money are at stake—and you are right—so you are saying you are not going to comment on this one because it is a \$4.7 billion one. Will you comment on a different one that is \$1 billion, or \$100 million or \$10,000?

Senator Conroy—I am not engaged in those ones, so you would have to seek the advice from the ministers involved. What I would say is that the whole of government has taken advice on this matter. We have set in place handling procedures for dealing with bidders. That involves things like whether you can meet with them, whether you can have discussions with them, whether you can be entertained by them. All of those things are part of a handling process to deal with this lengthy competitive bidder process.

Senator PARRY—That is covered under your ministerial code.

Senator Conroy—No, this is different from the ministerial code, Senator Parry, this is on top of it. The ministerial code does not ban you from going to the footy with somebody.

Senator PARRY—No, but you have to be clear—

Senator Conroy—The probity process involved in here is that if Telstra, a potential bidder rumour has it, or the Optus G9 consortium of companies—potential bidders according to rumours—were to invite me to the football, I would not accept.

Senator PARRY—That is common sense.

Senator Conroy—Yes, and that is called a probity process.

Senator PARRY—We do not want to go there. We want to go to two issues which are peripheral to all of this.

Senator Conroy—We have put in place a whole range of procedures to deal with conflicts that are potential dangers from discussion across the whole of government with these matters.

Senator PARRY—You will not be able to be seen with anyone because the speculation will be, ‘Whoever he’s not with will be a potential bidder.’ Where do you draw the line, Minister? That is crazy. What are you going to do for the next six months? Are you going to hand your salary in? You will not be doing much.

Senator Conroy—I think you are exaggerating slightly, Senator Parry.

Senator PARRY—I think you are exaggerating slightly with what you will not answer.

Senator Conroy—I am not exaggerating that we are putting in place a whole-of-government process. Yes, there are still many issues separate from the actual bidding process on which I have to deal with the telco sector—the rollout of 3G, the impact of the closure of the CDMA network. All of these are issues I will have ongoing contact with the sector on, but in terms of accepting hospitality or meeting specifically on this, none of these activities will be undertaken by me and that is the advice we have across a whole-of-government approach. That is not to say that we are not going to meet and have conversations on separate matters.

Senator PARRY—That is great for your personal probity and your departmental probity, but what about answering questions that are not directly at the heart of the identity of the bidders?

Senator Conroy—No, the questions revolve around the RFP processes and, while you may try to pretend that they are innocuous and you may ask me what date it was released, we can point to the public record on those.

Senator PARRY—Even like Senator Birmingham's question over the probity instruction; that cannot be sensitive.

Senator Conroy—If you would like us to educate you on what the RFP document says, we have an officer ready to start reading it to you.

Senator PARRY—We do not need that.

Senator Conroy—I am not confident that you do not because a number of issues are set out there which you seem confused about and I am here to assist. I am happy, with the help of my officials, to explain to you the processes involved in the RFP. You let me know and we will start reading to you from page 1 of the RFP document.

Senator PARRY—We do not need that, Minister. We are quite comfortable. We want the real questions answered. We have questions that go to your conduct and how the department has handled some of these matters and we want those questions answered. They do not go to the revelation of identity or commercial-in-confidence issues.

Senator Conroy—Unfortunately, you have a very narrow view on what would constitute a question around—

Senator PARRY—No, you are conveniently using a very broad net to not answer questions that go to your capabilities as a minister.

Senator Conroy—We said we will take them on notice and consider whether there is anything we would like to add to our opening statement.

Senator PARRY—I am sure we will plough through these. We will see how we go.

Senator BIRMINGHAM—To that end, Minister, you have already taken on notice the question as to when the department was provided with the advice that bidders would require 12 weeks to prepare their bids, having 12 weeks subsequent to the provision of relevant network information and data as identified by the Auditor-General, and also the question of when the department provided you with that advice. Can we have your undertaking that you will look at that question some time prior to the completion of the process, which is what you said earlier?

Senator Conroy—As I said, we will consider whether there is anything to add to my earlier opening statement. If there is, we will respond.

Senator BIRMINGHAM—You accept that inadvertent comment can obviously be avoided in answering questions on notice, do you not?

Senator Conroy—That is exactly why we will take these questions on notice. If there is anything further to add to the opening statement I have already given, then we will give that. As I have indicated, I am also happy to provide information at the completion of the process, as Senator Minchin indicated.

Senator BIRMINGHAM—When did you decide to change the deadline for the lodgement of request for proposals from 25 July to the 12-week period after the provision of network information?

Senator Conroy—We will take that on notice and, if there is anything further I would like to add, I will.

Senator PARRY—How can that be sensitive? How can that be an issue you cannot answer now?

Senator Conroy—As I said, it goes to a whole range of information.

Senator PARRY—It is a very narrow question.

Senator Conroy—Answering one question will then lead to a string of other questions.

Senator PARRY—Well, do not answer the string of others; answer the safe ones.

Senator Conroy—The safest way to deal with this is to take it on notice and if there is anything further that we want to add as a government, we will.

Senator BIRMINGHAM—There was ample criticism of the short time period for the lodgement of request for proposals and, in particular, the short time period for which bidders other than Telstra would have information available to them about the network data and so on. Why did you leave it so long to change the close-off date?

Senator Conroy—I will take that on notice and, if there is anything that I want to add, I will get back to you.

Senator BIRMINGHAM—Do you believe that this delay, particularly the delay from the release of the RFP documentation until bidders are going to actually receive fair and equitable data, has put Telstra at a distinct advantage over other bidders?

Senator Conroy—That is a commentary rather than a question. I repeat, I will take that on notice and, if there is anything I would like to add, I will get back to you.

Senator BIRMINGHAM—Would you agree that it is coincidental in the extreme that the day the Auditor-General released his response to Mr Billson's inquiries was the very day that you chose to change the deadline for the lodgement of RFPs?

Senator Conroy—That is commentary disguised as a question. I am happy to take that on notice and, if there is anything I would like to add, I will get back to you.

Senator BIRMINGHAM—It may be commentary disguised as a question, but we are not even getting answers disguised as answers here. Did the Auditor-General's inquiry, combined with pressure from the opposition and commentary from prospective bidders, prompt the minister to extend the process?

Senator Conroy—I am happy to take that on notice. If there is anything further to the answers I have already given in the opening statement, I will get back to you.

Senator BIRMINGHAM—When was the department provided with the Auditor-General's opinion?

Senator Conroy—I can take that on notice and, if there is anything that I would like to add, I will get back to you.

Senator BIRMINGHAM—Did the Auditor-General advise the department that it would be prudent to change the date and urgently grant an extension prior to the public release of his documentation or prior to, indeed, your announcement that you would extend that date?

Senator Conroy—Could you repeat that question?

Senator BIRMINGHAM—Did the Auditor-General provide the department with his views on the timing required by prospective bidders to lodge their bids prior to the release of his response to the department or prior to your announcement of an extension of the date?

Senator Conroy—There is an imputation in that question about the behaviour of the Auditor-General, Senator Birmingham, that I do not think you mean to make, but I would draw that to your attention. The Auditor-General's report is a public document. You are now asking me to interpret it and go behind it. It is there; it stands as a public record and you are welcome to speculate on it yourself, but I have nothing further to add than the words that the Auditor-General has produced. I would again say, I do not think that you intended an imputation about the conduct. There are proper processes for the Auditor-General, and I do not think that you genuinely intended—

Senator BIRMINGHAM—I acknowledge that there are those proper processes. Equally, there is obviously very strong exchange of information from the department to the Auditor-General to allow him to undertake his work. Exactly when his office provided you with any comments in relation to this issue would be important in ascertaining whether it was his views that prompted you to extend the process or not.

Senator Conroy—As I said, I will take that on notice. If there is anything further I would like to add, I will get back to you.

Senator BIRMINGHAM—In hindsight, Minister, do you concede that the 25 July deadline you set was reckless and unrealistic?

Senator PARRY—I know what the answer to this will be.

Senator Conroy—I will take that on notice and, if there is anything further that I want to add, I will let you know.

Senator PARRY—Why not a quick 'no'?

Senator BIRMINGHAM—That date does not even exist any more in terms of the process so surely commenting on your own failures in regard to setting an appropriate date for the closure of the RFP process cannot possibly reflect—

Senator Conroy—I appreciate the game you are engaging in, Senator Birmingham. It is not a game that I am going to join.

Senator BIRMINGHAM—I think the games are all being played on your side of the table, Minister.

Senator Conroy—No, on this side of the table we are taking a very serious approach to the largest government procurement currently outside of perhaps Defence contracts. As it is a live, commercial issue we intend to take the same approach as your government did previously.

Senator BIRMINGHAM—Minister, this was a question very specifically about the actions of you and the department about an issue that is no longer even reflected in the RFP process. It is remarkable just how broadly you are drawing the line in refusing to answer these questions.

Senator Conroy—You are making commentary disguised as questions along the way.

Senator BIRMINGHAM—Minister, that was not a comment; that was a very direct question.

Senator PARRY—To which I would have thought you would have answered ‘no’. I could not believe that you did not even answer it straight away.

Senator BIRMINGHAM—Maybe the minister does accept that his behaviour was reckless and unrealistic.

Senator Conroy—I appreciate that your—

Senator PARRY—I was gunning for you on that one.

Senator Conroy—The issue of inadvertent comment is very high in my mind. I am taking the wise counsel of Senator Minchin—a far more experienced minister than I—who counselled himself about answering questions—

Senator PARRY—Which means that you do not know whether your behaviour was not reckless. That is unbelievable.

Senator Conroy—As I said, the question of inadvertent comment comes to the fore. Senator Minchin took what you would now be describing as a very broad net and conservative approach, but I think it was wise counsel and I am following it.

Senator BIRMINGHAM—Your decision last week to change the deadline date for the lodgement of RFPs has a commercial impact, does it not?

Senator Conroy—I am certainly, as I have indicated, not going to answer questions that have a commercial issue around them, Senator Birmingham. You continue to ask rhetorical questions. You are asking and answering the question in the same go. It is quite a skill.

Senator BIRMINGHAM—That does not normally stop you, Minister, from disagreeing with those premises.

Senator Conroy—You are asking and answering your questions all at once, and I appreciate that.

Senator BIRMINGHAM—That is the only way I am getting answers today, Minister—to answer them myself.

Senator PARRY—It puts a bit of variety into it on this side. It is really consistent on your side.

Senator Conroy—Perhaps if he asked them and you answered them, Senator Parry.

Senator BIRMINGHAM—Give Senator Nash a go as well.

Senator Conroy—Or Senator Nash.

Senator PARRY—We would get better answers.

Senator Conroy—Senator Fielding is busting to have a go.

Senator BIRMINGHAM—If Senator Fielding can give me just a couple of minutes then I will happily yield to him before we return to the minister’s theatrics of the day. Minister, is it concerning to you that the Auditor-General has earmarked your RFP process for a full audit?

Senator Conroy—As I said publicly at the time, I welcome the Auditor-General's ongoing interest. It is a large project and we intend to—as he has already indicated—meet all the requirements of probity. As I said in my opening statement—and I am happy to repeat it—the Auditor-General was quite clear when he said that he found nothing untoward at all about how it was being conducted. That is actually what he said.

Senator BIRMINGHAM—It is remarkable that you are willing to quote from the Auditor-General's correspondence to your own advantage, but you will not answer questions about the Auditor-General's correspondence.

Senator Conroy—That is exactly the case. What you would like me to do is speculate about a whole range of issues that went into the makeup of the Auditor-General's report. It is a public document. What it says is quite clear. Despite the disappointment of Mr Billson, the findings in it are quite clear. I welcomed the original involvement and I welcome his final involvement.

Senator BIRMINGHAM—It is quite clear that he has raised some issues in there as well which you have refused to answer, the timeline for lodgement of the RFPs, being one of them, and you have refused to even respond to direct quotes from the Auditor-General's letters. There are others as well, which we will pursue, but in deference to Senator Fielding—

Senator Conroy—It is always sad when a shadow minister starts believing his own press releases, but I would hope, Senator Birmingham, that you are not starting to believe Mr Billson's press releases.

Senator BIRMINGHAM—You are giving me nothing to believe today, Minister. You are giving me absolutely nothing to believe at all.

Senator Conroy—The Auditor-General specifically states that he found nothing untoward, despite the best efforts—

Senator BIRMINGHAM—If you are hoping to convince us that you know what you are doing in this process, you need to actually say something more than you are today.

Senator FIELDING—I would like to declare up front that I have a brother—I have a lot of brothers actually—

Senator Conroy—How many brothers?

Senator FIELDING—I have 15 brothers and sisters. One of my brothers is a senior executive in Telstra, so I want to make sure that I have that on the record. I did that before when we were talking about selling Telstra.

Senator Conroy—I have not met him yet.

Senator FIELDING—He is a senior executive inside Telstra.

Senator Conroy—I look forward to meeting him. Is there any company you are not covered by?

Senator FIELDING—I have a brother or sister everywhere. I would like to try to cover an area that is not covered by the 98 per cent. That way it is not part of the national broadband network and—

Senator PARRY—You could actually get an answer.

Senator FIELDING—Yes. I thought it would be a different tack to actually go somewhere where you can answer some questions. Can you tell me a bit more about the announcement of the \$270 million over four years to ensure communication of the Australian Broadband Guarantee, ABG, which picks up the two per cent of people not looked after by the national broadband network. Can someone give me some outline or scope of that and where it fits in?

Mr Bryant—The \$270 million provides funding to extend the Australian Broadband Guarantee until the financial year 2011-2012. That is four years from the next financial year. It extends the approach that has been undertaken under the existing program, but there have been some changes. We issued draft guidelines for the new program starting 1 July this year Friday a week ago, so there is now a process of public consultation for those draft guidelines.

Senator FIELDING—Could you give us a bit more information about those draft guidelines.

Mr Bryant—The overall approach of the Australian Broadband Guarantee, as it currently operates, is premised around ensuring that any Australian in metropolitan or regional and rural areas has access to what is defined as a metro-comparable service if they do not have access to such a service through the operation of the market or through other government programs. What we mean by a metro-comparable service is one that has minimum defined standards in terms of speed and other parameters of service quality, such as network availability and so on, but also has a price cap on what we call the threshold service associated with the program.

Around that basic premise, we also have an approach of registering ISPs under the program, so it is a multi-provider program where ISPs can register across a range of technology platforms and the concept is that they then register service areas where they operate. When they connect an eligible customer at eligible premises, they then receive an incentive payment from the government under the program. That is the basic structure of how it works.

Senator FIELDING—I am just a humble engineer, so I know a little bit but not a great deal. Can you describe the two per cent so I can get a picture of who it applies to? Is it two per cent of population or two per cent of areas? Just give me an idea of what this \$370 million is going to target.

Mr Bryant—Let me just clarify that the program operates across Australia and targets premises that are under served anywhere across Australia. Clearly, that is slightly larger than two per cent at the moment, but, of course, as the national broadband network rolls out those premises, once they are covered by the national broadband network, are no longer eligible under this program—so then it is confined to the two per cent. Where are the two per cent? We are talking about two per cent of premises, for a start. It is not a discrete geographic area, obviously. It depends on demographics of particular areas and on the challenges of getting technology to different areas. Regarding the number of premises that we are referring to with the two per cent, I think there are about 11.2 million premises in the Geocoded National Address File, which is the national database that we work off. We are actually doing an accurate recount of under-served premises at the moment. We estimate that number is likely to be in the order of 400,000 to 500,000—that is around three to four per cent, I guess, if you

extrapolate that. Demographically, it is probably what you would define as rural and remote areas in the main, but, of course, there are pockets of difficult to serve areas in all sorts of regions. For example, in some metropolitan areas there are still pockets of what we would call under-served premises. So our program, the Australian Broadband Guarantee, targets those premises as well.

Senator FIELDING—If you divide \$270 million by that number, it is not a lot of money, is it, for covering those areas. Going forward for the next 10 to 15 years, broadband, as the government has acknowledged, is pretty important for all Australians. Is that enough to cover that two per cent, do you think?

Mr Bryant—As I explained, that is for a four-year period. As you can see from my description, it is a demand driven program. If you look at 400,000 premises, as I identified—and, as I said, we are counting them—and that is the total number of under-served premises, over a four-year period. Clearly, they will not all be demanding a service. That is not the nature of the market. We have estimated demand for that period and taken into account take-up and other factors—market movements and the general market demand curve—and we are confident that that funding will be sufficient to fund the program according to the structure of the program for that four-year period.

Senator FIELDING—So if I was in the outback or in a regional or rural area—and some places that may be part of this two per cent are not that remote—what would I do? Do people pick up the phone and say, ‘I want to get connected’? Just explain to me what people would do there.

Mr Bryant—Certainly. There are a number of channels, but probably the most important—and it is quite a recent innovation, really, over the last 12 months—is the establishment of a customer support centre within the department. There is a 1800 number: 1800883484. That support group plays a major role in supporting customers.

Regarding the channels for getting information to customers—clearly we have a website and so forth—one of the key factors we rely on is the market itself. Our registered ISPs clearly have a very strong interest in getting the message out to their potential customer base and obviously, as part of that arrangement, they are required to acknowledge the role of the program in enabling that service to be provided. So we rely on our registered ISPs to play a major role in getting that information out there. But our support centre is playing a major role, not just in assisting customers to get registered under the program and to get a service, but also once they have a service to resolve any issues they may have. Clearly there is a very important linkage there between the role that group plays and the role of the TIO in terms of general customer issues.

Senator FIELDING—So I have not got broadband and it will not even go through the certain speed at the moment. I ring up that number—what actually happens next? You take down that call, you ask for the details: how do you work out whether they actually get a connection to broadband in some way, whether it is wireless or via a line?

Mr Bryant—Let me explain what happens, because it is quite a sophisticated and helpful process. We have developed major online systems within the department, to manage the operation of the program but more importantly to provide an interface with the public to assist

them to understand what their rights are. That online tool is called the broadband service locator. It means that a customer can go to our website and enter their address details and a map of their premises is produced and their location so they can clarify that it is accurate. Then it tells them three things. Firstly, are there commercial providers who can provide them with a metro-comparable service? If there are they are required to go to those commercial providers—one of their choice if there is more than one—to find out whether they can get a service. If there is not, that is what is known as a tier A provider. Then anyone registered under the program who is providing a terrestrial service, whether wireless or fixed wire, will then be identified as tier B, a category 2 provider—that is the next tier down in terms of the service being provided. Then a category 3 provider is a satellite provider, so if there are no category 1 or 2 providers then they are eligible to get a service from a category 3 provider.

All of that operates through the broadband service locator, so customers can do that independently of the department through the online facility but, of course, people in those remote areas quite often do not have a suitable online connection, so they use the phone to contact our customer support centre and customer support staff will actually take them through that process—in fact, they will do the process for them and then register them on that system. Once that happens they are sent an information pack from the department telling them what the processes are, what the range of providers available to them are, what the protections are under the program and so forth. The department also sends them what we call an attestation form where they have to attest to the accuracy and the truthfulness of their particular circumstances. Then if they are eligible to get a service under the program they can go to the provider of their choice, the provider connects them and they fill out their attestation form. That is provided to the department along with the claim from the service provider and, hey presto, they have got a supported service.

Senator FIELDING—I appreciate your outlining of that process. I was getting a bit worried to start with as it is a bit like a do-it-yourself task, downloading all this stuff and that sounds awful, but I appreciate the second process of being able to pick up the phone and say, ‘Listen, I ain’t got a connection, I want a connection,’ so I at least appreciate that.

Mr Bryant—We do take a lot of calls, on average around 1,700 per week, and I think this financial year we have despatched 61½ thousand customer information packs to interested customers, so you can see it is an extensive process.

Senator FIELDING—So there are 61,000 packs out, over what period?

Mr Bryant—This financial year.

Senator FIELDING—From when to when, from the start of—

Mr Bryant—From 1 July.

Senator FIELDING—Okay. On the eligibility criteria, there are 1,700 per week—is that number those that have applied, or were they phone calls?

Mr Bryant—No, they are just phone calls and, as I said, they may relate to people who wish to take up a service or they may be customers who have a service and who have got a particular problem, or issue, or query, or whatever, that is just a total number of requests.

Senator FIELDING—How many actually apply? I think there were eligibility criteria. You must have a process where you receive the application.

Mr Bryant—As I said, they register on the program. Once they are registered, they get the information pack.

Senator FIELDING—How many are registered then?

Mr Bryant—Sixty one and a half thousand have the information pack and then only a certain proportion of those will be eligible. In terms of actual services provided since 2 April last year, which is when the first phase of the current program started, there have been 29,237 actual connections.

Senator FIELDING—Could you send me one of those packs?

Ms Scott—Yes.

Senator FIELDING—What objectives have been set for the \$270 million. Is there a tender for that? What have you done with the \$270 million? How did you come up with this figure of \$270 million? How was that set?

Mr Bryant—As I explained—let us deal with the second part of the question first—it is a demand driven program. As you can see, if you want a service, and you and your premise are eligible, you can get a service under the program. So we had to estimate, as I said, a number of tricky elements. One is the overall level of demand out there and where it is up to and the level of demand over the period. Two, in terms of the more remote areas, there is the level of pent-up demand—in other words, demand that is not consistent with normal market growth. We have to try to estimate the number of underserved premises, so the pool from which demand will be drawn. I think that is the most accurate of our assessments because we can actually count those. Out of all of that the next variable is how much will be paid and there are variable incentive payments. There are basically two tiers of incentive payments being paid and under the proposed new program we are proposing to vary that to some extent as well and pay some special high-cost payments to recognise very difficult circumstances. You have to put all of that mix of variables together and come up with an estimated demand and an estimated allocation for the program and that is what we have done. I think there was a first part to the question, which I did not answer.

Senator FIELDING—We will come back to the tender in a second. I should not have asked two questions at once. So there is the level of demand—that is fine. What was the average number of connections and average cost of providing those connections? You must have those sorts of figures. Obviously, it changes over a period of time, but you must have that on a historical basis.

Mr Bryant—Again going back to 2 April 2007, I can give you a technology breakdown. There were 645 via ADSL, 25,975 via two-way satellite and 2,615 via wireless. That is the breakdown.

Senator FIELDING—Could you give me an average cost for each of those?

Mr Bryant—Under the existing program, the two basic incentive payments have been \$1,000 ex-GST for a fixed wire connection, that is essentially ADSL but potentially capable as well and \$2,500 for a wireless or satellite connection. There has been a slight complication

with that in the past program in that where the proposed OPEL project was proposing to be rolled out we reduced the incentive payment for wireless to \$1,000 for obvious reasons in that we did not want to duplicate that wireless infrastructure. But under the program going forward for next year, it is proposed to be wireless wherever wireless is rolled out and it will be \$2,500. There are a couple of extra payments that we are proposing in the draft guidelines as well.

Senator FIELDING—Could you table those draft guidelines?

Mr Bryant—Yes, happy to. It is a public document. One of the difficulties that we are finding now is that, as you can see from those numbers I have given you, we are looking at predominantly remote areas now, the last two per cent. A number of satellite providers—indeed, our wireless providers as well—are indicating there are certain circumstances where the provision of an incentive payment of \$2½ thousand is simply not enough to deal with the costs of getting to those customers. To give a couple of examples, one is in northern areas that are cyclone prone, where you have to have a very solid installation of a satellite dish. And, doubling up the costs in those areas, you quite often have to have large dishes because of the position of those areas in relation to the satellite.

Another example is some of the remote territories—Christmas Island, for example. We are trying to get services to Christmas Island. That is proving very difficult because of those obvious extra costs involved. So in the draft guidelines we are proposing a payment of up to \$6,000 to deal with those special circumstances. Clearly there are some policy and program issues around that we have to be very careful about in terms of not providing that as a standard payment but making sure it is justified in those circumstances. So the draft guidelines deal with those as well.

In addition, we are now looking at customers who have two-way satellite connections who are coming off programs that have applied in the past. One of the consumer protections under this program and under similar past programs has been a requirement for registered providers to offer the service at the price-capped minimum standard for at least a three-year period—not necessarily a three-year contract but at least a three-year period. We are now finding some customers finishing their three-year two-way satellite contracts on a slightly lower metro-comparable level because, as you would appreciate, that level has risen over time. So we have to look at ways of making sure those customers are not disadvantaged and that taxpayers' funds are carefully expended.

One option we have we have again floated in the draft guidelines is an upgrade payment of \$600 in circumstances where it can be justified that that payment is required to upgrade a customer who is on a lower level of two-way satellite service so they can get the full proposed revised metro-comparable level. Again, we need to be careful that we are not just subsidising inefficiency in that circumstance, so we will benchmark all of that against the most efficient provider. But there are some of the complexities that are arising that we are seeking to deal with in those payments.

Senator FIELDING—Obviously this works by people quite rightly ringing up and saying they need a service. How many people are actually missing out that are ringing and registering? Is there anyone at all? Do you reckon at this stage the demand is being met?

Mr Bryant—Yes, with a very minor exception, as I said, of some very remote premises—

Ms Scott—Christmas Island.

Mr Bryant—Christmas Island, for example—where we have not been able to attract a provider to offer a service. But we are intending to fix that in the new guidelines. But, apart from that, no. If you are eligible and you cannot get a commercial metro-comparable service then you can get a service under this program.

Senator FIELDING—Is the actual amount of \$270 million above what was being planned beforehand, or is that in addition? I am just trying to work out that figure. It was based on demand, but was the previous government looking at doing the same thing?

Mr Bryant—No, this is new money. This is extending the program out for a four-year period. That is important, really, from the point of view of providers, to get that longer term certainty. That is one of the things we are pushing in the guidelines to try and build up certainty for providers in a number of ways.

Senator Conroy—The previous government did not—

Senator FIELDING—Can I ask you something general, Minister.

CHAIR—Senator Fielding, I am sorry to interrupt but Senator Nash had a few questions on the same issue and we are going to a break at quarter to 11.

Senator NASH—I just want to go back to the two per cent issue, which I think is quite a bit of a concern for people who live out in rural and regional areas. I noticed, Mr Bryant, that you referred to rural and remote, but we still have this real vagueness geographically around where that two per cent is. Has the department got any information—

Senator Conroy—Actually, your assumption is wrong. This is the program which is based on the same guidelines originally as you yourself had as part of that government. It is a program that covers roughly four per cent at the moment, based on exactly the same guidelines as your own government's. We are reviewing the guidelines, but I make that point because it was referred to as the two per cent. The two per cent is what it ends up at after the FTTN gets built, but at the moment it is covering more than two per cent, as Mr Bryant has said on a number of occasions.

Senator NASH—Indeed. So it is precisely that relationship between the FTTN and the current arrangements that is the link for the two per cent. It is still the same place. I understand the good work that the department is doing in extending that broadband guarantee out so that there is some kind of assistance to those people out in those areas. But we still have this issue, regardless of whether we are talking about Australian broadband guarantee, regardless of whether we are talking about fibre to the node, that there is still a two per cent area that will not be covered by the better services. What I am trying to understand is exactly where those places are. Where is that two per cent? People who are living out there in rural and regional Australia deserve to know if, indeed, they are going to be covered by the new arrangements or not.

Mr Lyons—The request for proposals sets out the government's objectives to provide high-speed broadband to 98 per cent of Australian homes and businesses. It requires proponents to come up with proposals to deliver on a range of objectives including that one. I

cannot really comment on exactly where the two per cent will be. That would be speculation about the outcome of the process.

Senator NASH—It would be speculation. It has been speculation for quite a long time. At the last estimates, the minister was asked and could not give an answer because apparently that two per cent was on the Telstra maps and they would not share the maps with him. We do not seem to be getting anywhere in determining those people that are not going to be covered by the fibre to the node. Is there at any point a time that you can see where you will not be speculating? Are we going to have to wait until we get through to the end of the entire process to figure out who is going to be left out?

Senator Conroy—Your question to some degree asks us to speculate on aspects of the tender process and the outcome of the process. As we have already indicated—I am not sure if you were in the room when I read the opening statement—that we will not be answering any questions that go to the national broadband network process. We have a stated commitment to reach 98 per cent. It is an election commitment; we will deliver on the election commitment. The sorts of questions you are now asking fall into this category: we have a live commercial process we are engaged in on how to achieve the 98 per cent and we are not going to be engaged in speculation around these matters.

Senator NASH—I do understand that that was your position, Minister. Your very calm voice does nothing to allay my concerns on this. I do not understand why I cannot ask about the two per cent that is not covered by the Australian Broadband Guarantee that is underserved.

Senator Conroy—The Australian Broadband Guarantee covers the two per cent? At the moment it covers the four per cent.

Senator NASH—Sorry, I will rephrase the question. That two per cent plus more that the Australian Broadband Guarantee currently covers, do you have geographical areas for that?

Senator Conroy—Did you? It is the same program that you were running on 23 November.

Senator NASH—A question? You will not give us an answer, Minister. There is no point in asking us questions. I would have asked the same questions last estimates and the estimates before, Minister, with a different government, and you know that very well. All I am after is a geographical area for the Australian Broadband Guarantee coverage.

Senator Conroy—Mr Bryant will take you through the program again.

Mr Bryant—I think what you are asking me, Senator, is: do we know where the 400,000, or whatever the number is once we have recounted them, are? The answer is yes, we know them premise by premise. What we are proposing to do is to publish a heat map on our departmental website which indicates where those underserved premises are by density. What we are seeking to do, as well as a part of our proposed new guidelines, is to encourage providers to roll out whole-of-region networks to target, in particular, those underserved areas. We know where some of them are. For example, talking to our South Australian colleagues, we know that the Eyre Peninsula is a real problem and we know that the Murray

Mallee is a real problem. Our heat map will clearly identify the extent of underserved premises in those particular regions.

Senator NASH—When will that be done?

Mr Bryant—We are probably a couple of weeks away, so as soon as possible.

Senator NASH—Would you imagine that those particular areas might extrapolate across to the two per cent that is going to fall out of the 98 per cent FTTN coverage?

Mr Bryant—It is impossible to tell. As the minister explained, it will be about 4 per cent. We think that is about the number. Across Australia there will be a number of circumstances. There will be some metropolitan areas that may have some underserved premises currently.

Proceedings suspended from 10.46 am to 11.01 am

Ms Scott—Chair, with your permission, we would just like to make a correction to one of the numbers Mr Bryant read out.

CHAIR—Certainly, Ms Scott.

Mr Bryant—Thank you. In my evidence to Senator Fielding, I believe I indicated that we take 1,700 calls per week. We actually send out 1,700 information packs per week. The number of calls per week from January through to April was about 1,100.

CHAIR—Thank you, Mr Bryant.

Ms Scott—Chair, we are now able to table the draft program guidelines which are out for comment at the moment. Senator Fielding was interested and I imagine Senator Nash will also be interested.

Mr Bryant—Comments are due by Wednesday of next week. The intention is to launch the final guidelines in early June.

Ms Scott—Mr Bryant gave a presentation at a conference of consumers and small business interests where he went through the guidelines to see if there were any questions and commentary on that.

CHAIR—Thank you very much for that useful information.

Senator FIELDING—I have a question for the minister. Is the Australian Broadband Guarantee part of your performance benchmarks or charter letter?

Senator Conroy—As we indicated yesterday, we have not received the charter letter, so I cannot comment.

Senator FIELDING—I was not here yesterday.

Senator Conroy—No, sorry. We were asked yesterday about the charter letter and, as we have not received it yet, I cannot speculate what is in it at this stage.

Senator FIELDING—Were there any other comments made on that yesterday?

Senator Conroy—No. I believe I was just asked whether I had received it. I indicated that I had met with and spoken with the Prime Minister about the charter letter but that we had not actually received it, so I could not comment on what it contains at this stage.

Senator FIELDING—My apologies that I was not around yesterday.

Senator NASH—On the information packs you were just talking about, could you just run through those figures again? You said 1,700 information packs were sent out.

Mr Bryant—Yes. From 1 July last year to 2 May this year, 61,585 information packs were sent out. That is a result of consumers registering on the broadband service locator or being registered by our staff. Between January and April this year we have responded to approximately 1,300 inquiries on the 1800 number. By my rough mathematics, that works out to about 1,000 a week.

Senator NASH—That is terrific. I appreciate the minister cannot answer any questions, but I think this is a pretty straightforward infrastructure type question: how many nodes are there across Australia?

Senator Conroy—You would probably need to put that question to Telstra.

Senator NASH—Does the department have that information? I am not asking whether or not you can divulge it yet; I am asking whether or not you have that information.

Senator Conroy—We have, as you know, passed some legislation, which has now received royal assent, I can publicly indicate. We have received some information at this stage, but the information has been obtained on a very confidential basis and we are not at liberty to reveal it. That was the condition of the legislation and the confidentiality agreements. It was only supplied on the basis of confidentiality agreements.

Senator NASH—I understand that. What I am getting at, Minister, is that your government has very confidently said that it will be able to reach 98 per cent of the population through the fibre-to-the-node network; is that correct?

Senator Conroy—That is our stated election commitment.

Senator NASH—You may or may not be able to answer this but, if you do not know how many nodes there are, how can you be absolutely certain that you can get to 98 per cent of the country?

Senator Conroy—Because, as I have stated previously, there would be a conversion of pillars to nodes to achieve this figure. If you going to ask me how many, that becomes a matter of the network architecture and construction, which would fall within the national broadband network bill and that is a matter of negotiation. That is one of the reasons why, as innocuous as the question sounds at its beginning, it is quite clearly very cleverly designed to elicit information that could prejudice discussions that have to take place in the future.

Senator NASH—I understand your position, but I think it is overly simplistic. I asked the question because a lot of people are very concerned that they are going to fall into this two per cent that I know we cannot talk about. They are very concerned, which is why I asked. I am concerned that perhaps there has not been enough information coming forward to date to elicit such confidence from the government that the 98 per cent can be reached.

Senator Conroy—I follow your press releases, Senator Joyce's press releases—

Senator NASH—I am very pleased to hear that!

Senator Conroy—I am not sure what Senator Joyce's party is any more, but I follow his press releases—and the former ministers' and now shadow ministers' press releases and I know you are engaged in a campaign to try to convince 50 per cent of the population that they are in the two per cent. That is the game you will continue to play.

Senator NASH—It is not a game, Minister. It is a very serious concern. I would not try to trivialise it by making comments like that.

Senator Conroy—Have you ever met anybody in the 98 per cent?

Senator NASH—Have I ever met anybody that lives in the 98 per cent—is that what you just said?

Senator Conroy—Yes.

Senator NASH—Good Lord! There are quite a number of them in this building regardless of everywhere else I travel in New South Wales.

Senator Conroy—So you admit that some people will be covered by the 98 per cent?

Senator NASH—It has never been my thought that that would not happen, but that is not my concern; my concern is for the two per cent. Can I just take Mr Bryant back to the Australian Broadband Guarantee funding. Just to clarify, it is \$270 million from 2008-09 to 2011-12; is that correct? So it is over the next three years?

Mr Bryant—That is correct. It is \$271 million.

Senator NASH—Sorry, I want to get that right. So it is \$271 million over the next three years. Given that there has potentially been no technological advance in that two per cent area in that time, has any consideration been given to further funding beyond 2011-12?

Mr Bryant—I should point out another process that is happening as well. The minister has called for submissions by 30 June on ways to enhance the delivery of services to that most remote two per cent. That is a process that is complementary to the Australian Broadband Guarantee and complementary to Dr Glasson's inquiry. As I think was indicated earlier today, the submissions from that process will be provided to Dr Glasson and will be made public subject to commercial-in-confidence issues.

Senator NASH—I am pleased to hear that. Sorry, I probably did not put it clearly enough. Post 2011-12, has any consideration been given to further funding needs for underserved areas?

Mr Bryant—I have just explained the process to you to look at going up to that NBN tier of service for that most remote two per cent. We have that process in place. We have the Australian Broadband Guarantee operating for the next four years to provide certainty and a safety net for everyone to get at least a metro-comparable service.

Senator Conroy—Let us be clear: your previous government terminated the funding for the ABG. There was no money in the forward estimates. Even your OPEL project never claimed to reach 100 per cent of Australians. It was only a 99 per cent guarantee. So you had no funding for the one per cent that remained. They are matters of fact.

Senator NASH—I think you have misunderstood my question. What I am trying to ascertain is: beyond 2011-12, is there any funding earmarked for further assistance to underserved areas? It is a simple question.

Senator Conroy—Unlike the previous government, which had no funding for the next four years, we have committed to four years funding—

Senator NASH—Here is one you can answer; is it yes or is it no? It is a simple question; I just do not know the answer.

Senator Conroy—We have committed to four years of funding—

Senator NASH—So four years only?

Senator Conroy—I did not say four years only. The forward estimates and the budgetary process, which you are familiar with, Senator Nash—

Senator NASH—Indeed.

Senator Conroy—is for this year and the three out years.

Senator NASH—Absolutely, which is why my question was, ‘Has any consideration been given? I did not ask if there was anything written down or any further budget process because I know it does not work like that. I said, ‘Has any consideration being given?’

Senator Conroy—It does not work like that. There is no suggestion—

Senator NASH—I would suggest that there was.

Senator Conroy—except the one that you are imputing and no doubt have your press release prepared on, that this funding terminates. Unlike your government, which did terminate their program by giving it no funding for these four years, we have committed \$271 million. There is no suggestion that this is a program that terminates. We have funded it for the full period of the out years, which is the normal, standard process.

Senator NASH—So you are absolutely prepared to guarantee, hand-on-heart, to everybody across this nation right now that you will be able to find money in four years time for rural and regional areas that are underserved?

Senator Conroy—The government have given quite a clear commitment that we will improve broadband services for 100 per cent of Australians.

Senator NASH—It is not doing very well so far.

Senator Conroy—The program for the ABG has been extended by four years by this government. It was not extended by your government. So on a track record of who is actually looking after those Australians with broadband in regional and remote areas, we have a four-year head start on you.

Senator NASH—You do not seriously believe that?

Senator Conroy—You have a press release.

Senator NASH—That is even better than a nonanswer; it is an absolute ripper. Beyond the next four years—I will try again for a yes or no—has any consideration been given to further funding for underserved areas apart from this current \$271 million?

Senator Conroy—Apart from the four-year funding that we have just promised and the Glasson committee?

Senator NASH—Yes, exactly. Yes or no? I know you are not happy to answer questions today, but that requires a simple yes or no.

Senator Conroy—We are not going to walk away now or in four years time from providing a commitment to guarantee broadband to all Australians whether they live in the two per cent or the 98 per cent.

Senator NASH—So we should just believe you?

Senator Conroy—Let me be completely clear. As opposed to you, who terminated the program, we have committed to a full funding for the out years.

Senator NASH—Four years?

Senator Conroy—That is the way budgets are prepared, as you well know, Senator Nash.

Senator NASH—I do understand that. If you are so concerned about these underserved areas and ongoing funding—

Senator Conroy—We have an ongoing commitment.

Senator NASH—why did you take away the \$2 billion communications fund, which was going to have over \$100 million a year as an ongoing funding stream in perpetuity beyond these four out years for underserved areas? You are sitting here telling us that you are so concerned about the ongoing nature of services in rural areas and you have taken away the very legislation was going to supply that security of funding. I am very happy to accept that we have \$271 million for the next four years, but for the last 10 minutes you have given me absolutely no guarantee that there has been any consideration given to further funding. All you have done is take away the legislation that provided that security for rural and regional people and given them four years, \$271 million and some kind of waffley guarantee that you are going to make sure you improve services. I just do not think that it cuts it, Minister.

Senator Conroy—I am quite happy to debate the \$2 billion communications fund, which your colleague and friend Senator Barnaby Joyce appropriately described as a slush fund. I appreciate that when the National Party lose access to slush funds they tend to squeal, and that is what you are doing. It was going to take 35 years of your pork-barrelling to match Labor's \$4.7 billion upfront spending.

Senator LUNDY—It seems to be a fact that Senator Nash chooses to overlook.

Senator CONROY—We have debated this across the country already; we have had an election campaign on it.

Senator NASH—What happened to it rolling out within six months of you being elected, too, Minister?

Senator Conroy —We even had the National Farmers Federation running ads.

Senator NASH—Could you actually answer that before we go any further.

Senator Conroy —We had the National Farmers Federation running misleading ads about Labor's policy. Let us be clear: it would take you 35 years of your pork barrelling to match

Labor's commitment to regional and rural telecommunication services in this country—and we are doing it up front.

Senator LUNDY—We have 10 years of experience which shows us that pork barrelling does not work.

Senator NASH—It is my call, Senator. I would suggest that the people out there who believed you during the election campaign when you said that you were going to roll out fibre to the node in the first six months of coming to government are feeling just a tad disappointed and might not believe you when you say you are doing more than anybody else.

Senator Conroy —Have you spoken to Mr Billson? I appreciate you are still two separate parties for the moment, but on the one hand your shadow minister claimed we were running too fast and should slow the process down and yet you are now saying we should be attacked for not being fast enough.

Senator NASH—Nice attempt at clouding the issue, Minister. You know what you took to the election campaign and you have not delivered. Chair, I am conscious I have probably taken up too much time, but I am glad at least the minister could answer some questions for us.

Senator Conroy —I appreciate that you are two separate parties, although in some states you are voting to merge, but I am just wondering whether you are going to continue to run the exact opposite arguments to your shadow minister with a straight face. I do not mind. Senator Birmingham is doing a good job on behalf of the shadow minister.

Senator NASH—It is a different situation. One is about—

Senator Conroy—Senator Nash, you are now arguing the exact opposite to what Senator Birmingham has been arguing in this very estimates.

Senator NASH—I am not going to argue with you, Minister.

Senator PARRY—Minister, we will try to go back to where we started this morning with the National Broadband Network. Mr Trujillo said in *The Australian* on Thursday of last week, the 22 May 2008—and this is probably why you are obfuscating these questions—that the rollout will be about \$15 billion. You have been saying \$4.7 billion. Why is there a discrepancy?

Senator Conroy —It may come as a surprise to you, but that is not the first time Mr Trujillo has said that. It is actually something he said not long after the election. There has been an enormous amount of public comment by potential bidders, all spruiking their own position. It is no surprise to me to see one of the potential bidders out there suggesting that only they can afford to build it because here of their costing of it. You will have to ask Mr Trujillo that question. I am not prepared to be drawn into commentary. I am happy to take your question on notice and if there is anything further I would like to add, I will get back to you.

Senator PARRY—Will you agree then that the government may have underestimated the cost and have to put in more money?

Senator Conroy —Can I be absolutely clear about this: we have an election commitment of \$4.7 billion. That has been stated in black and white, up hill, down dale and all across the country by the Prime Minister, me, the Treasurer—

Senator PARRY—So it will not be one cent more?

Senator Conroy —and that is our position. Again, further questions and commentary along this line go to the heart of some important issues.

Senator PARRY—You are on the public record stating \$4.7 billion. Are you saying not one cent more?

Senator Conroy —What I have pointed to is our election commitment and our opening statement.

Senator PARRY—Yes, but there is still the record. It is on the record that you are ruling out one cent more than \$4.7 billion.

Senator Conroy —As I said, we have an election commitment: a budget of \$4.7 billion. The budget papers state \$4.7 billion.

Senator PARRY—So you are ruling out a single cent increase above \$4.7 billion, despite the commentary of \$15 billion by Mr Trujillo and other commentary of about \$10 billion.

Senator Conroy —We have made it clear that we intend to deliver on our election commitments and after that I am not prepared to comment on these matters. I will take it on notice and get back to you if there is anything further I would like to add.

Senator PARRY—I think we could all conclude from that answer that not one cent more will be spent above the \$4.7 billion announced by you in the budget statements.

Senator Conroy—This goes to the reason that we have taken the position we have from nine o'clock this morning. You are seeking to put interpretations on everything that I say.

Senator PARRY—It is a simple clarification.

Senator Conroy—The bidders will be reading the newspapers tomorrow. They will be examining these and they will be looking to see what sorts of the answers are being given, what sorts of interpretations—whether they are ones that you or Senator Nash or Mr Billson or Senator Birmingham put in my mouth. That is exactly why we are taking the approach that Senator Minchin advocated, which was that inadvertent comment could—

Senator PARRY—We have been around the table this morning on this. Let's move on. You have indicated that it will be not one cent more than \$4.7 billion, so you do not expect the government to have to put it any more money. Can you indicate what other countries have put out a fibre based network, a broadband network? What examples are there? How is it working? And what is the competition like in these countries?

Senator Conroy—I will take that notice. If there is anything I want to add, I will get back to you.

Senator PARRY—Has any other country, to your knowledge, tried to fit out an entire nation?

Senator Conroy—I will take that on notice.

Senator PARRY—You must have some knowledge, Minister.

Senator Conroy—I have extensive knowledge on this. I have recently been to Bangkok and had extensive discussions with other countries that are engaged in fibre proposals. But I will take it on notice and, if there is anything further to add to my opening statement, we will get back to you.

Senator PARRY—Can you indicate, or can any departmental official indicate, how many kilometres of fibre will be needed to run out the broadband? Any idea? Surely there must be some estimation.

Senator Conroy—Senator Parry, shame on you. You are fully aware, and you even acknowledged it yourself, that inadvertent comment—and this would not fall into inadvertent comment. This is actually a question you should withdraw, because—

Senator PARRY—No—you can refuse to answer.

Senator Conroy—this is a question that you well know goes to the very heart of the project. It is not even an inadvertent slip here. This is deliberately designed—

Senator PARRY—I thought I would go for the obvious because you are being so good on the inadvertent ones. I thought I would try the obvious one.

Senator Conroy—This is a question deliberately designed to prejudice the discussion, Senator Parry, and you should actually withdraw it, but, if you won't, I will take it on notice and, if there is anything further I wish to add, we will get back to you.

Senator PARRY—All right. I am not going to go any further with the broadband.

Senator Conroy—You are not withdrawing it?

Senator PARRY—No—there is no point in withdrawing it; leave it there. I would love to have the answer on notice. It does not matter how far in the future; we will keep you to it. Moving on to the Communications Fund, the budget papers predict the closure of the \$2 billion Communications Fund. What is your comment?

Senator Conroy—They do not predict the closure; they indicated that we are consolidating it. I have read, with some—

Senator PARRY—So consolidation is not closure?

Senator Conroy—It has been transferred.

Senator PARRY—Transferred to where?

Senator Conroy—It has been transferred to the Building Australia Fund. I would draw your attention to the budget papers. I have enjoyed the somewhat confused commentary on this matter. Senator Albanese, the budget papers and I have all made the same point: this money is committed to the national broadband network. It is subject to the expert panel recommendations and it is not subject to any other process. It could not be clearer.

Senator PARRY—If you are taking out \$2 billion and you want to fund \$4.7 billion, where are you getting extra \$2 billion from? Simple arithmetic, isn't it?

Senator Conroy—That only comes to \$4 billion. You are about \$0.7 billion short. The other \$2.7 billion is coming from the Future Fund. We have made that abundantly clear. We

have a debated this in parliament; we have been accused of raiding the honey pots—the bear is in the jar; the whole bit.

Senator PARRY—Or just the hand of the bear in the jar.

Senator Conroy—That was Mr Costello. I remember some entertaining images from one of his performances at question time. Let me be clear; it is \$2 billion coming from the Communications Fund and \$2.7 billion coming from the Future Fund.

Senator PARRY—Okay. Regarding the estimate of earnings of nearly \$191 million from the interest of the Communications Fund, it says it will be spent next financial year, leaving a zero balance. How is it expected to grow?

Senator Conroy—I think you are confusing a couple of different issues.

Senator PARRY—Well, you clarify them for me.

Senator Conroy—The estimate, by the time that the money is transferred, is that there will be about \$400 million earned. That is an estimate subject to market movements, and there have been some fairly substantial market movements in recent times. It is estimated to be around \$400 million and that will also be transferred into the Building Australia Fund. It is quite clearly spelled out on page 183 of Budget Paper No. 2.

Senator PARRY—Yes, I have got that here.

Senator Conroy—Up to \$400 million is available to the Glasson committee for regional telecommunications. It is quite clearly spelled out in the budget papers. It is not subject to any other process.

Senator PARRY—What is the \$191 million that was going to be a part of the earnings that was going to be spent?

Senator Conroy—All of the money that would fall into the category of the interest earned will, by the time this money is transferred across, reach \$400 million. Mr Glasson is reporting in August and, depending on government deliberations around his recommendations, it will be available around then. So it will reach about \$400 million then. It will have been transferred across and will be available to meet the recommendations and considerations of the government following the Glasson committee report.

Senator PARRY—So the \$191 million from interest is going to be saved, not spent?

Senator Conroy—No. Could you point us to the \$191 million figure? Where is it in the budget papers?

Senator PARRY—Page 18 of the Communications Fund Special Account.

Senator Conroy—Which document are you looking at?

Senator PARRY—The Communications Fund Special Account. I do not have the actual document; I just have an excerpt from the document.

Senator Conroy—We just need to know which document.

Senator PARRY—What if you take that on notice? I do not know which portfolio budget paper it would be in.

Senator Conroy—It is not page 18 of the portfolio budget statement. If you could clarify the document, we are happy to have a look at it.

Senator PARRY—How about I come back to you with the exact reference? I will come back to you later in the day.

Senator Conroy—I think I can say this safely: all of the money, all of the interest earned on the Communications Fund, is budgeted to go towards the Glasson committee recommendations and government considerations around those—all of the money.

Senator PARRY—You are categorically stating that you are not taking that money out of the purpose that it was originally intended for.

Senator Conroy—I confess I am not planning on using it, as Barnaby Joyce described it, as a slush fund.

Senator PARRY—I am not talking about that.

Senator Conroy—That was his stated purpose for it. He is on the record, Senator Nash. I know you have not interjected to deny it, because he is. All of the interest earned—and we believe the estimate is around \$400 million—will be spent on the Glasson committee recommendations and the government considerations around that. That is what the money is budgeted for in the budget papers. It is set out on page 183 and page 184 of Budget Paper No. 2. Quite genuinely, it is there in black and white. It is the stated government position. I suspect the \$191 million is an old figure that has not accumulated up to the \$400 million that we have estimated. That is where I suspect the difference is between what we are talking about is. All of the money is to be spent on regional and rural communications. We are not trying to siphon it off anywhere—believe me. There may have been—

Senator NASH—It is just the capital. You take it away—

Senator Conroy—No, we are actually going to spend it on the national broadband network to deliver regional and rural telecommunications. It is not a slush fund.

Senator NASH—I see, we are back to the two per cent again—that that \$2 billion is not going to happen.

Senator PARRY—Thank you, Minister, I will get that reference back to you.

Senator Conroy—I think you will probably find that, ultimately, that is where the confusion is. You are looking at the accumulating figure and we are talking about the final expected figure.

Senator PARRY—I will make that assessment when I read it later in the day and I will get back to you.

Senator Conroy—We are happy to work that one through with you.

Senator WORTLEY—I would like some information. I know that some of it has already been tabled. I would just like to clarify a few matters on the Australian Broadband Guarantee. Following the questioning from Senator Fielding, I would like to explore some of the proposed changes to the draft guidelines. Could you tell me what the current ABG data allowance is? Is the government proposing changes?

Mr Bryant—The metro-comparable standard for the current program, and indeed the matching standard for the requirement under the current Australian Broadband Guarantee, is for a service of 512 kilobits per second download and 128 upload with a one gigabyte per month download limit for the threshold service. In revising that standard, we are proposing to increase the monthly data download to three gigabytes, reflecting the growing requirement amongst consumers for larger monthly download limits. It is important to understand that that is a minimum requirement. There is nothing, of course, to stop providers from offering more than that, and indeed they do in many circumstances.

The other important change we are proposing in regard to monthly downloads is in relation to excess data. The feedback we have had from customers under our program—and it is not just confined to them, obviously, but consumers more generally—is that there is concern that excess data charges can cause some very large monthly bills if consumers are not careful. That has been a concern for us under the program. We are proposing that we put a cap on excess data charges of 5c per megabyte and that we require all providers either to do that or to offer shaping—in other words, to reduce the speed to at least 64 kilobits per second when the monthly data download is reached, at no cost to the consumer. That is the proposal. We think that will increase consumer protections under the program and will increase the capacity of consumers to have larger monthly downloads.

The other important change we are making in terms of the required services to be offered is that we are requiring all providers to also offer what we call an ‘added value service’ of at least one megabit per second or 1,024 kilobits per second download, 256 upload, with a monthly download limit of at least five gigabytes. That is in recognition that speeds, and the speeds being taken up, are increasing in metropolitan markets and that we need all registered providers to be able to at least offer that level of service as well.

Senator WORTLEY—Will the government be establishing priority areas for new terrestrial networks?

Mr Bryant—Yes. That is one of the other key changes that we are proposing. I talked to Senator Nash beforehand about establishing heat maps where we can identify the key clusters of underserved premises. We are proposing to encourage providers to try and tackle those problem areas as much as possible on a whole-of-region basis so that we can get some broad coverage of new networks in some of those difficult areas where there are large numbers of underserved premises. In order for that to happen, providers have indicated to us they need as much long-term certainty as they can get under the program. The fact the program is being funded for four years is obviously of enormous benefit to those providers.

We are also looking, under the new program guidelines, to allow registered service areas for terrestrial networks to roll over year-on-year for the life of the program so that providers have the opportunity to get incentive payments for services delivered to eligible premises in those service areas for a four-year period. Again, we think—and they have indicated to us that they think—that is a big improvement in terms of getting greater certainty.

Senator WORTLEY—How will existing Australian Broadband Guarantee providers be incorporated into the new program?

Mr Bryant—Under the existing program, we have had a comprehensive and rigorous assessment process so that we are confident that the providers we have registered under the program have met all of the very tight requirements in relation to services being offered but also, most importantly, financial credibility. We are proposing, in recognition of the fact that they have recently been through a comprehensive assessment process, to fast-track them through into the new program. There are a couple of caveats around that. Firstly, if their financial circumstances have changed, obviously we will need to reassess their financial circumstances. Secondly, if there are any compliance issues that have occurred over this current financial year, we would need to assess those as well. Of course, we will need to assess the new services they offer under the new program, bearing in mind that we have upgraded the standard of service required.

Senator WORTLEY—What is being done specifically to encourage longer term infrastructure deployment?

Mr Bryant—The range of things I have just talked about—and to try to get that greater certainty amongst providers about the opportunities that are there under the program. Under the current program and indeed the past programs of this kind, agreements have been for a 12-month period. We think we are in a position now in terms of the risk management, from the department's perspective, to look to longer term agreements with providers. We are looking to a two-year agreement option. Again, I think that is another element of the program that will further encourage that certainty and the view amongst providers that they can invest for the longer term.

Senator WORTLEY—I think it was touched on earlier, but perhaps you could just go into what is being done to improve consumer protection under the ABG program?

Mr Bryant—I have talked about some of that in terms of the kinds of services being offered. I have talked about the support we, as a department, give to consumers. There are couple of other things as well that are quite important. Under the current program, there are a range of consumer protections. I will just run through the key ones: the right to three-year access to that subsidised service, the right to have a contract longer than 18 months if that is what customers want, independent testing of the speeds and the performance of the network to ensure they are getting the required and the subsidised level of service and a range of other protections in terms of information being provided to consumers. For example, when a consumer is connected under the program, the registered provider has to write to the consumer and set out the range of services being offered and the range of protections being offered to those consumers under the program. All of these are aimed at ensuring a level of protection for consumers while also encouraging providers to offer them choice of service.

How the system works is: we have an agreement with providers that they will offer those protections to consumers, and then the provider has a contract with the consumer in the provision of the service where those protections are reflected. Obviously, if they do not provide that then they are in breach of their contract with us. A bit of a problem has been that, in the past, the way that those protections have been expressed in the consumer contracts have not been exactly replicating the requirements set out in our agreement with them. So there has been some ambiguity both in the consumers' minds and also in the legal contract between the registered provider and the consumer as to the nature of the protections. We are proposing to

have the standard contract clauses required for registered providers to ensure that what the consumers are getting exactly reflects the requirements that we require under the program and under our funding agreements with providers. Again, we think that will lead to not only a more consistent application of the program requirements but also better informed consumers.

Senator WORTLEY—So it is clearly understood by both parties?

Mr Bryant—Absolutely.

Senator BUSHBY—Minister, I have some questions about the government's national broadband plan. My understanding is that prior to the election the then opposition undertook to provide high-speed broadband across the nation at a minimum speed of 12 megabytes per second and with a coverage of about 98 per cent. Is this correct?

Senator Conroy—That was our election commitment.

Senator BUSHBY—Sorry, I did not hear that.

Senator Conroy—That was our election commitment.

Senator BUSHBY—Your election commitment, thank you. I also understand that the point was particularly made at that time that the proposed national broadband network was superior to that being implemented by the then government because only the opposition was serious about rural and regional Australia and, in fact, Kevin Rudd said that the high-speed broadband was critical for rural and regional Australia. How will the cost of coverage come into the equation? Will the government require equity in pricing to Australians in rural and regional areas, or will the government, under its plan, allow what will be claimed to be full cost recovery in areas of high delivery cost and lower usage?

Senator Conroy—I appreciate that you have only just joined us, but I am sure you have been aware of some of the discussions that have already taken place on the committee. I have indicated that, as this is a live commercial project that has commenced in a very serious way with the bonds being lodged—

Senator BUSHBY—With respect, Minister, I am not asking about the details of the tender or the proposal; I am asking: as a matter of policy, is it part of your policy to be delivering—

Senator Conroy—With respect, you are absolutely traversing into commercial areas, Senator Bushby. You know you are. I am following the wise advice of Senator Minchin, who, when it came to the T3 commercial project engaged in by your former government, took the position that even inadvertent comments could impact on the commercial process that was underway. I have indicated that I will take questions on notice and, if there is anything further I want to add to the opening statement, we will get back to you. We have taken this position with all of the questions that Senator Birmingham, Senator Parry and Senator Nash previously asked. Our election policy is our election policy. We are now moving to implement it. The issues that you are alluding to go to the core of what will be very sensitive negotiations.

Senator BUSHBY—So you do not feel that you have crossed the line by restating what your election policy is?

Senator Conroy—Our election policy is our election policy.

Senator BUSHBY—That it may have some inadvertent consequences in terms of what you are trying to do?

Senator Conroy—I do not think stating what our election commitments are is an inadvertent comment.

Senator BUSHBY—Why is that? What is the difference between that and answering questions of policy as applied to how you are going to implement your election commitments?

Senator Conroy—We have sought, as part of the national broadband network process, invitations from potential bidders of the regulatory environment. You are traversing into those areas quite clearly and quite deliberately in an attempt to undermine.

Senator BUSHBY—In the tender document—

Senator Conroy—Given that you are quite clearly and knowingly now traversing into areas—

Senator BUSHBY—Let me ask a question which is already in the public domain.

Senator Conroy—There are a whole range of questions that are already in the public domain. What I have said—

Senator BUSHBY—Maybe the departmental people will be able to answer matters of fact, just to clarify things that are in the—

Senator Conroy—No, the departmental people are guided by the same advice I read out. I will be happy to read the opening statement out again if you like. It also covered departmental officials. Let me be clear—

Senator BUSHBY—Let me ask the questions, Minister, and you can tell me whether you can answer them or not. In the documentation that has been publicly released to interested parties that might choose to tender, are there requirements that ask them to ensure that the prices that people in rural and regional areas pay are equitable vis-a-vis those paid in urban areas?

Senator Conroy—We will start at page 1 of the RFP and we will willingly read out every single word to you. Seeing as you seem incapable of reading it for yourself, we will now inform the committee by starting at page 1 and reading it out to you—

Senator BUSHBY—You will not—

CHAIR—One at a time, please, Senators.

Senator Conroy—because, let me be clear—

Senator BIRMINGHAM—Minister, there is no need to threaten Senator Bushby.

Senator Conroy—questions around the RFP go to the commercial situation. You are knowingly and deliberately seeking to undermine the national broadband network process—

Senator BIRMINGHAM—That is an outrageous slur on Senator Bushby!

Senator Conroy—by asking knowingly and deliberately now.

Senator BUSHBY—I disagree strongly with what you are saying, Minister.

Senator Conroy—If you would like information about the RFP, which you have just asked about, we will now start reading it out to you.

Senator BUSHBY—I do not want you to read the whole thing; I just want you to point me to any parts in there that may well answer my question.

Senator Conroy—We are more than willing to read it out to you.

Senator BUSHBY—If you do, that is off your own bat because I certainly did not ask you to do that.

Senator Conroy—You asked me about the RFP. We are not in a position to—

Senator BUSHBY—What I am asking you to do is to point to any section in there that may be relevant to my question.

Senator Conroy—You are asking me what is contained in the RFP. That is very specifically what you have asked me, so we are going to inform you what is in the RFP.

Senator IAN MACDONALD—Can I take a point of order?

CHAIR—There are no points of order, Senator. There is a question—

Senator IAN MACDONALD—Is it just a case of shout as much as we like then and overshout the minister? Minister, you were asked a specific question about one issue and you were asked if it is in the document.

Senator Conroy—We are prepared to—

Senator IAN MACDONALD—Your officials will be able to indicate an answer to Senator Bushby, without the stupidity of reading from page 1 on issues that we are not interested in.

Senator Conroy— Given that Senator Bushby appears not to understand—

Senator BUSHBY—That does raise questions about his inability to understand questions.

Senator Conroy—we are only too happy to assist in the process, Senator MacDonald.

Senator IAN MACDONALD—Thank you. This is a very specific question.

Senator Conroy—We are only too happy to start at page 1, chapter 1, and read you the RFP document. Let me be clear: the advice that we have given to every potential bidder is: if you have any questions about the RFP, here is the phone number. You are seeking to use this process to undermine the process.

Senator IAN MACDONALD—We are not potential bidders; we are members of parliament trying to keep you accountable, which is a very difficult thing for the Labor Party. You talked a lot about accountability before the election but, after the election, you seem to have forgotten what it is about. It is a very simple and easy question for the officials. It does not even need your intervention, Minister. It is a question of fact on what the document says about the two issues that Senator Bushby raised and that is what we want to do.

Senator Conroy—It is a question of interpretation.

Senator IAN MACDONALD—We do not want you wasting the committee's time by prattling on about things that are of no interest to the committee.

Senator Conroy—It is not a question of fact, Senator Macdonald; it is a question of interpretation. What Senator Bushby is seeking is an interpretation.

Senator BUSHBY—I was asking a question of fact. Is there anything in there that requires bidders to address—

Senator Conroy—What we have said to every single person who has asked us a question about that—

Senator IAN MACDONALD—Your answer is: ‘No, there’s nothing about that in the document’?

Senator Conroy—No, that is not my answer.

CHAIR—I think we are getting to the answer?

Senator Conroy—No, that is not my answer.

Senator IAN MACDONALD—We are not going to start at page 1 and go to page 3020.

Senator Conroy—It is not quite that long, but it is up there.

Senator BUSHBY—I think it is about 160 pages.

CHAIR—Senator Bushby has a question before the minister and the officers.

Senator IAN MACDONALD—Chair, would you ask the minister to answer it, please?

Senator BUSHBY—I think it can be answered with a yes or no.

Senator Conroy—Let me be clear: we have been asked many questions about the document—the RFP.

Senator IAN MACDONALD—We are aware of that; we have heard it all before, thanks.

Senator Conroy—Can I finish, Senator Macdonald. In each and every case, neither my departmental officials nor—these are the private questions on the file—

Senator IAN MACDONALD—That is of no interest to us. It is a very simple question and your officials can say, as a matter of fact, whether it is referred to in the documents.

Senator Conroy—If I could finish. Each time we have been asked a question of fact—

Senator IAN MACDONALD—We have heard this before, thank you, Minister.

Senator Conroy—you have not let me finish the sentence.

Senator IAN MACDONALD—You are wasting our time. We have a lot of questions to ask.

Senator Conroy—Each and every time, we have said that, because of the probity rules around it, we cannot answer those. You will have to phone the probity officer if you have questions.

Senator IAN MACDONALD—Absolute rubbish.

Senator Conroy—Sorry, the contact officer covering the probity issues.

Senator BUSHBY—Are you suggesting that, as senators at an estimates inquiry, if we want an answer to what is in there, we have to ring that particular officer? Can we not ask the minister or the departmental officials?

Senator IAN MACDONALD—Bring him along here.

Senator Conroy—He is sitting right here.

Senator BUSHBY—Put him up here and we will ask that question.

Senator Conroy—He will now address the specific issue to save time reading it to all of you. But he will not be taking questions on the interpretation, which is what you will then be seeking to do. He is happy to read the section out that you have been unable to find yourself, Senator Bushby. He will read it out to you, but he will not be taking questions on the interpretation.

Senator BUSHBY—I was not going to ask him any questions on the interpretation.

CHAIR—Senator Bushby is awaiting an answer to his question. Mr Mason, I believe you are ready to give it?

Mr Mason—I think the question went to uniform pricing. Clause 1.3 of the RFP deals with the Commonwealth's objectives for the NBN:

1.3.1. The evaluation criteria in clause 10.3 include the extent to which the Proposal meets the Commonwealth's objectives for the NBN project. The Commonwealth's objectives for the NBN project are to establish a national broadband network that:

1. covers 98 per cent of Australian homes and businesses;
2. is able to offer broadband services with a minimum 12 Mbps dedicated downlink transmission speed over each connection provided to a premises;
3. supports symmetric applications such as high-definition video conferencing;
4. is able to support high quality voice, data and video services;
5. uses fibre-to-the-node or fibre-to-the-premises network architecture—

and pertinent to the question at hand—

6. enables uniform retail prices on a national basis ...

Senator KEMP—That was not so hard, was it?

Senator Conroy—It was not so hard to actually look it up on the net and read it yourself.

Senator BUSHBY—Thank you very much. I appreciate the answer and thank you to the officer concerned. Minister, it has been suggested that ISPs are not offering high-speed broadband plans to Tasmanians as the cost to them of broadband back haul to Tasmania renders it uneconomic to offer high-speed broadband to consumers. Earlier this month Internode cancelled further sales of its eight megabyte per second and extreme ADSL2+ home broadband plans until further notice, noting that data transfer between Melbourne and Hobart is six times more expensive than it is between Melbourne and the United States. Other ISPs have postponed introduction of high-speed plans for the same reason or have failed to enter the Tasmanian market because of the high cost of broadband back haul into Tasmania. As such, because of the cost of broadband back haul, Tasmanians do not have access to high-

speed broadband as it currently stands. What guarantee is the government able to offer that it will ensure Tasmanians will have access to plans at reasonable rates under which they can access the 12 megabytes per second on offer by the government?

Senator Conroy—I am pleased if not excited by the fact that coalition senators have discovered that the state of broadband in Tasmania is a national disgrace. I am pleased that you have finally come to that conclusion instead of Helen Coonan telling people for years that no-one is complaining about broadband speeds in metropolitan Australia, which includes Hobart and Launceston as far as I am concerned.

Senator BUSHBY—Does that mean that you will guarantee that, after the implementation of this, Tasmanians will have access to—

Senator Conroy—I might get Mr Mason to read you the section again which I think goes to the heart of your question. Mr Mason, please read the section on uniform pricing that you just read out. You might want to stay on that page; we may have to read it out a few times.

Mr Mason—Again, clause 1.3.1—

Senator KEMP—Madam Chair, I raise a point of order. This is just grossly wasting the time of the committee. We have had this section read out before and we are not going to go through this tiresome exercise of the minister constantly trying to avoid the question.

Senator Conroy—I am not trying to avoid the question. Now, once again, as Senator Minchin said in estimates—you would not have been there Senator Kemp, so I appreciate that you would not be aware of it—

Senator KEMP—But you opposed what he said, didn't you? You argued against it.

Senator Conroy—I am following his wise counsel.

Senator KEMP—So why have you changed your mind?

Senator Conroy—In the end, I accepted the points he made.

Senator KEMP—You did not accept the points. You have flipped, in that case.

Senator Conroy—He made the point that the estimates process should not be used to disrupt, do anything or damage the commercial process underway. I intend to follow that wise advice from a minister who, at that time, had had more experience in the ministerial chair than I did. These questions clearly—

Senator KEMP—You were wrong then, were you?

Senator Conroy—No. I said I am following the wise advice of a minister.

CHAIR—Minister, Senator Bushby has a question; can we have an answer, please?

Senator BUSHBY—Minister, I will take that as reread.

Senator Conroy—Senator Bushby is now attempting to do exactly what I suggested, which is to start seeking interpretations of answers.

Senator BUSHBY—What I am trying to do, as a senator for Tasmania, is ensure that Tasmanians receive the broadband coverage that they have been promised by this government.

CHAIR—Senator Bushby, have you got another question?

Senator BUSHBY—Currently, all broadband back haul into Tasmania comes via two Telstra owned optic fibre cables.

Senator Conroy—I am very pleased you have finally discovered this after 11½ years in government.

Senator BUSHBY—It is apparent that the lack of competition that exists in sourcing broadband back haul—

Senator Conroy—Senator Lundy, did you ever notice this?

Senator LUNDY—For the last 11 years.

Senator Conroy—What did you do about it? We are building a national broadband network.

Senator BUSHBY—The fact is that the OPEL network would have led to competition by more fibre being laid across Bass Strait, which would have led to increased competition.

Senator LUNDY—Since when has the coalition cared about competition?

CHAIR—What is your question, Senator Bushby?

Senator BUSHBY—How will the government's broadband plan act to increase competition across Bass Strait thereby rendering it economic for ISPs to deliver high-speed broadband plans to Tasmania and delivering on your broadband promises for Tasmania?

Senator Conroy—If you want to move the debate on to the OPEL contract, I am more than happy to engage in a lengthy debate with you.

Senator BUSHBY—The debate is about competition across Bass Strait. If you do not have competition across Bass Strait, you are not going to get 12 megabyte per second plans offered by ISPs.

Senator WORTLEY—We went to Tasmania and we saw—

CHAIR—Would you like to reiterate your question, Senator Bushby?

Senator BUSHBY—I am asking: what will the government do to ensure that there is sufficient competition across Bass Strait to make it economic for ISPs to be able to purchase data and offer plans to consumers at 12 megabytes per second or higher?

Senator Conroy—Senator Bushby, I do not know if you actually understand the point that Mr Mason has read out. You say you take it as read, but can I tell you quite seriously that you appear not to understand. I am not going to engage in interpretation and commentary. I will happily read it out myself if you would like. I believe what is stated there goes to the heart of your question. If you do not understand that that actually answers your question, I cannot do anything to help you—other than keep reading it out. I am not trying to be difficult or waste time. That actually answers the question.

Senator BUSHBY—It does, provided that ISPs choose to set up in Tasmania. If it is uneconomic to set up in Tasmania, they will not do it. Are you going to require every ISP that offers a plan anywhere in Australia to have to offer it everywhere in Australia?

Senator Conroy—What happened in this country for the last 11½ years of your government was when you saw a national ad—

Senator BUSHBY—We are interested in what you are doing—

Senator Conroy—Let me be clear about this, Senator Bushby. When there were national ads about national programs—

Senator IAN MACDONALD—These estimates are about your programs and your budget.

Senator Conroy—at the bottom of the ad there would be an asterisk and next to the asterisk it would say, ‘This plan is not available in Tasmania.’ That is what you delivered.

Senator BUSHBY—And how are you going to change that? Are you going to force every ISP that wants to set up in Queensland to also set up in Tasmania?

Senator Conroy—We are delivering a national broadband network. I cannot help you if you do not understand the structure of the industry.

Senator BUSHBY—I know that there are ISPs all over the country that do not operate in other areas.

Senator Conroy—I believe quite genuinely that what has been read out to you—and I am willing to read it out to you again—answers your question.

CHAIR—I do not think we need to have it read again, Minister.

Senator Conroy—It absolutely genuinely answers your question.

Senator LUNDY—Offer him a briefing, Minister.

CHAIR—Senator Bushby, do you have a follow-up question?

Senator BUSHBY—I think he has answered all he can and all he will.

Senator Conroy—If I can add, in an attempt to help, a couple of other sentences in the RFP that may again assist your understanding.

Senator IAN MACDONALD—Minister, I recommend that you allow the officials to answer these questions. They seem to have a far better understanding of it all than you do.

Senator Conroy—If we could just add to the answer to Senator Bushby.

Senator KEMP—Are we going to get an answer from Senator Conroy, are we?

Mr Mason—I will provide some further references to the RFP, if I may. I should also make clear that the Commonwealth’s objectives that I read out previously continue. There are actually 18 objectives for the NBN.

Senator KEMP—I do not know why Senator Conroy could not have said that.

Senator Conroy—I am happy to read it out for you.

Senator KEMP—Why can’t you answer these questions?

CHAIR—Senators!

Mr Mason—In relation to the government's objectives and evaluation criteria, the RFP actually provides for a discussion of those objectives in section 1.5. In relation to uniform pricing, clause 1.5.11 reads:

The Government considers that consumers and businesses should be able to purchase key entry level voice and broadband services for the same price, irrespective of where they live or work.

Senator KEMP—Why couldn't you have said that, Minister?

Mr Mason—It continues:

The NBN should enable uniform prices for basic entry level services. Proponents should provide relevant pricing details for these services in their responses to Schedule 2.

Schedule 2 sets out the information that is requested of proponents. Also relevant is clause 1.5.23, which is in the context of competition and open access. It reads:

If a Proponent considers that mechanisms are required to facilitate the Government's objective of enabling uniform retail prices and the delivery of services to premises within the NBN footprint, it should clearly set out the nature of this mechanism. For example, if Proponents are proposing cross-subsidy arrangements within access prices to enable uniform retail prices, they should clearly identify the extent of any cross-subsidization, as well as other relevant details (see Schedule 2). If a Proponent proposes another type of mechanism to enable uniform retail prices, it should set out details about the nature of its proposed mechanism and other relevant details (see Schedule 2).

Senator BUSHBY—Thank you. That is very useful.

CHAIR—Thank you for that information.

Senator BIRMINGHAM—Firstly, Minister, there was a little bit of confusion at the point when Mr Mason was introduced to the committee. Is he the probity officer?

Senator Conroy—He is the contact officer, not the probity officer.

Senator BIRMINGHAM—So he is the contact officer responsible within the department? Is the probity officer attending the proceedings here today?

Senator Conroy—He is not a member of this department.

Senator BIRMINGHAM—Is he attending these proceedings today?

Senator Conroy—I do not believe he is present.

Ms Scott—No.

Senator BIRMINGHAM—Minister, can you confirm the new date for the lodgement of bids, please?

Senator Conroy—We stated in the press release that it was 12 weeks after the last data was received. I am not in a position to comment further than that for two reasons: firstly, because all of the information, as we say, was not available initially; and, secondly, because it would then lead to speculation around other matters which quite genuinely we are not in a position to engage in.

Senator BIRMINGHAM—I understand there will be a level of sensitivity there. I guess this highlights the problem with the initial 25 July date. What we do not know is if it is going to be 12 weeks from next week, 12 weeks from the following month or how long the process

actually could take from here. Of more concern is the fact that the bidders do not actually know that either. Nonetheless, we welcome the fact that you have provided them with at least some certainty that they will be a minimum time frame, even though it may advantage some against others the way the process has been undertaken. Minister, can you confirm when the government expects to make its first announcements about the short listing or preferred bidders?

Senator Conroy—I would probably refer you to my last answer.

Senator BIRMINGHAM—Does that mean that the back end of the time line has been pushed out as well?

Senator Conroy—That would depend on when the data becomes available. There is no trick here. It is subject to the data being available.

Senator BIRMINGHAM—The original time line, from memory, gave the government about three months from the close of RFP bids being submitted; is that right?

Senator Conroy—We will just confirm that for you. Page 4 of the RFP gives an indicative timetable. It states:

The schedule is indicative only and may be subject to change at the Commonwealth's discretion.

The government decision indicatively was October 2008, identification of preferred proponents by panel was September 2008, and negotiations were between September and October.

Senator BIRMINGHAM—When does the government expect the network roll-out to commence?

Senator Conroy—Our ambition, as we have always said, was by the end of the year.

Senator BIRMINGHAM—That remains the government's ambition?

Senator Conroy—That remains our ambition.

Senator BIRMINGHAM—Does the government stand by its ambition that 2012 be the completion date?

Senator Conroy—No, it is a five-year plan. For most of the last 12 months we have been accused of not providing any broadband until the year 2013. Five years from 2008 is 2013, not 2012—that is four years.

Senator BIRMINGHAM—I was being optimistic as you were yesterday on a few matters.

Senator Conroy—To quote from 1.3: it is rolled and made operational progressively over five years from the date of execution of a contract. That is the objective.

Senator BIRMINGHAM—So rolled out over five years?

Ms Scott—Progressively.

Senator BIRMINGHAM—Progressively indeed.

Senator Conroy—That means it is switched on as it goes, just in case you were wondering what the word 'progressively' meant in this context.

Senator BIRMINGHAM—Thank you, Minister, I can grasp that.

Senator Conroy—You are doing better than your previous minister.

Senator BIRMINGHAM—I will leave you to make those sorts of snide comments along the way. Does that five-year period mean that, if because of delays you are unable to make decisions in time for construction to start this year, you would expect that the date could be pushed out to 2014?

Senator Conroy—You specifically used the word ‘mean’ which is an interpretational question. As I said, I am happy to tell you exactly what it states in the RFP but I am not in a position to give you an interpretation of it. That would be falling into the category that Senator Minchin described as ‘inadvertent comment’. So I am happy to take that on notice. If there is anything I would like to add, I will get back to you.

Senator BIRMINGHAM—Is 2013 a fixed promise from the government in terms of the completion of this project?

Senator Conroy—I think I read out that it was an indicative timetable. That is stated clearly in the document.

Senator BIRMINGHAM—So 2013 is also an indicative promise?

Senator Conroy—Now you are asking me to speculate. I have said the timetable is in black and white in the document. I am happy to read out a section of it again. This is from ‘Commonwealth objectives for the NBN’, and paragraph 7 of 1.3.1 on page 5 states:

7. is rolled made out and made operational progressively over the five years from the date of execution of a contract between the government and successful Proponent.

I am not in a position to speculate, interpret or tell you what I mean by that.

Senator BIRMINGHAM—No, that is okay. I can interpret from that that, as the timetable is delayed at present, the potential is that 2013 becomes an indicative promise as well as an indicative date. Minister, can you estimate when consumers living outside metropolitan areas in large regional centres will be connected to the new network?

Senator Conroy—That absolutely falls into the centre of negotiations, Senator Birmingham, and would fall into the categories I have described. I am happy to take it on notice. If there is anything further I would like to add to the opening statement on that, I will get back to you. But that absolutely falls into it, and I am sure you know that.

Senator BIRMINGHAM—Minister, can you explain how the evaluation process will work within government?

Senator Conroy—As I said, you are now traversing areas that are clearly within the context of the opening statement.

Senator IAN MACDONALD—No, it is a matter of process, minister.

Senator Conroy—You have asked me to interpret an evaluation.

Senator IAN MACDONALD—No, not at all. Your government must have some policies, some idea of what is happening.

Senator Conroy—As I said, it is able to be downloaded to save you having to ask the questions, but we will now read you the evaluation criteria which have been available for a couple of months.

Senator IAN MACDONALD—That is fine. We are asking and getting the information very cooperatively from your officials if you were not trying to gag them all the time.

Senator Conroy—I have told you that we are happy to start at page 1 and read it all out to you.

Senator IAN MACDONALD—No, you read the sections we are asking about, not page 1.

Ms Scott—The evaluation criteria is set out on page 6 and also in section 10 of the RFP. Page 6 reads:

Within the framework of an overarching value-for-money assessment, the evaluation criteria against which Proponents will be assessed are:

the extent to which the Proposal meets the Commonwealth's objectives for the NBN project—

and we have previously read out seven of those—

the capacity of the Proponent to roll-out, maintain, upgrade and operate the network;

the nature, scope and impact of any legislative and/or regulatory changes that are necessary to facilitate the Proposal;

the cost to the Commonwealth of the Proposal;

the acceptability of the Commonwealth of the contract terms and conditions proposed by the Proponent and the extent to which the Proposal departs from the Commonwealth's notified commercial terms (if any); and

the extent of the Proponent's compliance with the RFP [request for proposal].

The criteria are not listed in order of importance. Subject to clauses 10.4 to 10.9, the Panel—

which is the expert panel—

... will evaluate each Proposal against each of these criteria and then undertake a comparative assessment of all Proposals in order to make a recommendation to the Minister for Broadband, Communications and the Digital Economy ('the **Minister**') as to which Proposal(s) offer the best overall value for money to the Commonwealth. The Minister, following consultation with Cabinet, will be the final decision maker.

Senator BIRMINGHAM—Thank you, Ms Scott. Can you confirm or clarify that the department then is the sole body in assessing and evaluating the bids?

Ms Scott—The section I read out I think answers your question but I am happy to repeat it. It refers to the role of the expert committee:

Subject to clauses 10.4 to 10.9, the Panel will evaluate each Proposal against each of these criteria and then undertake a comparative assessment of all proposals in order to make a recommendation to the Minister ... as to which Proposal(s) offer the best overall value for money to the Commonwealth.

Senator BIRMINGHAM—Thanks, Ms Scott; that is fine. I caught 'the panel' but I missed the words 'expert panel' when you read it out the first time.

Senator IAN MACDONALD—It does not mention Markson Sparks or the ACTU in the document?

Senator Conroy—To answer that we would have to read the whole document out to you.

Senator IAN MACDONALD—So I would probably find that there somewhere?

Senator Conroy—We are happy to test it for you by reading the whole document.

Ms Scott—There is also another relevant section—

Senator IAN MACDONALD—That is a bit of an admission.

Ms Scott—There is also another relevant section which relates to national security implications because this goes to basic infrastructure, and that is subsection 10.5.4 of the request for proposal, which reads:

The Attorney-General's Department will coordinate an assessment of the national security implications of Proposals in consultation with national security and law enforcement agencies to be provided to Government to inform the final decision-making process.

Senator BIRMINGHAM—Thank you, Ms Scott. What protocols are in place regarding the interface between the expert panel and the department?

Ms Scott—I think I can answer your question by referring to the press release by the minister that was put out on 11 March 2008 announcing the panel of experts and their role in assessing the national broadband network proposals. It indicates:

The Panel will be supported by the Department of Broadband, Communications and the Digital Economy, with support from other key departments and specialist advisors in relation to economic regulation and technical, legal and financial and commercial issues.

The press release attached the terms of reference for the panel.

Senator BIRMINGHAM—Does the panel have a direct interface with you, Minister, as well or does it do its work through the department?

Ms Scott—There is a section in the RFP that deals with that. We will just find the right section.

Mr Mason—The relevant sections of the RFP are as follows. Subsection 10.2.3 indicates:

The Panel will advise the Minister on its progress in the assessment of Proposals and the Minister may ask questions of the Panel. Where the Panel or the Minister considers it appropriate, the Panel may seek guidance from the Minister or the Minister may provide guidance on the Government's position on policy and regulatory issues.

Subsection 10.2.4 continues:

The Panel will provide a report to the Minister on its recommendations. The report may include recommendations to shortlist one or more Proponents for parallel negotiations, recommendations to invite one or more Proponents to participate in an offer definition or best and final offer process and/or recommendations on preferred Proponents.

Senator BIRMINGHAM—Thank you, Mr Mason. Why is it necessary for the panel to seek guidance from the minister or indeed vice versa on the government's position on policy or regulatory matters? Shouldn't those positions be clear?

Senator Conroy—The RFP sets out the process. You are now asking departmental officials to give you an interpretation and that clearly falls within the scope of the opening statement.

So we will take that on notice and, if there is anything further we would like to add, we will get back to you.

Senator BIRMINGHAM—I hope you can give the panel better answers if they ask you for such advice, Minister. With regard to the release of information by network providers, the legislation recently passed provides for you to release regulations or draft regulations as to the scope of the information to be provided. Have you released those regulations yet?

Senator Conroy—No, we have not released anything yet. The legislation, I announced a little earlier, has actually been given royal assent today. We have been engaged in some voluntary discussions and now we have the option to legislate.

Senator IAN MACDONALD—Regulate.

Senator Conroy—Regulate, sorry.

Senator IAN MACDONALD—When do you expect that to be?

Senator Conroy—As I said, that is an option we can consider but I would not want to speculate on that.

Senator IAN MACDONALD—Let me get this clear: you indicated before that it was within 12 weeks of the data being made available.

Senator Conroy—The final data.

Senator IAN MACDONALD—Is this what we are talking about now? Is this the final data that we needed following that legislation?

Senator Conroy—Discussions are still occurring, and I would not want to speculate on the outcome of those discussions.

Senator IAN MACDONALD—No, I am just trying to get the facts. You said before that the critical date was 12 weeks after the data was available. I am wondering when the data is to be available. As I understand it, Senator Birmingham's question referred to legislation which requires this data to be made available; is that correct?

Senator Conroy—We have engaged in a voluntary process while we sought to pass the legislation.

Senator IAN MACDONALD—Yes, but the legislation has now passed.

Senator Conroy—The legislation has now passed and has royal assent. So on top of the voluntary discussions that we are having, we now have the option of regulating.

Senator IAN MACDONALD—Thank you. I am asking you when is the regulation going to be, and you say 'soon' or 'it is in discussion'—

Senator Conroy—No, I am saying that I am not prepared to speculate.

Senator IAN MACDONALD—But the whole control of the timing on this seems to rest with you, Minister, on when you issue these regulations pursuant to this legislation.

Senator Conroy—No, that is not correct.

Senator IAN MACDONALD—Well, it was a question I asked before and I thought you acquiesced in that.

Senator Conroy—No, that is not correct. You said ‘the whole control’, and I am saying that is not correct.

Senator BIRMINGHAM—Minister, you have had months to negotiate voluntary release of the information. You insisted that the legislation had to be passed by the parliament during the budget week, and the opposition cooperated with you in that regard to ensure that it was.

Senator Conroy—As was stated in the press release, not all of the information was available.

Senator IAN MACDONALD—Fine, but you have your legislation now—

Senator Conroy—That is why there was an extension.

Senator IAN MACDONALD—When are you going to issue the regulation?

Senator Conroy—That is a matter that I am not going to speculate on.

Senator IAN MACDONALD—We as a parliament and the Australian nation need to have some indication of the relevant date, and the relevant date seems to be 12 weeks after you get around to issuing the regulation to make the information available.

Senator Conroy—That is your interpretation, Senator Macdonald. That is not an accurate interpretation.

Senator IAN MACDONALD—Well, give me the right one then.

Senator Conroy—It is not an accurate interpretation, and I am not going to speculate.

Senator BIRMINGHAM—Is it your preferred position that this information is still released voluntarily?

Senator Conroy—There are ongoing discussions, and I am not prepared to speculate.

Senator IAN MACDONALD—But the whole process seems to depend on you, Minister, getting active and issuing some regulations pursuant to the act. Until that happens—

Senator Conroy—That is your interpretation. That is incorrect.

Senator IAN MACDONALD—I would like an explanation from someone who really knows, which I suspect is the department, if this is not the issue: things cannot happen until 12 weeks after the data is made available, and the data will not be made available until you get moving and regulate to make provision for the data. Can I ask the officials: if that is not correct, could you tell me what the correct situation is?

Senator Conroy—I am just wondering if you could let me know what the opposition’s position is.

Senator IAN MACDONALD—No.

Senator Conroy—Because on 29 February—

Senator IAN MACDONALD—Regrettably we are not in government, Minister. You are in government, and we want to know what your position is. You are the government and you are to be accountable to the Australian people, and we are trying to make that happen through this estimates process. So we are asking the officials what the process actually is—

Senator Conroy—Mr Billson actually opposed making that network information available to proponents; did he tell you that?

Senator IAN MACDONALD—We are hear to ask you questions.

Senator Conroy—He stated, and I quote, that ‘the proposed legislation—

Senator IAN MACDONALD—Minister, this is all very interesting, but could we have the departmental officials actually answer the questions that we are asking and not just have you continually babbling on about things that are of no interest to this particular committee.

Senator Conroy—Mr Billson started off by opposing the legislation—

Senator IAN MACDONALD—We are not interested in that issue.

Senator Conroy—Then he changed his position and said—

Senator IAN MACDONALD—We are not interested in that issue.

Senator Conroy—I am not interested in what you are interested in; I am interested in answering the question.

CHAIR—Minister, could we have an answer to the question, please.

Senator IAN MACDONALD—Thank you, Madam Chair.

Senator Conroy—I am answering the question. I am simply pointing out as part of answering that question that Mr Billson and the opposition seem to have two different positions.

Senator IAN MACDONALD—No, that is not the question.

Senator Conroy—First, they opposed the legislation—

Senator IAN MACDONALD—What is your position? That is what we want to know.

Senator Conroy—And now they support it.

Senator IAN MACDONALD—What is your position?

Senator Conroy—As I have said, the opposition opposed it and now they support it. Senator Macdonald continues to misunderstand—

Senator IAN MACDONALD—I am asking you to clarify for me or at least get someone who has some idea to clarify it, which would be your officials.

Senator Conroy—Madam Chair, I am attempting to help Senator Macdonald understand the answer to this question.

Senator IAN MACDONALD—Well, you are not. Your officials would be a better help.

Senator Conroy—The premise of your question is actually incorrect, as I have said to you three or four times now, Senator Macdonald. As I have indicated, we are in voluntary discussions at the moment and we will go down the regulatory route, if necessary, once voluntary discussions are complete.

Senator IAN MACDONALD—When are they likely to be complete?

Senator Conroy—I repeat: that is a matter you are asking me to speculate on and I am not prepared to.

Senator IAN MACDONALD—Is it likely to be five years, 10 years, two decades or five days perhaps, Minister? You have not shown a great deal of aptitude or enthusiasm in getting this process going. The Australian people, including the Australian parliament, want to have some understanding of the time processes. I am quite sure that your departmental officials could tell us where the negotiations are at, when there will be a need for regulation, when you are going to get moving and regulate as required so the data can be made available and so that the 12 weeks starts to run.

Senator Conroy—I appreciate that on the one hand you are now arguing contrary to what Senator Birmingham has been arguing—

Senator IAN MACDONALD—I am not arguing anything; I am asking a question.

Senator Conroy—Yes, you are. I am sorry, but that was the world's longest question which actually contained a string of arguments and suppositions within it.

Senator IAN MACDONALD—No, it did not. It asked some questions that I hope your officials would be allowed off the leash so they could answer it. I am quite certain they have the answers.

Senator Conroy—You have asked me. I have said to you now seven or eight times that I am not prepared to speculate in answer to your question, to which you then said, 'Tell me the answer'. I am saying that I am not prepared to speculate. You can ask me another 10 times. We are engaged in voluntary discussions.

Senator IAN MACDONALD—So the parliament and the people of Australia just have to wait until you are energetic enough to have a few discussions with a few people, when obviously the department has been doing this now for some months and obviously you have the power following the legislation to regulate if you are running into trouble. If you are not capable of doing the negotiations then regulate—

Senator Conroy—We received royal assent today. That is it. Today is the first time that the power is now available to regulate.

Senator IAN MACDONALD—So you have done nothing until today. You cannot be that incompetent, Minister.

Senator Conroy—We are engaged in voluntary discussions. I am not sure how many times I can explain that to you, Senator Macdonald. If they fail, we now have from today the option to go down the regulatory path.

Senator IAN MACDONALD—Can you let me ask your officials: have you drafted the regulation just on the chance that perhaps the negotiations do fail?

Senator Conroy—As we said, we are in voluntary discussions and if we feel it necessary to go down the path—

Senator IAN MACDONALD—No, that is not the question.

CHAIR—Senator Macdonald, the minister is answering.

Senator Conroy—If I can finish my answer, if we feel the need to go down the regulatory route we will be prepared to do so, and we have done some preliminary work if we need to go down that route.

Senator IAN MACDONALD—My question was: has the department drafted the regulation?

Senator Conroy—We have done some preliminary work.

Senator IAN MACDONALD—So is that no or yes?

Senator Conroy—We have done some preliminary work so that, if we need to go down this path, we can.

Senator IAN MACDONALD—Drafting a regulation is not the final regulation, so I am asking have the department drafted a regulation? I would assume from your answer—

Senator Conroy—We have done some preliminary work.

Senator IAN MACDONALD—Your answer is yes, so thank you. It has taken a long time to get a simple answer but thank you, Ms Scott, for providing that to the minister. That regulation is able to be implemented in a relatively quick time, if needed?

Senator Conroy—Philip Mason might answer to make sure we give you the absolutely correct answer.

Senator IAN MACDONALD—I am sure he will be do it more accurately.

Senator Conroy—It is three days and 10 working days, but I will let him explain it.

Mr Mason—The process provided for in the legislation, which is the new part 27A of the Telecommunications Act, provides for consultation on the instrument specifying the information that would have to be provided. It provides for a minimum of three working days consultation. The other time frame set out in part 27A is that they have 10 days to provide the information requested of them.

Senator IAN MACDONALD—On the voluntary basis or in the regulations?

Mr Mason—No, that is on the compulsory basis.

Senator IAN MACDONALD—So you have to have three days of consultation before you promulgate the regulation and then there is 10 days after that to provide it.

Senator Conroy—Ten working days.

Senator IAN MACDONALD—Wow! We are getting somewhere now. So three days and 10 days makes 13 days, and then if you add 12 weeks to that we are starting to get some idea about timing, which is all we wanted. We do not want exact timing. So on the basis of that, assuming that your voluntary discussions last for another week or two, then we can look forward to the process getting towards finalisation in three plus 10 days plus 12 weeks. That gives us—

Senator Conroy—You forgot to add your mother's age to the number of days—

Senator IAN MACDONALD—Leave my mother out of this. You have a bad habit of inviting responses that would be unfortunate, so let us move on. Thank you very much for that timing. So in all expectation we can have this process finalised well before the end of the year.

Senator Conroy—I repeat what we have said in answer to a string of other questions that our ambition is to have finalised the contract and started it by the end of the year.

Senator IAN MACDONALD—And we now have the timing—

Senator Conroy—You have made a number of assumptions which, as I said, include a number of variables that are not relevant to the negotiations.

Senator IAN MACDONALD—Finally, before I pass back to Senator Birmingham: who actually drafted the terms of the RFP?

Senator Conroy—It is a government document.

Senator IAN MACDONALD—Is it done entirely within the department; is it done with outside consultants, outside lawyers or perhaps with some input from marks and sparks?

Senator Conroy—We had a range of specialist advisers. We had an interdepartmental committee. We consulted colleagues in cabinet, and the department worked on it extensively.

Senator IAN MACDONALD—Can we get a description of the specialist advisers? They would be contracted to the department, would they?

Senator Conroy—They are outlined in the RFP.

Senator IAN MACDONALD—I am sorry, I have not had the opportunity—

Senator Conroy—Not by name. Mr Mason might just outline to you the areas they cover.

Mr Mason—The department has contracted specialist advisers in relation to technical matters, in relation to commercial and financial matters and also in relation to economic regulation. In addition, we have legal advisers and we of course have a probity adviser, whose name is specified in the RFP.

Senator IAN MACDONALD—The legal advisers are in house or AGS, or are they external legal advisers?

Mr Mason—We have external legal advisers.

Senator IAN MACDONALD—On this particular matter?

Mr Mason—Yes, and we also have internal legal support.

Senator IAN MACDONALD—On notice, could you give me the names and descriptions of those advisers?

Mr Mason—We can answer that now. The technical advisers are Gibson Quai-AAS, which I think from memory is Amos Aked Swift. The legal advisers are Corrs Chambers Westgarth, the financial commercial adviser is KPMG, the economic regulatory adviser is Frontier Economics and the probity adviser is the Australian Government Solicitor.

Senator IAN MACDONALD—The second last one was Frontier Economics, did you say?

Mr Mason—Frontier Economics is the regulatory economic adviser.

Senator IAN MACDONALD—Where are they from? Are they Canberra based or are they world wide?

Senator Conroy—We would have to take that on notice.

Mr Mason—They are Australian based. From memory, their head office is in Melbourne. They have overseas offices as well.

Senator IAN MACDONALD—So the answer to my earlier question about who prepared the RFP is: the department with the advice and assistance of all of those people you have mentioned plus the people the minister mentioned, his colleagues and the Prime Minister.

Mr Mason—Could I just add a point of clarification in relation to your specific comment: Frontier Economics were contracted after the RFP was released.

Senator IAN MACDONALD—So they did not have a part in framing the conditions of the RFP.

Mr Mason—No, they were not involved at that stage.

Senator IAN MACDONALD—Is the actual document finally, to use the old phraseology, typed up in the department or is that done externally? Who actually pulls it all together? That would be the department rather than your lawyers?

Ms Scott—The department.

Senator IAN MACDONALD—You read out the assessment and you said in the process that the advisory committee can seek guidance from the minister but finally reports to the minister. I want to make this clear: the final decision is with the minister. Is that correct?

Ms Scott—I will read you the relevant section again.

Senator IAN MACDONALD—Yes, thank you.

Senator Conroy—If we had started reading at page 1 we would have finished by now and they would have had the answer to all the questions.

Ms Scott—The minister, following consultation with cabinet, will be the final decision maker.

Senator IAN MACDONALD—Does that require or does anything else require the minister to take any notice of the reports of the expert committee?

Ms Scott—The minister is bound by the Financial Management and Accountability Act, which has reference to requirements about value for money. The criteria I read you earlier relates to value-for-money propositions.

Senator IAN MACDONALD—So the answer really is, as you quite rightly point out, that the final decision is the minister's, and he can take or leave most of the expert recommendations with the exception of those required by legislation.

Senator Conroy—That is an interpretation rather than a question.

Senator IAN MACDONALD—I am sure if it were wrong, you would challenge it, Minister, with your deep knowledge of this.

Senator Conroy—Interpretations of what the RFP documents mean fall into that category. I will take that on notice, if you like.

Senator IAN MACDONALD—Thank you, minister and thank you officials.

Senator BIRMINGHAM—Minister, do you stand by your comments and indications that you will accept non-complying bids?

Senator Conroy—That clearly falls into the category of the opening statement. I am happy to take that on notice and if I have anything further to add, I will get back to you.

Senator BIRMINGHAM—Surely that brings into question the efficacy of your earlier statements, if answering that question brings into question the process on offer. Minister, you have been out there indicating a willingness to accept non-complying bids. You have said so publicly. All I have asked you to do is to confirm that what you have said publicly still stands.

Senator Conroy—As I said at nine o'clock in my opening statement, I am happy to take that on notice and, if there is anything further I would like to add, I will get back to you.

Senator BIRMINGHAM—Has the probity officer provided advice in relation to the acceptance of non-complying bids?

Senator Conroy—I am happy to take that on notice and get back to you.

Senator BIRMINGHAM—Has the probity officer or the department or yourself considered the Auditor-General's comments that the amendments to the RFP would be required for non-compliant bids to be accepted?

Senator Conroy—I am happy to take that on notice and give you any further information we have.

Senator BIRMINGHAM—Is there any concern that your comments relating to the acceptance of non-complying bids are in breach of the tender guidelines at all?

Senator Conroy—I am happy to take that on notice and, if there is any further information we have, we will pass it on.

Senator BIRMINGHAM—Minister, how do you expect those wishing to lodge an RFP to know whether or not non-complying bids will be accepted?

Senator Conroy—You are clearly asking questions that go to discussions around the opening statement and I am happy to take that question on notice. If there is any further information I wish to give, we will pass it on.

Senator BIRMINGHAM—Will those potential bidders be able to clarify in advance of lodging their bids the non-compliant aspects and whether those changes or non-compliant aspects will be accepted?

Senator Conroy—I am happy to take that on notice and if there is anything further I wish to add from the opening statements, we will get back to you.

Senator BIRMINGHAM—Do you accept that this is a fairly important point for those making bids?

Senator Conroy—I am happy to take that on notice. I do not think it was actually a question. It was more of a rhetorical question. I am happy to take it on notice and if I have anything further to add, we will get back to you.

Senator BIRMINGHAM—When do you expect to clarify the government's position in relation to non-complying bids?

Senator Conroy—As I said, that clearly moves into areas that I identified in the opening statement. I am happy to take that on notice and if there is anything further to add to the opening statement, I will get back to you.

Senator BIRMINGHAM—Do you intend to publicly clarify it?

Senator Conroy—As I said, that goes to matters around the opening statement. If there is anything further, beyond the opening statement, that I wish to add, I will get back to you.

Senator BIRMINGHAM—Has the department started to draft amendments to the RFP in light of the Auditor-General's comments that the acceptance of non-complying bids would require amendment to the RFP?

Senator Conroy—That goes to matters I referred to in the opening statement and I am happy to get back to you if there is anything further that I would like to add.

Senator BIRMINGHAM—Minister, how many times has the expert panel met?

Senator Conroy—Once face to face and then there were telephone hook-ups. We are just trying to find out how many times the telephone hook-ups have occurred. We are not sure whether it is two or three, but we are happy to try to clarify that for you.

Senator BIRMINGHAM—Thank you. Has the expert panel met with persons or groups external to the membership of the expert panel?

Ms Scott—Just a clarification: has the expert panel met with anyone other than themselves?

Senator BIRMINGHAM—Correct.

Senator Conroy—Sorry, other than ourselves at this table or other than, for instance, the specialist advisers? Are you asking whether they have talked to the lawyers? Have they met other human beings? We are sure they have, but we are just trying to narrow that down for you a bit.

Senator BIRMINGHAM—I am sure they have met their mothers and fathers and everybody else, Minister.

Senator Conroy—Don't mention mothers! Senator Macdonald gets very upset.

Senator BIRMINGHAM—Indeed. But my question was: aside from the expert panel meeting as an expert panel, who have they met with?

Senator Conroy—We are happy to get you that information. We think we can give you almost all of the people involved.

Mr Mason—As a panel they have met with specialist advisers, the probity adviser and the National Broadband Network Taskforce within the department. Our specialist advisers included the legal advisers, the technical adviser and the commercial adviser. They have met with the minister as well.

Senator Conroy—If there are any others, we are happy to try to get that information for you.

Senator BIRMINGHAM—If you can take that on notice.

Senator Conroy—We think that is everybody, but if we think of anyone else over lunch we will let you know.

Senator BIRMINGHAM—If checking of records indicates there are any others, if you could indicate that to the committee that would be appreciated. Minister, did you withdraw from a meeting of members of the TERRiA or G9 consortium on 9 May?

Senator Conroy—As I think I indicated, we have taken probity advice on these matters now. Yes, I had scheduled to talk with the G9 TERRiA group and, following probity advice about how we were going to handle this—as you can see, we started quite early—because we have now reached a new stage of handling it, we cancelled that meeting.

Senator BIRMINGHAM—You say that was on the basis of probity advice?

Senator Conroy—Yes.

Senator BIRMINGHAM—When was that probity advice given?

Senator Conroy—In the day or so before that, I think. It might have been the 7th or the 8th. It was beforehand, obviously, but a day or so before that. I am happy to confirm the date of when we received that advice.

Senator BIRMINGHAM—When was the last meeting you had with a prospective bidder?

Senator Conroy—It depends on whether or not you are talking about a discussion with people around the bid or around other telecommunications matters. I meet ongoingly with telecommunications companies and their representatives on other telecommunications matters. On the actual bid, I do not think I have met with any since then. I would also say, if I answer that, that would mean that we identify prospective bidders, which we are not engaged in.

Senator BIRMINGHAM—I was not asking for—

Senator Conroy—No, I know you were not trying to—

Senator BIRMINGHAM—I may have gone to whom, but I was not at that stage.

Senator Conroy—No, I do not think you were trying to draw me into that. As I said earlier, we are not suggesting that there is no contact between us and the telecommunications industry; it is just that we have no contact with them on that matter.

Senator BIRMINGHAM—I understand that. You can give an assurance that, since the probity advice was received a day or two prior to 9 May, you have not met with any prospective bidders on matters relating to the NBN?

Senator Conroy—On that matter, yes.

Senator BIRMINGHAM—Can you indicate—you may have to take it on notice and check your records—when you last met with a prospective bidder in relation to the NBN?

Senator Conroy—I will have to take that on notice. I will have to check the records and work out who the prospective bidders are. I actually do not know at this point. I have not received that briefing. There is an interaction there. I am not even sure whether I can answer that, given that I do not know at the moment who the prospective bidders are.

Senator BIRMINGHAM—We obviously all know who a number of them may be from their self-disclosures.

Senator Conroy—Yes.

Senator BIRMINGHAM—I turn to open access arrangements.

Senator Conroy—I suspect open access arrangements do go to central issues. We are happy to take your question on notice and, if there is anything further, we will add to it.

Senator BIRMINGHAM—Thank you. In your policy speech of 21 March 2008 you stated:

A prerequisite for all proposals for regulatory reform to facilitate a fibre-to-the-node network is that the parties accept regulated open access to bottleneck infrastructure.

Genuine open access in a fibre-to-the-node world would require equivalence of access charges and full scope to access seekers to differentiate their product offerings by allowing customisations of access speeds, quality of services and contention ratios.

Is that still your commitment and do you believe that is adequately reflected in the RFP?

Ms Scott—One of the relevant sections of the RFP is in 1.3.1, Commonwealth objectives, National Broadband Network. Paragraph 10 of that ‘facilitates competition through open access arrangements that ensure equivalence of price and non-price terms and conditions, and provide scope for access seekers to differentiate their product offerings’.

Senator BIRMINGHAM—Thank you. In the same speech, you noted that Telstra had accepted the need for it to provide open access on bottleneck infrastructure on any fibre-to-the-node network it built. What was the evidence for your confidence in that statement.

Senator Conroy—Could you repeat that question?

Senator BIRMINGHAM—In your speech you said that Telstra had accepted the need to provide open access on bottleneck infrastructure in any fibre-to-the-node network it built. What was your evidence in making that statement on 21 March?

Senator Conroy—Telstra had made a number of public statements prior to that speech, quite open and public ones, that they would bid an open access network. I am conscious that I cannot comment on any prospective bidders and what they may or may not have done in the bidding process. On a number of occasions Telstra officials had indicated that that would be the case, prior to that speech.

Senator BIRMINGHAM—So you interpret their offerings on open access on those prior occasions as being consistent with your desire for open access, Minister?

Senator Conroy—I cannot comment on the thinking behind Telstra’s statements. You are probably now traversing areas that fall into the opening statement I made, so I am happy to take that on notice and get back to you to add anything further. You asked me to interpret Telstra’s thinking. That is a question you probably should put to Telstra.

Senator BIRMINGHAM—Looking primarily I guess for your level of comfort in that regard, but obviously some of that will be revealed over the next six months as well.

Senator Conroy—I think you fairly assume that that does fall into that category.

Senator BIRMINGHAM—Should we read anything into the fact that open access rates as No. 10 out of the 18 objectives of the NBN?

Ms Scott—Earlier there was a clear statement regarding the order of the criteria. Paragraph 1.4.2 states that the criteria are not listed in order of importance.

Senator BIRMINGHAM—I note that the government of Western Australia has been very vocal on the need for effective open access regimes. It said in a recent Senate committee submission:

An effective open access regime needs to deal with both price and non-price issues. Barriers to entry can also take the form of delays in making decisions ... The open access provisions cannot be left to the contract negotiation stage before they are detailed as more than high level principles, it is important that the RFP includes a level of detail on the types of services that will be made available for open access and the conditions.

What comfort can you give the government of Western Australia in regard to their concerns?

Senator Conroy—They have read the RFP and they are aware of the measures that are contained in the RFP. At last week's OCC all of the states raised a number of issues. They of their own volition even wrote something into their communique last week on these matters. The RFP document has been read and analysed by the Western Australian government.

Senator BIRMINGHAM—And they have not expressed any concerns subsequent to that—

Senator Conroy—You would have to ask them for further comment. I cannot speak on the Western Australian government's behalf.

Senator BIRMINGHAM—They did not express any concerns at the ministerial council meeting last week and they have not made approaches to you?

Senator Conroy—I do not think it will be telling tales out of school to say that all of the colleagues were 100 per cent behind Labor's national broadband plan.

Senator BIRMINGHAM—As so many ministerial council meetings are at present, Minister.

Senator PARRY—So that part is not commercial-in-confidence.

Senator Conroy—No.

Senator PARRY—Amazing.

Senator BIRMINGHAM—What discussions took place at the ministerial council regarding the national broadband network?

Senator PARRY—This will be confidential.

Senator Conroy—I will probably have to refer you just to the communique. I am not sure it is common practice to repeat conversations around the table. There was a communique that was put out. We can get you a copy. I am sure it is not far away. You can have a look at the communique.

Senator BIRMINGHAM—Did the Tasmanian government excuse themselves from any discussions at the meeting?

Senator Conroy—I do not think anybody excused themselves.

Senator BIRMINGHAM—The Tasmanian government is reported as having paid a bond with the aim of submitting a proposal. Were there any discussions at that meeting that may represent a conflict in relation to the access the Tasmanian government has had to information?

Senator Conroy—The only information that is available publicly is the RFP document. There is no other information available. When people have generally asked, as we indicated we have published all clarifications on the website, unlike the previous governments when asked questions and only one bidder ended up knowing what was really going on. So we have published all clarifications. So all the information that revolves around the RFP is available on the website. I could not comment on the Tasmanian government's view. I do not know that the Tasmanian government are a bidder, as you have described. I have seen speculation in the newspapers. But, as I said to you, I actually do not know the number or names at this point.

Senator BIRMINGHAM—That is fine. You do not know how many \$5 million bundles are in the department?

Senator Conroy—I actually do not.

Senator PARRY—Do you not have access to the bank account?

Senator Conroy—I think Patricia is holding out on me. If she disappears to Bermuda shortly, we will know what has happened! Only joking, Patricia.

Senator BIRMINGHAM—We will keep the hearings going a little longer, Ms Scott, to keep you here. You are confident there were no inappropriate discussions involving the Tasmanian government, should they be a bidder?

Senator Conroy—I am confident there were no inappropriate discussions. The only matters discussed were much the same way. I had to explain in much the same way as I had at the beginning of this meeting at the beginning at that meeting that I was bound by a range of probity constraints. As I said, we have a handling strategy for the whole of government on this.

Senator BIRMINGHAM—Which day last week was that meeting?

Senator Conroy—Wednesday, the 21st.

Senator BIRMINGHAM—It was before the close of bids, Minister. I thought the close of bids was when the appropriate restrictions we face today kicked in.

Senator Conroy—No, as I said, we have been taking advice as we have reached different stages of the process. We have been doing our best to meet all the concerns of the probity officer.

Senator BIRMINGHAM—Thank you. This is probably a neat time for me to draw a line under where I am going at present.

Senator PARRY—I am going to move to another area. You will have to answer these questions because there is no issue of probity surrounding them. Community cabinet: Minister, did you attend the Canning Vale meeting in WA?

Senator Conroy—Yes, I think I was there.

Senator PARRY—Did you attend the Narangba meeting in Queensland?

Senator Conroy—Yes, I think I have attended all three of the—

Senator PARRY—Did you attend the Penrith meeting in New South Wales?

Senator Conroy—I think I have attended all three.

Senator PARRY—How many staff went with you?

Senator Conroy—I think I took one personal staff to each of those and I think from the department Patricia was lucky enough to come along.

Ms Scott—I have attended two and an acting secretary attended one.

Senator Conroy—Abul, I think, attended one.

Senator PARRY—Do you know the total cost for your travel to community cabinet?

Senator Conroy—I am happy to take that on notice. I presume you want the departmental officials as well.

Senator PARRY—Yes, the total cost. Obviously, we are scrutinising the process.

Senator Conroy—I am happy to take that on notice and provide that information.

Senator PARRY—Departmental liaison officers allocated to ministers and parliamentary secretaries—

Senator Conroy—I have two.

Senator PARRY—Two, that is it?

Ms Scott—Just two.

Senator Conroy—Yes.

Senator PARRY—You indicated you have been in Bangkok since you have been a minister.

Senator Conroy—Yes.

Senator PARRY—How many overseas trips have you taken so far?

Senator Conroy—That was my first and only. We went to Bangkok. We were there two or three nights. We got in about midnight on the Wednesday night. I am not sure how you count half a night, but we had Wednesday, Thursday night and then we left Friday afternoon.

Senator PARRY—Knowing those sorts of trips, it would have been laborious and tiring.

Senator Conroy—Yes, but a very worthwhile trip. As I said, we had excellent bilateral meetings with Singapore, Hong Kong and Thailand and discussed at length broadband rollouts.

Senator PARRY—The number of staff who travelled with you?

Senator Conroy—I think I took one and the department would have had a range. When a minister travels, the international section does a lot of preparation.

Ms Scott—We were there for a meeting before the ministerial meeting and also for a series of discussions in working groups. I travelled at the same time as the minister, but we did have some officials there beforehand.

Senator Conroy—The meeting went for a full week and we attended the last couple of days.

Senator PARRY—Can we also have on notice the cost involved for the department, the number of staff and if you have a cost factor, that would be great.

Proceedings suspended from 12.59 pm to 2.02 pm

CHAIR—Thank you, everybody. We will resume proceedings.

Senator KEMP—I have some questions that arise from the questions on notice. I am rather unhappy with the responses that I have received in relation to a number of them. Senator Conroy, I know you could not use the excuse that your paperwork has been intense, but some of these questions have been filed extremely late. I was wondering, for example, on the issue of the list of grants that have been approved—I think they seem to have arrived in my office—

Senator Conroy—What number questions, Senator?

Senator KEMP—This is questions 132 and 185.

Senator Conroy—We will have them in just a moment, Senator Kemp. We have finished doing the research for Mr Billson, have we, to save him from reading the document?

Senator KEMP—We will be coming back—

Senator Conroy—We have saved him from reading the document? No? You have more research for him?

Senator BIRMINGHAM—I am sure we can come back to the issue, Minister. You would expect no less, I am sure.

Senator Conroy—Of course. I would be very disappointed. He could have just read the document himself. It would have saved you a lot of time.

Senator BIRMINGHAM—You could have come in here today willing to answer questions. Maybe we could have all been very enlightened. Sadly, that is not the case.

Senator Conroy—I am afraid Senator Minchin has set an excellent example which, like Senator Kemp, I am trying to live up to.

Senator KEMP—My memory was that you constantly attacked Senator Minchin over that issue, Senator Conroy. It is interesting to see a backdown so gracelessly delivered. How are we going on—

Senator Conroy—I think we have them.

Senator KEMP—My question without notice on a question on notice is causing trouble, is it?

Ms Scott—It is about television black spots?

Senator KEMP—Questions 132 and 138 refer to the list of grants which have been approved by the minister.

Senator Conroy—Questions 132 and 185 you said were combined.

Senator KEMP—I think I am right that this was actually sent to me on the 23rd of this month, is that correct? When was it filed?

Ms Scott—Let us have a look. We have 186 responses provided to the committee secretariat.

Senator Conroy—I think from recollection there were only two outstanding.

Ms Scott—I am just checking the date.

Senator KEMP—I think you will probably find there is a very big difference between the date it was given to the minister's office and the date that it was filed. I think you will find a significant gap there.

Ms Scott—I am just trying to see when we gave it to the secretariat.

Senator KEMP—I think more interesting is: when did you give it to the minister? As the secretary will—

Senator Conroy—When I asked that very question many, many times of you and your departments, you were particularly unbecoming, and the answer was: 'That is not revealed.'

Senator KEMP—I remember being relentlessly attacked by you over that issue.

Senator Conroy—I am modelling myself on your ability in the chair.

Senator KEMP—I think at the end of the day, I was—

Senator Conroy—I never wore you down.

Senator KEMP—not too unhappy about it, but I do not know what you have to hide. You are a new minister.

Senator Conroy—I was never able to wear you down, Senator.

Senator KEMP—I was minister for 10 years and I probably had a lot to hide, but you are only a new minister with nothing to hide.

Senator Conroy—I was never able to wear you down.

Senator KEMP—How defensive can one be?

Senator Conroy—I was never able to wear you down, Senator Kemp, so I am adopting the Kemp and Minchin approach.

Senator KEMP—How are we going?

Ms Scott—Senator, I understand what happened was we originally provided an answer to the committee and then it was updated with further information. That is one of the reasons it came to you relatively late in the piece. We did actually have 124 responses with the secretariat by 24 April, 44 responses to the secretariat on 2 May and then 10 responses to the secretariat on 16 May. The answer became more fulsome over time, I think, if that is the answer.

Senator KEMP—Are you sure? I was thinking it probably became—and I think you are pre-empting my next question—less fulsome.

Ms Scott—Let me check, Senator. That was added to. It became a longer answer.

Senator KEMP—I cannot believe that, Secretary. I respect your views greatly, but I simply cannot believe it became longer given the brevity of the answer.

Senator Conroy—There you are. It doubled in size, almost.

Senator KEMP—I am absolutely intrigued. When I ask for the grants which have been approved under a particular program, that would normally be answered: ‘A grant was made of \$3 million to the ACTU for the black spots program, a grant was made to the Transport Workers Union for such and such.’ You have not done that.

Senator Conroy—Institute of Public Affairs, *Quadrant*?

Senator KEMP—The Institute of Public Affairs or *Quadrant*, sure. What you have done there is to say two grants were made under particular programs. You do not think that is, putting it kindly, a little bit cute, do you?

Ms Scott—No, I do not think so, Senator. I actually have to say I have not reviewed this question before, but the Telecommunications Consumer Representation and Research Grants Program is the one that Mr Besgrove was talking about this morning, so he would be able to give you fuller information about that. I think maybe Dr Pelling can speak more fulsomely—

Senator KEMP—When you ask what grants have been given, you do not say, ‘The Australia Council made 400 grants,’ and leave it there. You actually say who the grants are to. For example, let me just ask you: as at 20 May, the minister for broadband, Senator Conroy, approved two grants totalling \$0.089 million plus GST under the Telecommunications Consumer Representation and Research Grants Program. Who were they made to?

Ms Scott—I will get Mr Besgrove to come forward and answer that. In the meantime, I will get Dr Pelling—

Senator KEMP—I can only assume that the minister must have corrected this, because it is outrageous the way that question was answered.

Ms Scott—I think we are expecting an answer to your question.

Dr Pelling—I can speak on the second of those two things, the two black spots programs.

Senator Conroy—Who can speak to the first one?

Ms Scott—Keith.

Dr Pelling—I will hand over to Keith, and then I’ll answer.

Mr Besgrove—Senator, as I understand it these are two research grants. One is to Monash University and one to La Trobe University. I do not have the full details with me, so we will have to take the detail on notice.

Senator KEMP—Thank you, Mr Besgrove, but to be quite frank this question has been on notice for about two months—

Mr Besgrove—Sorry, Senator—

Senator KEMP—and I have never heard, I have to say, of a question being answered in this fashion. Normally you answer the question and provide the details of who the grants are made to, not that two grants have been made under a particular program totalling a sum of money. Do you agree with that?

Mr Besgrove—Sorry, Senator; I have just been advised I have misled you. It was Griffith University, not Monash University.

Senator Conroy—I am sure that during the course of the afternoon we can obtain some more information—

Senator KEMP—I commend your honesty, but you get the point, Minister. We are trying to have a sensible discussion here.

Senator Conroy—I accept the point that you are making, Senator Kemp.

Senator KEMP—What you have done is not actually answer the question at all. You have just said—

Senator Conroy—We are happy to provide you, during the course of the afternoon, with more information.

Senator KEMP—I have been waiting for 2½ months for this. It was not a particularly onerous question.

Senator Conroy—What is your home address and we will make sure we post the answer on these ones to you.

Senator KEMP—Given the time that you take to answer, I am not sure I will be around still.

Senator Conroy—Will you be at the IPA office or the *Quadrant* office? Where would you like it forwarded?

Senator KEMP—Senator, I do not want you to make a trivial issue of something that I regard as quite unsatisfactory. Could we have the list of the actual grants made under the particular programs, which is what that question meant? It clearly meant that.

Senator Conroy—You have actually just expanded the question.

Senator KEMP—I have never heard of a question being answered—

Senator Conroy—You have just accidentally expanded the question.

Senator KEMP—I hope the answer to this is yes, because I would be depressed if this department—which I know very well and which is an excellent department—did this. Senator Conroy, did you fiddle this answer and make it—

Senator Conroy—Pardon?

Senator KEMP—Fiddle the answer; change the answer?

Senator Conroy—No.

Senator KEMP—It does not actually answer the question which is obviously—

Senator Conroy—Are you suggesting that I was desperate to hide from you the fact that we had given money to Griffith University?

Senator KEMP—No, but it does make me suspect that there may be other grants that you are desperate to hide, Senator. I am sure there are many grants—

Senator Conroy—Can I clarify what information you are seeking? You would like the names of the two grants—

Senator KEMP—I want the question answered properly. That is what I want.

Senator Conroy—No, you just changed the question.

CHAIR—Well, put the question properly, Senator Kemp.

Senator Conroy—There are the ones I have approved—

Senator KEMP—Sorry, but what was that, Madam Chair?

CHAIR—I said can you just put the question again—

Senator KEMP—The question is—

Senator Conroy—You just changed—

Senator KEMP—The question is: what grants have been made under the particular program?

Senator Conroy—By this minister? By me?

Senator KEMP—By this minister; that is what I just said.

Senator Conroy—As opposed to all of the grants under the program?

Senator KEMP—It was crystal clear what the question was, and I am concerned that it has been so poorly answered after me waiting so long, I have to say. Mr Ash, what can you tell us?

Mr Ash—I took over the position in the department around about five or six days ago. This was a question—

Senator KEMP—You are in the clear. You are absolutely in the clear; don't you worry about that.

Mr Ash—The original answer is what you have. The shorter version had been provided to the minister's office. They requested the information be updated from 18 February to the day before it was answered. As a consequence of that, the original answer—due to, I suppose, a clerical error inside the department—only went back to the black spots alternative technical solutions program for further clarity as to whether there had been any further grants under that program after that date. What we identified last Monday was that we had not gone back and specifically asked other programs whether they had made any grants between 18 February and 20 May, and that was adding those extra three grants.

Senator KEMP—Thank you, Mr Ash, and thank you for moving so promptly on the issue. But did it occur to anyone that what I was actually interested in—

Senator Conroy—Who knows what you are actually interested in.

Senator KEMP—The normal way of actually interpreting the question was to provide the recipients of the grants.

Senator WEBBER—All they do is to answer your question.

Senator KEMP—Senator Webber, I am asking the questions.

Senator Conroy—We are happy to provide the information as soon as we can this afternoon.

Senator KEMP—This will be, I understand, a continuing question on notice. Could that be done in the normal fashion? Now, let me—

Senator LUNDY—‘Continuing question on notice’? What is that?

Senator Conroy—We will get the information for you as soon as we can this afternoon, Senator Kemp.

Senator LUNDY—What is that? I want some of those.

Senator KEMP—What was that, Senator?

Senator LUNDY—I want these ‘continuing questions on notice’. If I had known that 12 years ago—

Senator KEMP—You would be a minister today.

Senator LUNDY—we could have had great fun.

Senator KEMP—You would have been a minister today.

Senator LUNDY—A continuing question on notice!

Senator KEMP—We have decided that—

Senator LUNDY—Sadly, you have to lodge them every time, Senator Kemp, as you well know.

Senator KEMP—That is one of those on the continuing list. There was a question as to what vacancies are currently outstanding under the minister’s portfolio. This has only been updated to 23 April, is that right? This is question 131. We may have covered this in some other discussions on the ABC in terms of the vacancies—

Senator Conroy—We had a discussion yesterday which—

Senator KEMP—Yes, I remember it well, Senator. What I would like is—

Ms Scott—Senator, I am sorry; what is your question?

Senator KEMP—I wondered what you were talking about over there. You were having a nice chat with the minister. I have a question on notice, No. 131, and the answer is for the situation as at 23 April. I wondered whether that list had changed since then.

Ms Scott—I do not think there have been any resignations since then.

Senator KEMP—Can you think of any further vacancies?

Senator Conroy—No. You understand these were vacancies that existed at that time.

Senator KEMP—Yes, sure. I understand that. That is why I have asked the question.

Senator Conroy—As we discussed last night, there is an upcoming vacancy in the ABC but—

Senator KEMP—How about, for example, in the Special Broadcasting Service, SBS?

Senator Conroy—There are currently two—

Dr Pelling—I can answer that, Senator. There are two vacancies in the SBS board.

Senator KEMP—Are they going to be appointed according to the Nolan-Conroy principles?

Senator Conroy—They are. That is why they continue to be outstanding, because we want—

Senator KEMP—They will be appointed by the—

Senator Conroy—The new process, yes.

Senator KEMP—Will the vacancy to Australia Post be filled under the Nolan-Conroy principles?

Senator Conroy—No. The Nolan principles will only apply to the ABC and SBS.

Senator KEMP—Why would you make a distinction between them?

Senator Conroy—Because the Prime Minister particularly was keen to ensure that the ongoing debate around the politicisation of the ABC, and SBS to a lesser degree, needed to be addressed by a specific and separate process. So we committed to deliver the Nolan style principles to those organisations.

Senator KEMP—So he is not worried about the Australia Post—

Senator Conroy—There has not been a lot of complaint. I do not think you or anybody else have accused us of stacking the Australia Post board with rampaging lefties.

Senator KEMP—No, we have not accused you of that, but we will wait and see, actually. I do not think you have had enough chance to fulfil that obligation. Have we got a full list—you may have given this to me—of the appointments made to date by the minister? This is called ‘Labor jobs for the boys’ job watch.

Senator Conroy—I think we have—

Senator KEMP—Have we done that?

Senator Conroy—As you can see, I have a huge amount of boards to appoint to.

Senator KEMP—Yes, I am surprised at the patronage. You normally like a bit of patronage.

Senator Conroy—I have enormous responsibilities in these areas—

Senator KEMP—I think that is because Mr Rudd seemed to remove a large whack of your responsibilities.

Senator Conroy—No, we always indicated that I looked after communications. Sport and arts were looked after by other people in opposition.

Senator KEMP—But what happened to IT?

Senator Conroy—The digital economy. I am afraid that if you do not understand the link between IT and the digital economy, I am happy to spend an afternoon—

Senator KEMP—Well, but all the same—

Senator Conroy—In fact, I may get my office to organise a briefing for you at some considerable length to explain the link between IT and the digital economy, Senator Kemp. In fact, Senator Lundy is offering to come and give you one right now.

Senator KEMP—I would far prefer to be briefed by someone who knew something about it, I have to say.

Senator Conroy—Senator Bernardi, I am trusting you have arrived because you have heard there was some bad language used yesterday.

Senator KEMP—Have we got an answer on this?

Senator BERNARDI—Senator Conroy, let us not start on that.

Senator Conroy—In fact, I understand that across the whole building—

Senator BERNARDI—Let us not start on that.

Senator Conroy—there has been some bad language being used. Senator Birmingham may need to apologise.

CHAIR—One at a time, Senators. Be mindful that Hansard is trying to transcribe this.

Senator Conroy—Senator Heffernan and Senator Birmingham have both profaned in the course of estimates.

Senator BERNARDI—Is that a can of worms you are opening?

CHAIR—Order! One at a time.

Senator Conroy—He did. He has confessed.

Senator BERNARDI—Are you opening a can of worms, Senator Conroy?

Senator Conroy—No, he has confessed.

Senator BERNARDI—Because I need to know.

CHAIR—Senator Kemp.

Senator Conroy—You love it.

Senator KEMP—Minister, if you could take it sort of slightly seriously. Could we have a list of the appointments that you have made to date?

Senator Conroy—I do not think we have actually—

Senator KEMP—This question has been on notice for three months.

Senator Conroy—I do not think we have actually made any appointments.

Senator KEMP—It has been on notice for three months. I cannot believe it.

Ms Scott—Senator, I have just checked with my officer and she says that we think we have answered the question you are asking.

Senator KEMP—I think I said that you may have answered it. I cannot lay my hands on it.

Ms Scott—We think it is 133. I am just checking whether there is any other question that you asked on this.

Senator KEMP—We just want to keep an eye on Senator Conroy, because we are not sure that he will be quite as assiduous on his appointments as the former minister was.

Ms Scott—Senator, I am not aware of another question you have asked on this, but I am happy to be corrected.

Senator KEMP—There will be again, Senator Lundy, a continuing question on notice about all of the appointments.

Senator Conroy—A continuing question on notice. Where would you like us to post it to? What is the forwarding address?

Senator KEMP—Just post them to the committee. Happily, I will not have to come here again.

Senator Conroy—What is your forwarding address? The Institute of Public Affairs?

Senator KEMP—Can I have a list of the election promises which are being administered by the department?

Senator Conroy—I think we have done that. I think someone else asked for that, so you may not have noticed that.

Senator KEMP—That could easily have happened, Senator. I cannot cover everything.

Senator PARRY—We could always have two.

Senator Conroy—Sorry?

Senator PARRY—It will not hurt to have a second one.

Senator Conroy—I think it is the same one. My point is that I think we have actually provided that information to you. It was not a Senator Kemp question. It was Senator Minchin, I think. The election commitments made by federal Labor, the great majority of which were accompanied by an estimate of cost, are on the public record. The administrative arrangements orders issued by the Governor-General on 3 December 2007 and 25 January 2008 list the matters dealt with by each department of state. That is in response to a question from Senator Minchin on this matter.

Senator PARRY—To you, Minister?

Senator KEMP—No. That was—

Senator Conroy—That was made on behalf of all. As I said, Senator Minchin asked these questions across the board and that was our answer.

Senator KEMP—Apparently Senator Conroy is not aware, but this has been a matter of significant debate in other committees, as you would expect, because no-one can work out why any government would want to keep secret the list of election promises that the particular departments are required to administer. I ask the secretary: has a list been made up?

Senator Conroy—Do you want me to read it out to you again? I will happily read it out to you again.

Senator PARRY—No, we do not need that.

Senator KEMP—We do not need that.

Senator Conroy—‘The Prime Minister, on behalf of all ministers, has provided the following answer to the honourable senator’s questions—’

Senator KEMP—Madam Chair, we are not interested in this.

Senator Conroy—‘The election commitments made by Federal Labor—’

Senator PARRY—This is just tirelessly repeating the question—

Senator Conroy—‘the great majority of which were accompanied by an estimate of costs, are on the public record.’

Senator KEMP—We are not the slightest bit interested. What I want to know is: has the department got a list?

Senator Conroy—‘The Administrative Arrangements Orders issued by the Governor-General on 3 December 2007 and 25 January 2008 list the matters dealt with by each Department of State.’

Senator KEMP—Has the department got a list of the election commitments it is required to administer? Senator Lundy asked me that exact question some years ago and a list was provided to her. I am fully aware that all departments have these lists and governments, of course, appropriately check—

Senator LUNDY—I do not think I got it after one round.

Senator KEMP—that their promises are being delivered.

Senator Conroy—I think the Prime Minister has authorised an answer.

Senator KEMP—Are you saying, Senator, that this list does not exist in your department?

Senator Conroy—No, I am saying that the Prime Minister has provided an answer.

Senator KEMP—No, that is not an answer.

Senator Conroy—That is the answer the Prime Minister has chosen—

Senator KEMP—Senator Faulkner established last night that all election promises are not all ALP policies.

CHAIR—Senator Kemp, the minister has answered—

Senator Conroy—That is the answer that the Prime Minister has chosen to give to your leader in the Senate.

Senator KEMP—Would you like to explain to us why you refused to provide some material that all other governments have been very happy to provide?

Senator Conroy—Do you want me to read it again?

Senator KEMP—Don’t be silly. I think this is just pathetic. This is not a joke, actually. What we have asked for is something that all governments—

Senator Conroy—And you have—

Senator KEMP—in the past have had—

Senator Conroy—And you have an answer.

Senator KEMP—and we have been prepared to provide. That is not an answer.

Senator Conroy—And we have given you an answer.

Senator KEMP—That is a total non-answer. I asked the secretary—

Senator Conroy—No—it is not an answer—

Senator KEMP—Oh, keep quiet.

Senator Conroy—It is not the answer that you want but it is the answer you are getting.

Senator KEMP—I asked the secretary: is there a list available of the election promises that this government requires the department to administer?

Senator Conroy—The Prime Minister has provided an answer to that question across the board and that is the answer. Whether you like the answer or not—

Senator KEMP—That is a complete non-answer.

Senator Conroy—It is the answer that the Prime Minister has given.

Senator KEMP—It is a complete non-answer.

Senator PARRY—Answer this then: are you a puppet minister or a real minister? Come on, answer that. Or do you have to get another instruction to answer that question? Senator Faulkner is next door. Go and ask him if you can answer that question.

Senator LUNDY—This is turning into a bit of a comedy—

Senator PARRY—It is true. This is a straightforward question. It is his department and he cannot answer what the election commitments are. Where is the list?

Senator Conroy—It is a straightforward answer.

Senator PARRY—No, it is not a straightforward answer.

CHAIR—The minister has given an answer. Can we move on, please? Have you got another question?

Senator KEMP—Madam Chair, this is actually quite an important question. All previous governments have been prepared to provide an answer to this question. In fact, as I said, I was pressed by Senator Lundy in a previous manifestation of mine to provide such a list, and indeed a list was provided. There was no argument about it.

CHAIR—Yes, you have made your point, Senator Kemp. The minister has answered. Can we move on?

Senator Conroy—Are you asking a question?

Senator KEMP—If you would kindly keep quiet.

Senator Conroy—Now, Senator Kemp!

Senator KEMP—What we want is an explanation—

Senator Conroy—Senator Kemp—

Senator KEMP—of why it is impossible for your department to provide to this committee—

Senator Conroy—You know you cannot speak to the chair like that.

Senator KEMP—Don't you worry about the chair; worry about providing proper answers to this committee.

Senator Conroy—You have an answer to the question.

Senator KEMP—It is not an answer.

Senator Conroy—It may not be to your satisfaction.

Senator KEMP—It is not an answer.

Senator Conroy—But you have an answer.

Senator KEMP—Can you as the minister provide an explanation as to why it is impossible for your department to provide a list, which all departments have and which in previous periods has been regarded as completely non-controversial?

Senator Conroy—The Prime Minister has provided an answer on behalf of the government to the questions that Senator Minchin has asked across the board and that is the answer that, whether you like the answer or not—

Senator KEMP—Madam Chair, I would like to adjourn. Can we have a private hearing?

Senator Conroy—Have a private hearing—knock yourselves out.

Senator KEMP—I think this is entirely unsatisfactory.

CHAIR—We will have a short suspension for a private hearing.

Proceedings suspended from 2.27 pm to 2.33 pm

CHAIR—We will now resume proceedings.

Senator KEMP—Madam Chair, as you know, the committee has requested that the minister produce this information which most of us—

CHAIR—Senator Kemp—

Senator KEMP—No, just let me finish.

CHAIR—Senator Kemp, you asked the minister—

Senator KEMP—Let me finish.

CHAIR—to provide that information.

Senator KEMP—The minister has been requested to produce the information which 99.9 per cent of people would think is a perfectly standard question for a Senate estimates committee and the government has refused to provide the information. I have to say that not all departments have, Senator Conroy. Some departments actually have produced a list without any big deal. But it is the strong view of the coalition senators on this committee that what we have seen is a complete abuse of the process by a government that has portrayed itself as open and transparent but refuses to provide a straightforward list about its election promises that are being administered by this department. I give notice that I and my

colleagues on this committee—I speak for them—will be pursuing this issue through all channels so that we can obtain information which is no big deal. It is an absolutely disgraceful abuse of process. Senator Lundy knows particularly well that when she requested similar information from the previous government at estimates committee hearings it was provided to her.

CHAIR—Thank you, Senator Kemp. Are there any further questions?

Senator PARRY—Minister, thank you for circulating, straight after lunch, the 15th Online and Communications Council communique. Who drafted the communique?

Senator Conroy—I think it is a consultative document drafted by officials of states, territories and the Commonwealth.

Senator PARRY—But who physically put it together?

Senator Conroy—I think it is physically put together by them. Just to explain the process to you, because it is the first time I have been through the process—it is then put up on a white screen and, quite literally, you go through each paragraph to approve it with all of the ministers and all of the advisers in the room, like this, and you amend it as you go.

Senator PARRY—So let me get this straight: all the ministers come together from around Australia, someone drafts this, it goes on to a white screen, you go through it line by line and you say, ‘Yes, we all agree.’ What happens if someone does not agree with a line? Is it removed?

Senator Conroy—Well there is ensuing discussion. Often there are suggested amendments. That is the point of putting it up so that people can suggest changes, additions and deletions. That is actually the process that we engaged in at this particular online council. It was my first. That may not be the way others have been done, but it was the way it was done at this one.

Senator PARRY—So this was put together prior to your coming together or during the course of the meeting?

Mr Lyons—The officials prepare initial drafts. The drafts get refined during the course of discussions to reflect those discussions, and then there are further opportunities before the communique is finalised to make sure that the participants agree on the wording.

Senator PARRY—So basically all of the Labor ministers have gone through this and said, ‘Yes, this sounds pretty good.’ It is not drafted from your office first, Minister?

Senator Conroy—No.

Senator PARRY—Not even a shell of a draft?

Senator Conroy—I defer to Mr Lyons, but I do not believe so.

Mr Lyons—No—the answer I gave was the correct answer.

Senator PARRY—Yes, but it did not clearly articulate exactly how it happens. Does someone start with a document somewhere?

Mr Lyons—The officials draft—

Senator PARRY—The officials from every single state department?

Mr Lyons—No, sorry—the secretariat of the online council, which is the Commonwealth department. That is a very preliminary draft that reflects the agenda and the papers that are on the agenda. Then the draft is refined during the course of discussions to make sure that it reflects those discussions.

Senator PARRY—Who adds to that?

Senator Conroy—The secretariat consult with all of the officials from all of the states and territories and the Commonwealth during the course of the meeting and put together a sort of preliminary communique—I do not know if that is the official word. Then it is put up on the screen, ticked off and where changes are necessary changes are made, whether they are additions, subtractions, deletions or amendments.

Senator PARRY—Are the changes by a simple majority or does it have to be by an absolute majority?

Senator Conroy—We did not need to vote. There was an outbreak of harmony.

Senator PARRY—Very good. So the outbreak of harmony also applied to the last paragraph on page 2 of the five pages, where it says—

The state and territory Ministers resolved to resolved to work together to examine options to leverage their future telecommunications procurements...

Senator Conroy—Sorry, Senator Parry. Could you read that out again?

Senator PARRY—Do you need to get a copy of this in front of you?

Senator Conroy—We are doing that just now.

Senator PARRY—I will pause until you get a copy and then you can read it through with me, Minister. So all state and territory ministers were in absolute harmony over the comments—

Senator Conroy—What page?

Senator PARRY—On page 2 of the five pages; the first line of the last paragraph states—

The state and territory Ministers resolved to resolved to work together to examine options to leverage their future telecommunications procurements...

Then it concludes at the end of that paragraph, over the page—

... a solution to be operated by a genuine wholesale provider that is separate from any retail service provider.

So there was complete harmony on that. It was not dictated by the Commonwealth to the states?

Senator Conroy—As you can see, the Commonwealth is not included in that paragraph. It says, ‘The state and territory Ministers ...’

Senator PARRY—So you did not agree with this then?

Senator Conroy—No, we—

Senator PARRY—Abstained?

Senator Conroy—This was something that was an initiative of the state and territory ministers and was agreed by them, and I made it clear that the Commonwealth could not join that process.

Senator PARRY—Under the heading ‘National Broadband Network’ on page 2, it states—Members welcomed and supported the Australian Government’s commitment of up to \$4.7 billion to implement the National Broadband Network, noting it is the largest commitment ever made by an Australian Government ...

Do they all just say this: ‘Oh, look, we really want to note, Minister, that this is the largest commitment ever made.’ It just seems like a draft document from your office praising the Australian government.

Senator Conroy—We have lost Senator Kemp, who has been involved in communicate processes previously—

Senator PARRY—What a shame.

Senator Conroy—He has attended ministerial councils. I am sure he would confirm to you the degree of harmony at these meetings that he has chaired.

Senator PARRY—It is overwhelming, is it?

Senator Conroy—Senator Kemp is known for his capacity to bring people together. I am sure that he was as successful as he has been at bringing the Victorian branch together—Ted Baillieu and himself. How are you enjoying your new factional bedfellow Mr Downer? Are you urging all the way behind him as well?

Senator BIRMINGHAM—We are all great friends and we can even be friendly with former Senator Schacht as well, Senator Conroy.

Senator Conroy—No doubt you are.

Senator PARRY—So you would have us believe, Minister, that you sit around, probably holding hands, looking at the big screen, saying that you love all of these paragraphs.

Senator Conroy—I think you have added a small bit of colour and movement in there, which I am sure most people will realise was not an accurate portrayal.

Senator PARRY—I will go back to some of the questions I had when we were interrupted by the lunch break. If I can go to freedom of information, Minister, has the department received any advice and, if so, what advice on how to respond to freedom of information requests?

Senator Conroy—In relation to?

Senator PARRY—Just in general as to how to respond to them.

Ms Scott—Senator, to the best of our recollection we have not received any further advice on this matter.

Senator PARRY—When you say ‘further’, that means you have received advice at some stage in the past?

Senator Conroy—From the previous government?

Senator PARRY—Yes.

Senator Conroy—Has there been any change or any advice since this government came to office? I will help you with the question, Senator Parry. I think that is what you are asking.

Senator PARRY—That is very good. It was not exactly what I was asking, but I am very happy for that addition.

Senator Conroy—I am happy to help you ask questions.

Senator PARRY—I will help you answer the questions too if you like. We will make this a two-way thing.

Ms Scott—Senator, it might be best if we take it on notice. To the best of my recollection, we have not received any written advice on this matter.

Senator PARRY—Have you received any complaints about how you handle the response to freedom of information requests?

Mr Markus—We are prepared to take that on notice, Senator. I am not aware of any complaints, certainly in recent years, but we will take that on notice and endeavour to find any that we are aware of.

Senator PARRY—Thank you. You may need to take the rest of these questions on notice, but it would be nice if you could answer some of them here. How many FOI requests has the department received since the new government has commenced?

Mr Markus—I would have to take that on notice. We keep statistics by financial year. I do not have those figures, but I can take it on notice.

Senator PARRY—We will not hold you to this, but could you indicate whether it has been hundreds or tens—or thousands, in fact?

Mr Markus—It would be a small number. It would be less than 10, I would say. Just by way of indication, we have received, in the financial year to the end of May, 23 requests in the department. So it is something like maybe half that number—something like that. But I will take that on notice.

Senator PARRY—So you would assume it is proportional to the total number for the year to date?

Mr Markus—Yes.

Senator PARRY—There has been no spike or peak or slump?

Mr Markus—I will have to have a look at the figures, but because it is a fairly small number it has not struck me as being—

Senator PARRY—Nothing out of the ordinary?

Mr Markus—Nothing out of the ordinary, no.

Senator PARRY—How many of these, to the best of your knowledge—and again take it on notice if you need to—have been granted or denied?

Mr Markus—I would have to take that on notice. Yes, I would have to take that particular figure on notice.

Senator PARRY—Have you a feel for whether more have been granted than denied?

Ms Scott—Some start out to be extremely broad and eventually get narrowed down. One or two have been withdrawn. People have not continued with their interest in the subject.

Senator PARRY—Could you provide a table, then, of those maybe, if it makes it easy for you. Are they allocated in date sequence so you would realise when the FOI was received, or the date of the original FOI?

Mr Markus—We can provide the information of the date of the request.

Senator PARRY—Date of request, and I am more interested probably in the date of the original request. I presume that would be contained within the documentation that is provided to you?

Ms Scott—If the proposal is narrowed down, that is often the case because people just do not have the last information—effectively everything on a topic. The clock stops while the matter is clarified. So I think—

Senator PARRY—But you would have an original date of the original request?

Ms Scott—Yes.

Senator PARRY—So in that case, do not bother breaking it down into post change of government. You can do it for the whole financial year, if you like, for all of those 23. It might make it easier for you to provide, providing the dates are there.

Ms Scott—I think to be accurate what we should do is indicate if the request changes, because that does change the whole nature of the process. I think that would be a reasonable clarification to provide.

Senator PARRY—Yes. I do not mind more detail, as long as we get the minimal amount. How many conclusive certificates have been issued in relation to the same freedom of information requests?

Ms Scott—The department has never issued a conclusive certificate.

Senator PARRY—And that has been the policy of the department from day one?

Senator Conroy—It is not the policy; it is just that we have not.

Ms Scott—The department has not issued a conclusive certificate.

Senator PARRY—Why is that?

Ms Scott—I guess the circumstances that have led other departments to issue conclusive certificates have not arisen in this case.

Senator PARRY—Okay. I want to go to media monitoring. Does your department monitor the media?

Ms Scott—I am happy to take that.

Senator Conroy—Yes, go for it.

Senator PARRY—That was a yes?

Ms Scott—We have a media monitoring contractual arrangement, and I will ask my colleague to join me—

Senator Conroy—Which we provide to the shadow minister—the clips.

Senator PARRY—Just the clips? Just newspaper clips? So the answer is yes, you do?

Ms Scott—We do. We have a contract at the moment with Media Monitors. It started out as a contract with Rehome, but they were acquired by Media Monitors.

Senator PARRY—What is monitored? What do you seek to be monitored?

Senator Conroy—We have not changed it since the new government took office.

Ms Scott—The only substantial change in the contractual arrangement since the new government was formed is that clearly we are no longer interested in sport and arts and so on. So the nature of the contract has changed because of the machinery of government functions.

Senator PARRY—Because the departments have changed, yes.

Senator Conroy—So we collect what was collected previously.

Ms Scott—Essentially. We are interested over time in seeing if there are some efficiencies to be gained in this area. At the moment we have under active review—effectively there are a number of words identified that Media Monitors searches for. We are just seeing if those words are still as current as they need to be.

Senator PARRY—So you have not expanded the type of media? It is contained within Australia? Do you have an international perspective?

Ms Scott—It is all Australian. We are interested in regional newspapers. At one stage, I think, during the course of the year we may have asked Media Monitors to ensure that they actually cover more of the regional newspapers, including some of the primary producer newspapers, like *The Land*.

Senator PARRY—What about the *Burnie Advocate*? Do you get the *Burnie Advocate*?

Ms Scott—We do. I am pleased to say that I have from time to time read interesting clips from the *Burnie Advocate*—

Senator PARRY—That is good. I will pass that on to the local paper.

Ms Scott—The *Wagga Wagga Advertiser*.

Senator Conroy—We have your original comments supporting that hospital closure.

Senator PARRY—That is right. That would not come to this department, though, Minister.

Senator Conroy—No, maybe it did not.

Senator PARRY—With the media monitoring, apart from the external, do you do any internal monitoring?

Ms Scott—Not monitoring, no, but we do have two officers who particularly assist me and the executive. I would like to thank the minister's office in summarising what can be a very fulsome report. We have two junior officers who help out on that. They are available to provide me and the executive with a summary first thing in the morning.

Senator PARRY—And that is two officers—departmental.

Ms Scott—Yes.

Senator PARRY—Minister, what about your office? Do you have media monitoring in your office?

Senator Conroy—No, I do not think we—

Senator PARRY—You are reliant on the department?

Senator Conroy—The department and I think the Senate clips, which you would see come around as well.

Senator PARRY—Yes, the standard clips.

Senator Conroy—If there is any difference to what I have just said we will get back to you, but I do not believe that is the case.

Ms Scott—My colleague has corrected me. I should have said 2.2 officers.

Senator PARRY—It has grown. You said ‘junior’. What are the APS classifications?

Ms Scott—An APS6, an EL1 and the 0.2 is also an APS6.

Senator PARRY—Thank you. I will leave those questions there for the time.

CHAIR—Senator Birmingham.

Senator BIRMINGHAM—Back to me and back, if we can, Minister, to see what little bits of detail you are willing to share with us on the NBN process. I am sure it will be another enlightening session for us all. How committed is the government to ensuring some form of separation between the wholesale and retail operations of the future owner-operator of the NBN?

Senator Conroy—Senator Birmingham, even though this is not your specific portfolio area and I appreciate that you are doing this on behalf of others, I am sure you would recognise that that question falls specifically into the commercial negotiations into the future and falls within the scope of my opening statement. I am happy to take that on notice, and if there is anything further we wish to add to the opening statement we will get back to you.

Senator BIRMINGHAM—I posed the question because the RFP does appear to be quite open in terms of what may be accepted in regard to structural separation and leaves open all manner of possibilities, which are quite concerning. Does the government have a preference for a strengthened form of operational separation, or functional separation, or actual structural separation?

Senator Conroy—Let me be clear: I am sure you are aware that that question specifically, once again, goes to the live commercial negotiations that will take place. I am sure you are not actually deliberately trying to undermine the national broadband network project, but that falls specifically within the realm of my opening statement. So I will take that on notice and if there is anything further I wish to add, other than the opening statement, we will get back to you.

Senator BIRMINGHAM—Who did you consult, then? Did the department consult with regard to the sections within the RFP relating to structural separation?

Senator Conroy—We sought public comments on what should be contained within the RFP. We put out a press release calling for views on what should be contained within the RFP, so we were very open.

Senator BIRMINGHAM—We know we will not be seeing any more press releases from you on the NBN for another six months or so, Minister. Did you consult specifically with regard to the wording in the RFP relating to structural separation—

Senator Conroy—The wording, did you say?

Senator BIRMINGHAM—That is right. Did you consult outside of the department on the exact wording within the RFP?

Senator Conroy—My hopes went up with your first question because it was clear that Mr Billson had read at least one part of the RFP, but my heart has plummeted because you are now asking about sections that do not exist in the RFP. There is no section to do with structural separation in the RFP. We are happy to table the RFP. We are happy to post or email a copy to Mr Billson and you, but you are asking questions about something that does not exist.

Senator BIRMINGHAM—Perhaps I could read from page 9 of the RFP. It states:

If a Proponent proposes to supply both wholesale and retail services it should demonstrate what structural measures or models it proposes be put in place and maintained to prevent inappropriate self-preferential treatment and ensure that effective open access is achieved on the terms required by the Commonwealth.

Senator Conroy—Yes, the word ‘separation’ does not appear there.

Senator BIRMINGHAM—I think you are picking—

Senator Conroy—I am being very specific.

Senator BIRMINGHAM—So, in fact, you are saying that structural separation is not an option there?

Senator Conroy—No, now you are asking me to speculate on the words within—you have accurately read the words out, and I pointed out that you inaccurately quoted them before you read them out.

Senator BIRMINGHAM—I think the words very clearly indicate that it relates to the structure that is put in place.

Senator Conroy—That is your interpretation and, as I have said to you, we are not going to engage in interpretation and speculation. We are happy to read out the rest of the RFP to you. I am happy to read out sections of the RFP to you, but we are certainly not going to engage in your interpretations and what I think of your interpretations or what you think of my interpretations because that goes to a direct undermining of the process of the—

Senator BIRMINGHAM—You are already engaging in interpretations at this stage. You seem to be picking and choosing a little bit today when it comes to your answering of questions.

Senator Conroy—While I accept I may not have been 100 per cent perfect, I would say I have been doing my best to be that.

Senator PARRY—Can we take a vote on that over here?

Senator Conroy—Welcome, Senator Eggleston. We have missed you.

Senator PARRY—We will hold up cards in a minute.

Senator BIRMINGHAM—With regard to the quote that I just read—and, like you, I am happy to read it again—from page 9 of the RFP, on the wording surrounding that quote did you consult—

Senator Conroy—You, like all of the potential bidders, are all pondering what is in the government's mind on that.

Senator BIRMINGHAM—Perhaps if you could allow me to finish the question—

Senator Conroy—And Senator Minchin has made clear he did not believe that people should engage in this because there could be inadvertent lapses and slips.

Senator KEMP—When did you become such an admirer of Senator Minchin?

Senator Conroy—I know you are feeling jealous and slighted now, Senator Kemp, because I have professed many times to be trying to emulate your abilities as a minister.

Senator KEMP—Have you told Nick Minchin this?

Senator Conroy—I have to confess I think Senator Minchin did an excellent job.

Senator KEMP—I have never heard so much praise from Senator Conroy.

Senator BIRMINGHAM—We all love Senator Minchin here—

Senator Conroy—And you particularly, Senator Birmingham. In fact, I will now quote that one back to you.

Senator BIRMINGHAM—What I would like to turn to, if you will allow me, is the question I was asking before you interrupted and gave us another of your long-winded spiels on why you are not saying anything today. With regard to the quote that I recited from page 9 of the RFP—which I am happy to read again if you need—was there consultation with anybody external to the department about the wording within that section?

Senator Conroy—Sorry, could you just repeat that? I am not sure I understand your question.

Senator BIRMINGHAM—Did you consult with anybody else outside of the department about the exact wording in the quote that I read?

Senator Conroy—I confess I did read *Communications Day* on 29 April this year, where Mr Billson was quoted as saying that he wanted to ensure the final network is structurally separated and will not remonopolise the telecommunications industry. Is that the coalition's position?

Senator BIRMINGHAM—I am trying to ascertain your position. I am trying to ascertain at least the very basic process that you went through—

Senator Conroy—No, you are asking me if I consulted and I am saying—

Senator BIRMINGHAM—before releasing this RFP.

Senator Conroy—I did read this section in *Communications Day* about Mr Billson, where he stated—

Senator BIRMINGHAM—I am pleased that you have had time to read *Communications Day*. It seems that you have not had time to address a whole range of other things that we have been discussing in this committee over the last day and a half.

Senator Conroy—No, I am reading Mr Billson, where he says that he wants to ‘ensure the final network is structurally separated and will not remonopolise the telco industry’, which goes to the heart of your question. You are asking me who I consulted. I am telling you that one of the things that I looked at was Mr Billson’s comments on 29 April 2008.

Senator BIRMINGHAM—Perhaps if you spend less time reading *Communications Day* and more time introducing the Nolan principles or introducing antisiphoning principles you might be making progress in other areas of your portfolio.

Senator Conroy—Is that your official position? Can I just confirm that? Is that the official coalition position?

Senator BIRMINGHAM—I am not here to answer questions; you are here to answer questions. You clearly have forgotten that today, and that has been on display all day long. Did you consult the Minister for Finance and Deregulation about the quote that I read out earlier from page 9 of the RFP?

Senator Conroy—I think we earlier indicated that on the RFP as a whole, which includes the section you are talking about, we did consult with cabinet colleagues. I think I have already said that earlier in the day. Maybe Senator Kemp asked me about that and you might not have been in the room.

Senator BIRMINGHAM—The RFP was approved by cabinet?

Senator Conroy—I think it went to what we call the central agencies.

Senator PARRY—Senator Faulkner?

Senator Conroy—No, Senator Faulkner is not a member of the central agencies, but we did consult with a range of people. We also took advice from the previous government’s position on structural separation and your expert task force appointed last year. We looked at this and, notwithstanding Mr Billson’s comments about wanting to ensure structural separation, paragraph 28 of the task force’s September 2007 report stated:

The proposed final Guidelines do not therefore express a preference for a vertically-integrated model or one that structurally-separates wholesale and retail operations.

That was your expert’s task force that you appointed. The position your government had and the position Mr Billson had are very different. You might want to clarify that for us. But these are things that we looked at in considering all of the views that were put to us. Just to repeat: we did circulate it to cabinet colleagues and particularly what are referred to as central agencies, which include the Minister for Finance and Deregulation.

Senator BIRMINGHAM—I am very pleased to hear that before you disbanded one expert task force to establish a new expert task force—

Senator Conroy—No, we actually had some experts on our task force.

Senator BIRMINGHAM—you at least did not throw out the work of the previous one; you have considered it. That is pleasing to hear.

Senator Conroy—No, we just considered it. Your former government made it quite clear they did not want to express a preference for vertical versus structural separation, but Mr Billson seems to have taken a leap to the position that he wants to ensure the final network is structurally separated and will not remonopolise the telco industry.

Senator BIRMINGHAM—In the wide range of documents you have considered in relation to this—and the wide range of cabinet colleagues or key departments that you consulted and so on—was one of the documents you considered the ‘Reforming Telstra’ paper written by Mr Tanner as shadow minister for communications and published in May 2002?

Senator Conroy—I think if you are going to quote old papers, I have a couple of newer ones than that. I have Billson on 29 April this year and your expert task force in September last year—

Senator BIRMINGHAM—But Mr Billson is not the minister for finance, nor the minister for communications.

Senator Conroy—No. We did consult, as I said, Mr Tanner.

Senator BIRMINGHAM—Did you consider, or consult, or look at his words from that document?

Senator Conroy—We actually spoke directly to him, as in we asked him for his comments on the RFP as a whole, including that section.

Senator BIRMINGHAM—So Mr Tanner did not express any concern about the content of the RFP or the wording of that section on page 9?

Senator Conroy—I am sure you would not expect me to reveal confidential discussions between cabinet colleagues.

Senator BIRMINGHAM—Certainly Mr Tanner’s past paper indicates that Telstra ‘should not be allowed to completely dominate the market to the extent that anticompetitive outcomes occur’. It goes on to say, ‘Any sensible discussion of Telstra’s future must consider the possibility of full structural separation ...’

Senator Conroy—I appreciate—

Senator KEMP—What is the government’s position?

Senator Conroy—I appreciate that Mr Billson has apparently now taken a new position on behalf of the coalition, as opposed to the position that was held for 11½ years by the coalition on structural separation where you rejected it outright. But I appreciate that Mr Billson has now taken a new position. I am not sure if you have confirmed that you agree with it—or is Dr Nelson waiting for Mr Turnbull or perhaps Mr Downer on the front bench again?

Senator BIRMINGHAM—Minister, you are here as the minister. You are the one setting communications policy now and for hopefully only the next couple of years at most.

Senator Conroy—As I said, we consulted Mr Tanner and other—

Senator PARRY—Only a couple of months after this.

Senator Conroy—colleagues and the RFP stands as is written.

Senator BIRMINGHAM—Minister, last month at the Sydney Institute, before you applied your self-imposed gag on yourself—

Senator Conroy—Very good.

Senator BIRMINGHAM—you stated that the government was ‘prepared to carefully look at structural arrangements similar to those adopted in countries such as the UK, New Zealand and Singapore’. Do you stand by those remarks?

Senator Conroy—You have correctly, I believe, quoted from my speech but, as I said, we have now moved into a new phase of the national broadband network project. As I indicated at the beginning of estimates, I will not be commenting on that. If I have any further comments other than my opening statement, I will take it on notice and I will get back to you.

Senator BIRMINGHAM—Again, Minister, it is simply a case of confirming whether you stand by statements you have made which you refuse to do.

Senator Conroy—You have accurately, I believe, read out my speech. But, in terms of what you are seeking to do now, you are seeking to create an interpretation of them. As I said, I am not going to be debating or interpreting your words or my words because we have reached a new phase in the project and that requires me to restrain—as hard as it would be for Senator Kemp or me to restrain ourselves—from commenting on any matter. We are both working hard at it.

Senator BIRMINGHAM—One of you is working hard at it.

Senator Conroy—True. He is not. I think he is definitely not.

Senator BIRMINGHAM—Minister, have you consulted your state Labor government peers on the issue of structural separation?

Senator Conroy—They were able to put their views through the process. They may have expressed some views via the Senate committee inquiry into the original broadband bill, and they raised some views at the online council meeting. As I said, they were not views that I expressed a position on. We continue to take the view that, as we have reached a new phase in the project, it would be inappropriate, as Senator Minchin described, to risk disrupting or damaging the process or to risk inadvertent comment in the estimates process that may affect the commercial process and outcome.

Senator BIRMINGHAM—I note again the government of Western Australia, which I quoted before the lunch break, has a strong view on this issue and has stated: ‘The state government is of the view that the most effective way to achieve a truly competitive telecommunications market in Australia is structural separation so that the infrastructure is owned and operated by a separate company that earns its revenue from selling capacity and services to as many different service providers as possible.’

Senator Conroy—The Western Australian government has a unity ticket with Mr Billson.

Senator BIRMINGHAM—Does the Western Australian government have a unity ticket with the federal government?

Senator Conroy—It seems that Mr Billson has adopted the Western Australian government's position.

Senator KEMP—I thought the blame game was to end with the Rudd government and now you are attacking the Western Australian government, claiming that they are aligned with the Liberal Party.

Senator Conroy—No. There is no blame here. I am just noting the fact that Mr Billson said that he wants to ensure that the final network is separated and will not re-monopolise the telco industry, and that seems consistent with Western Australia. As I said, when the discussion arose at the online council I made it clear that the federal government could not comment on any of these matters. I continue to stand by my opening statement and I will take that on notice, and if there is anything further that I can add I will get back to you.

Senator BIRMINGHAM—Given, Minister, that you have given yourself carte blanche to effectively rewrite the RFP as this process is undertaken, will you consider updating and strengthening the—

Senator LUNDY—That is a very irresponsible thing to say.

Senator BIRMINGHAM—Sorry, Senator Lundy?

Senator LUNDY—That is a very irresponsible thing to say. How can you think you can just state things like that on the public record and get away with it?

Senator BIRMINGHAM—Because, Senator Lundy, that is a fact. There are ample opportunities where the government has reserved its right to change the RFP—

Senator LUNDY—Yes.

Senator BIRMINGHAM—throughout this process.

Senator LUNDY—And you know of that actually occurring, do you?

Senator BIRMINGHAM—Unfortunately the minister will not answer any questions today, Senator Lundy.

Senator LUNDY—But it is not a stated fact.

Senator BIRMINGHAM—It is a fact that the government has given itself carte blanche—

Senator LUNDY—Yes.

Senator BIRMINGHAM—to change the RFP.

Senator LUNDY—But it is not an established fact that it has occurred and you just stated it as though it were an established fact.

Senator BIRMINGHAM—It is an established fact they have given themselves that capacity.

Senator LUNDY—Thank you for the clarification.

Senator PARRY—That is what he said in the first place.

Senator BIRMINGHAM—There is no clarification, Senator Lundy.

CHAIR—Senator Birmingham, continue with your questions.

Senator BIRMINGHAM—Minister, given that fact, will the government consider updating the RFP to reflect the very strong preferences of your state Labor colleagues?

Senator Conroy—Embarrassing.

Senator BIRMINGHAM—There is only one major embarrassment out of today, Minister, on the record.

Senator Conroy—As Senator Minchin again said, the estimates process should not—should not—be used to do anything to disrupt or damage the process underway. All you have engaged in today, along with your colleague Mr Billson, which is going to be embarrassingly exposed in a moment, is seek to do just that, and inaccurately and incorrectly. You are asking me questions specifically that go to the core decision-making process of the national broadband network. I started out giving you the benefit of the doubt, thinking that, no, you were not deliberately trying to do it, but it has reached a point now, especially given commentary that has now been made, tragically inaccurately, that you are actually intent on, to borrow Senator Minchin's words, disrupting and damaging the process. You can reflect upon that. We will not be engaging in commentary on the RFP. We are happy to read it to you. We are happy to table it. We are happy to read it out to you. You can take any interpretation you wish from that. You can even make embarrassingly inaccurate media releases if you want, but we will not be. So I am happy to take that on notice and, if there is anything further than what is in the opening statement that we would like to add, we will get back to you.

Senator BIRMINGHAM—Minister, thank you once again for stating what you have been stating ad nauseam today. As we have already made very clear, we reject your contention that this is comparable somehow to the Telstra process and to the position Senator Minchin took in that regard. The Telstra process was a public float governed by ASIC laws, governed by laws of the ASX, governed by the rules around the ASX—

Senator Conroy—It was a commercial project.

Senator BIRMINGHAM—and was indeed governed by a range of factors that this is not governed by. You as a government have given yourselves—

Senator Conroy—This is a more serious one.

Senator BIRMINGHAM—This is more serious.

Senator Conroy—Senator Minchin refused to comment on things like a scoping study. How did that affect the share price? He actually banned questions on the scoping study.

Senator PARRY—But he answered a lot more questions than you have.

Senator Conroy—A scoping study.

Senator BIRMINGHAM—You have refused to answer essentially any question in any territory today. You are hiding behind this shield, and you are doing so clearly to avoid scrutiny of the details of where the government is going with this project. Yet, when you have given yourself all the opportunity in the world to actually change the RFP as you go along, and when you are still making up the policy that will actually set the framework for the building of this national broadband network, it is quite amazing that you have shut down any discussion around that policy development stage, around any of those activities, and you are

trying to claim that the same ASIC laws, the same ASX provisions, that might apply to a public float are applying to the probity issues around your broadband tender.

Senator Conroy—I am not sure that was actually a question, but I am happy to respond. I think Senator Parry started off at the beginning of the day slightly tongue in cheek saying he was hoping that you could draw some inadvertent comments out, and I accepted that is part of the process. But I have to say that on reflection now over a long period of questioning, including looking at media releases that have been put out, you are not actually attempting to draw inadvertent comments; you are now doing anything you can to disrupt or damage the NBN process, as is evidenced by Mr Billson's embarrassingly inaccurate and frankly wrong press releases, which we will come to. As I said, we are happy to engage in conversations and discussions, but Senator Parry suggested, somewhat tongue in cheek and in good humour, that the whole process was about drawing out inadvertent comments. You are now well beyond that.

Senator PARRY—Not the whole process; in part.

Senator Conroy—As I said, I am not being pejorative, Senator Parry. I am saying that in good humour and semi-tongue-in-cheek you were saying that is the purpose of this, and I took you at your word.

Senator PARRY—In part—

Senator Conroy—You are now being led down an entirely different path, Senator Birmingham.

Senator BIRMINGHAM—Minister, I reject outright the slurs you are trying to make in this matter. Unfortunately, if you had actually attempted to answer some questions, perhaps we might have gone down a different path today. Regrettably, you have stonewalled all day long. You have tried to hide behind probity issues to avoid dealing with anything related to this process.

Senator Conroy—No, I have hidden behind mainly—

Senator BIRMINGHAM—And that has led us to the fact that every question has been ruled out, rather than a process where perhaps if you had been reasonable today and addressed reasonable questions you could have indeed indicated that others perhaps did cross the line and that would have happily been accepted.

CHAIR—Thank you, Senator Birmingham. Senator Lundy has a question.

Senator LUNDY—I do. I think the coalition has been completely exposed as trying to disrupt this process because my question is this, and I ask the department this: shadow minister Billson has just put out a press release stating the following: 'Media reports suggest that the Tasmanian Labor Government has lodged a \$5 million bond to put it in a position to bid for the National Broadband Network. The Tasmanian government's focus is reportedly broadband services to, and within, the island, a subnational approach which is at odds with the official RFP documents and would amount to a non-complying bid.' I ask the department if that is in fact the case? Or is it the case that Mr Billson has once again got it wrong and is seeking to disrupt the process? It is obviously a tactic that these coalition senators are now running a mile from this afternoon.

Senator BIRMINGHAM—Nice try, Senator Lundy, but you—

Senator LUNDY—You are running a mile from it because your shadow minister has just put out something proving that he has not read the RFP, and you are looking pretty foolish right now. Could the department please answer my question?

Ms Scott—In keeping with our earlier stance, there is a section in the RFP on part proposals. It is section 9.3.1 and I will ask Mr Mason to read the section.

Mr Mason—I will read from the RFP. Section 9.3 deals with part proposals, as the secretary has indicated. Section 9.3.1 states:

The Commonwealth may consider stand-alone State or Territory-based Proposals where any such Proposal is assessed as assisting the Commonwealth to achieve an outcome which best satisfies the Commonwealth's stated evaluation criteria including its overall NBN Project objectives.

Such Proposals:

1. should provide sufficient information to satisfy the schedule of required information;
2. must meet the conditions for participation specified in clause 10.9, and;
3. should identify how any stand-alone State or Territory-based solution will contribute to meeting the Commonwealth's objective of achieving coverage of 98 per cent of Australian homes and businesses.

Clause 9.3.2 continues:

Failure to provide the information requested in clause 9.3.1.1 and 9.3.1.3 may result in the Commonwealth not considering the State or Territory-based Proposal. Failure to comply with the requirements of clause 9.3.1.2 will result in these Proposals not being further considered.

Clause 9.3.3 goes on to add:

If a Proponent wishes to submit a Proposal for more than one State or Territory, the Proponent needs to submit a Proposal for all States and Territories. Proponents may only lodge one Proposal, except where a Proponent lodges a separate Proposal as a member of a consortium. Failure to comply with this requirement will lead to a Proposal being excluded from further consideration.

They are the relevant clauses.

Senator LUNDY—Thank you, Mr Mason. That answers the question. I throw it over now to coalition senators. Obviously, the shadow minister has completely fouled it up. You are sitting there with egg on your face. Now let us see if you can fix it.

Senator BERNARDI—If you have nothing else to add, hand it back to the Chair.

Senator BIRMINGHAM—Embarrassingly, you tried to get the department to reveal who one of the bidders was, Senator Lundy. Not surprisingly, of course, they declined.

Senator LUNDY—Excuse me, I am reading Billson's press release.

Senator BIRMINGHAM—No, but I heard your question and you can check the *Hansard* later to see that in fact you were asking who the bidders were.

Senator Conroy—Keep covering for him as best you can.

CHAIR—Order!

Senator BIRMINGHAM—Minister, we discussed earlier meetings between you and prospective bidders. You indicated that your meeting on, I think, 9 May—without going back to those notes—with the TERRiA consortium was cancelled on the basis of probity advice. Did you meet with any prospective bidders between 11 April, when the RFP was released, and 9 May?

Senator Conroy—With prospective bidders I probably had a range of meetings—I am happy to take that on notice—but not to discuss the RFP. I will take that on notice and get back to you. I will just have to check my diary on who I did meet, but I would say that I probably did meet a couple.

Senator BIRMINGHAM—I recognise that you probably may have met with representatives of the companies, as we discussed earlier, but I would be eager to know if you met with any companies to have discussions in any way, shape or form related to the RFP between 11 April and the advice on probity that you said you received a day or two before 9 May.

Senator Conroy—I will take it on notice and get back to you.

Senator BIRMINGHAM—Thank you. On what date did you give the Sydney Institute speech that was referred to earlier?

Senator Conroy—That is an example where I did have discussions with a room full of people where I was asked questions. What was the date? I am sure you have got it there.

Senator BIRMINGHAM—I actually confess that I have quotes of it and I recall it being recent, and I am sure it was post 11 April.

Senator Conroy—I think it was relatively recent.

Senator BIRMINGHAM—It was after the release of the RFP.

Senator Conroy—Yes, I think the point you are making is that it was after the RFP was released. For instance, there was a dinner after the Sydney Institute where representatives from Telstra, Optus and a number of other potential bidders, I think, were present. There were lengthy discussions around many of these issues, but at all stages whenever the questions were put to me I indicated I could not answer specific questions.

There were discussions that went beyond what I could contribute to, and I made the point that my probity advice was such that there were some things I could not respond to. I am sure the people at the dinner understood. There was a discussion in front of me—there were 30 people in the room—of the issues that revolved around the structure of the industry and people's thoughts about what the industry should look at. Yes, there was that discussion, but I did not entertain them.

Senator BIRMINGHAM—Did you seek probity advice before giving the speech and taking the questions and answers subsequent to that speech?

Senator Conroy—As I said, I have been very conscious of the probity advice. Whenever I was asked specifically about some of these specific areas, I indicated I was not able to give any commentary. As I said, as the process has moved on I have been saying less and less and now I am not going to be giving any speeches or doing any interviews or press conferences on

these issues since we have got to this point. But have I been in rooms where discussions have taken place on some of these issues? Yes, but I have indicated that I cannot give my views on them on a number of occasions.

Senator BIRMINGHAM—How was it appropriate for you to make the comments you did relating to structural separation and the comparison with the UK, New Zealand and Singapore models at the Sydney Institute speech, and yet it becomes inappropriate later on for you to make such comments? The RFP was already out at that stage.

Senator Conroy—I appreciate that your questions were written prior to the opening statement this morning, but I think we have canvassed this. We have moved to a new stage of the process and to ensure that there is no suggestion that I am passing commentary or giving favoured advice to one potential bidder or another potential bidder, I am accepting the advice—and I am probably accepting it more stringently than the actual advice is but I am erring on the side of caution. As I said, I am drawing on Senator Minchin more than the probity advice. Let us be clear about this: I read out Senator Minchin's comments about the dangers of making inadvertent comments or allowing the estimates processes to be used to do anything to disrupt or damage the process that was underway. I am drawing more from Senator Minchin than the probity advice.

Senator BIRMINGHAM—I do not know if you are running away from how extensive the probity advice is, Minister. We went through this earlier today and you refused to release the probity advice. Now you are telling us you are drawing more from Senator Minchin's words as your cover than, in fact, the probity advice you may have been given.

Senator Conroy—I think you are seeking to put words in my mouth, Senator Birmingham. My opening statement is on the record. It is available. I can read it again if you like. Senator Minchin gave wise counsel. I did not agree with it at the time. I argued about it, but ultimately I had to accept it.

Senator BIRMINGHAM—You have been on the road to Damascus.

Senator Conroy—Ultimately I had to accept it because Senator Minchin enforced it vigorously. I have looked at the situation in Senate estimates where I was likely to get a whole range of probing questions that would go beyond what would allow bidders to feel confident that I was not giving advice that could impact on the integrity of the process. I took a decision that I would follow the precedent set by Senator Minchin.

Senator KEMP—Have you had a chance to apologise to him for your behaviour at the time?

Senator Conroy—I think I challenged Senator Minchin at the time.

Senator KEMP—Yes.

Senator Conroy—I think you defended Senator Minchin at the time.

Senator KEMP—Absolutely.

Senator Conroy—You are now challenging me. Have you had a chance to apologise for your behaviour?

Senator KEMP—I am just trying to help you, Senator Conroy. You know my sole remaining task is to try to help you.

Senator Conroy—I have sought to emulate your capacity as a minister and I know you are feeling a little jilted now because I have adopted Senator Minchin in this particular estimates. I do not want you to be jealous, Senator Kemp. You are my overarching guide.

Senator KEMP—I am delighted to hear that.

Senator BIRMINGHAM—What does your probity advice provided by the AGS actually say in terms of restricting comments, Minister?

Senator Conroy—Now you are asking me to release advice which is not done by any government at any stage.

Senator BIRMINGHAM—Minister, I think you at least went to the extent of taking on notice earlier today releasing that advice, since then, though, you seem to have just made the statement before that you are relying more on Senator Minchin's words than you are on the probity advice.

Senator Conroy—I am relying, in terms of the opening statement, on how to deal with estimates with Senator Minchin's counsel and the precedent that he established.

Senator KEMP—Under different parameters.

Senator BIRMINGHAM—Are you relying on the probity advice today at all really or are you simply relying on politically convenient coverage?

Senator Conroy—A combination, as I have said.

Senator KEMP—Very convenient.

Senator Conroy—Are you suggesting Senator Minchin was being politically convenient previously?

Senator BIRMINGHAM—I am suggesting that you are finding an example of a different set of circumstances and managing to apply them yourself in what is a convenient way for yourself, Minister.

Senator Conroy—Sorry, the Sydney Institute speech was 6 May.

Senator BIRMINGHAM—Thank you. Let us return to that for a moment. The probity advice preventing you from meeting with Optus and the Terria group and the G9 consortium, which provided a day or two before 9 May—

Senator Conroy—No, to discuss the NBN project. I said I have ongoing meetings with potential bidders to discuss other matters.

Senator BIRMINGHAM—You took questions that went to the heart of the NBN process at the Sydney Institute forum.

Senator Conroy—I am not trying to suggest or play a game around the Sydney Institute. I want to be clear: matters came up which I indicated I could not respond to. They came up in a forum that is usually described as closed, but there were potential bidders in the room. I indicated quite clearly I could not comment on some matters.

Senator BIRMINGHAM—You were happy to comment and take questions on issues like structural separation.

Senator Conroy—No. I was happy to reiterate points I had made before, prior to the bonds being lodged. Now, as I have clearly said over and over again, we have moved to a new phase.

Senator BIRMINGHAM—What was the changing phase between 6 May and 9 May?

Senator Conroy—No, 6 May was the—

Senator BIRMINGHAM—You said the Sydney Institute.

Senator Conroy—I do not want you to misunderstand, Senator Birmingham. I know you are trying to be helpful. I am not trying to suggest that there were not circumstances where I was not in a room one way or the other with a whole range—like I am sure you do—of business meetings, a range of boardroom lunches and boardroom dinners where, over the last six months, this has been a serious topic. Progressively, as we have moved through the process, I have had to confine myself as to what I can say about the process. The most simple question I get asked quite regularly at lunches and dinners is, ‘What rate of return are you going to accept? Will you structurally separate or not?’ For months now I have said those go to the heart of the negotiating position of the Commonwealth and I am not in a position—this goes back long before I received probity advice. My standard answer has been, ‘These are matters which I am sure you will understand are subject to future negotiations and you would not expect the Commonwealth to reveal its negotiating position prior to the commencement of a negotiation.’ That has been my response for some time.

As we have got closer and closer to key dates—and a key date I am defining as the bonds being lodged and potential bidders being revealed, and they are still potential bidders but they are revealed as being more serious than just commentators—I have been confining myself more and more. But that is not to say I have not been in a room many times over the last few months and I am not actually trying in any way to suggest that this is not the case. I have been in a room many times—

Senator BIRMINGHAM—I understand and I take that point where you accept that is a part of your duties.

Senator Conroy—I have consistently said when asked specific questions, ‘I am sorry I cannot answer that.’ In fact, my response for the last probably six to eight weeks if not maybe even a little bit longer is, ‘I’m sure if I were to answer a question like that, I would get in trouble with my probity officer.’ That was without having received formal advice. I have made it clear to a whole range of businesspeople, interested parties and analysts that there are some questions I have not been able to answer. That has been getting progressively harder and harder, which is why I am saying that I am not a position where I can do many of those forums over the next few months. I cannot accept hospitality and I cannot engage in meetings specifically about that matter. I can talk about other telco issues, about other developments in telcos, about other investment plans that telcos have, seeking advice on a whole range of things. But I cannot engage, as I have not engaged today, in speculation about what the government’s views are on these issues. I am trying to be as transparent as I can when I say that to you, Senator Birmingham.

Senator BIRMINGHAM—I understand. Minister. Does the probity advice now restrict attendance by you or more particularly by potential bidders at Labor Party fundraisers paying thousands of dollars to sit next to you?

Senator Conroy—Could I take that on notice?

Senator BERNARDI—Surely you must know—

Senator Conroy—No, he has asked a slightly different thing. He has asked a two-tiered question. The first part of the question goes to money going to the ALP. The second part goes to who is sitting next to me having discussions about it. There is actually two parts to that, and one is a newer part. I am happy if there is—we have RFP on policy and law, and ethical dealings. Let me pass to the secretary.

Ms Scott—Senator, there is a section in the RFP relating to ethical dealings, under section 7. That may be informative to you. It talks about the actions of potential proponents. ‘A proposal should be complied without improper assistance of current or former officers, employees, contractors or agents of the Commonwealth and without the use of any information properly attained or in breach of an obligation confidentiality.’ Then it goes on to cover a section there. There is another section. There is a section further on about attempts to solicit information from, except as provided for under clause 10.7.5, or influence improperly any current or former officer, employee, contractor or agent of the Commonwealth or any minister or minister’s adviser, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFP process, otherwise acting unethical, or in an improper manner or contrary to any law.

Senator BIRMINGHAM—How do you interpret that section as it relates to parties attending ALP fundraisers or making donations to the ALP?

Senator Conroy—As I said, I have had a practice all day of not wanting to interpret these matters for you. I am happy to take that on notice and get back to you if there is any information I would like to add.

Senator BIRMINGHAM—Did you attend the budget night fundraiser in the Great Hall?

Senator Conroy—If I could just do some housekeeping for the moment, Senator Birmingham, which you might be able to help me with. We have had departmental officials here most of yesterday afternoon and through into late last night. It is nearly four o’clock now. We were just wondering whether there were any officers who you felt we were not going to be needing so that we can send them home. I appreciate there are probably three or four things that you probably want to bat on with—I can think of some obvious ones—but are there any areas that you would think you would not want to be addressing?

Senator BIRMINGHAM—We are due to break at 3.45. Can I consult with my colleagues and advise Ms Scott after that?

Senator Conroy—Thank you very much.

Ms Scott—When the minister said go home, I think he probably meant go back to work. I would not want any of my colleagues having unreasonable expectations.

Senator Conroy—No, I was thinking in terms that it was the evening—

Ms Scott—We know for public servants that work and home are often interchangeable.

Senator Conroy—The answer is, yes, I did attend that.

Senator BIRMINGHAM—And who was seated at your table?

Senator Conroy—I think from recollection there were a couple of interested parties. Certainly, I think a representative from Optus was at the table. As I said, the issue that you raise I have said I will get advice on. No matters to do with the national broadband network came up. I am sure all potential bidders, or bidders who were in prospect, understand that we are not in a position that we can have a discussion about that. Nothing came up to that effect. But there were—again, I do not actually know who all the potential bidders are, so I have to qualify myself—at least one and possibly a second. But I would have to double-check that.

Senator BIRMINGHAM—Could you take that on notice?

Senator Conroy—Yes, I am happy to take that on notice. As I said, I did indicate that I do have ongoing meetings and discussions with many, including potential bidders, about other matters that are not to do with the national broadband network. I am not suggesting I will not be in the presence of them, otherwise I could not do my job. I do not think you are suggesting that that should be the case, if I can just clarify.

Senator BIRMINGHAM—No, I am not suggesting that. In relation to the probity issues about Labor Party fundraisers, can we expect a quick turnaround on that one? We are not going to have to wait until the end of the process?

Senator Conroy—No, I think that is a genuine and valid question which I am happy to seek advice on.

Senator BIRMINGHAM—Thank you. Minister, your office described what has generally been referred to as the gag order in the RFP documents as quite common. Are you aware of legal opinion that this provision is, in fact, quite uncommon? If it is quite common, can you cite similar examples?

Senator Conroy—Look, this does go to the opening statement. There are many issues you have raised today which I would dearly love to respond to, but I will take on notice. If there is anything further to the opening statement that I would like to add, I will.

Senator BIRMINGHAM—Is there a clause in the RFP that gags you as well as the companies?

Senator Conroy—I think you described it as a self-imposed gag, but we have reached a new stage in the process.

Senator BIRMINGHAM—Indeed. What role do the ACCC, the Productivity Commission, Infrastructure Australia or consumer representative bodies have in the NBN process?

Senator Conroy—We can quote the RFP. As I say, I will happily table it. I will happily read it all out to you and then save Mr Billson and his office time. We will quote the relevant section.

Mr Mason—There are a number of clauses in the RFP that are relevant to the question. In relation to consultation, for example, with consumer organisations it is important to recognise the government's instituted parallel process seeking input on regulatory issues including consumer safeguards. The relevant part of the RFP relating to that is clause 1.1.16, which is:

- 1.1.16 At the same time as this RFP is released, the Government is inviting, in a separate process, industry and public interest groups to provide submissions to the Government on regulatory issues, including consumer safeguards, relevant to the outcome of the NBN process. The closing date for these submissions is one month prior to the Closing Time for Proposals for this RFP. These submissions will be available to Proponents so that they may have regard to them in preparing their Proposals. The Commonwealth reserves the right to publish the submissions but may choose not to publish submissions or parts of submissions where it considers it appropriate to do so for confidentiality or other reasons. The Panel will be able to consider submissions (whether published or not) in making its recommendation to the Government on the NBN. The submissions will also provide a general resource for the Government in relation to the development of future communications policy and regulation.

There are some other clauses where the process for taking those into account is discussed. In relation to the role of the ACCC, that is discussed in full in section 10.4 of the RFP. It reads:

- 10.4.1 The Commonwealth will draw on the expertise of the Australian Competition and Consumer Commission (ACCC) during the evaluation process.
- 10.4.2 The ACCC will provide the Panel with ongoing advice on Proposals, including advice on issues such as wholesale access services and prices, access arrangements, proposed legislative or regulatory changes and the likely impact of Proposals on pricing, competition and the long-term interests of end-users in the communications sector.
- 10.4.3 The ACCC will also provide a written report to the Panel. This report will be due to be lodged with the Panel before the Panel is due to complete its assessment of Proposals. The Panel will consider the advice provided by the ACCC as part of its assessment process.
- 10.4.4 In order to provide its advice and report, the ACCC will be provided with Proposals by the Panel, as soon as is practicable, in order for the ACCC to conduct an individual and comparative assessment of Proposals.
- 10.4.5 In conducting its assessment, the ACCC may be able to draw on all information it has legally available to it, including the range of information it has on costs and prices.

Clause 10.4.6 concludes:

- 10.4.6 In addition to the reserved rights of the Commonwealth in clause 11.2.1.3 of this RFP, the ACCC may also seek clarification of a Proposal from any Proponent so as to assist the ACCC to provide its written report to the Panel as set out in clause 10.4.3 of this RFP. Where the ACCC seeks clarification of a Proposal this may be either in writing or by way of an oral presentation from the Proponent. The ACCC will advise the Panel in advance when it seeks clarification and the Panel and the Probity Adviser will have the option to attend any proposed oral presentation and to review any proposed request for clarification and any response which may be provided.

Ms Scott—Going on from there, section 10.5 outlines the role of other Commonwealth agencies and specialist advisers. Earlier, in answer to a question, I had referred to the role of the Attorney-General's Department. Under section 10.5.3 there is mention of Treasury and the Department of Finance and Deregulation; in section 10.5.2, of the Department of Foreign

Affairs and Trade and the Attorney-General's Department; and in section 10.5.1, of the Australian Communications and Media Authority.

Senator BIRMINGHAM—Thank you, Mr Mason and Ms Scott. With regard to the parallel process referred to at the commencement of Mr Mason's comments and looking at regulatory matters, what particular role do the aforementioned bodies—the ACCC, the Productivity Commission and Infrastructure Australia—have, particularly in the operations of that parallel process?

Senator Conroy—Section 10.5.5.

Ms Scott—Section 10.5.5 says:

10.5.5 The Commonwealth or Panel may also seek advice from other agencies and specialist advisers as it considers appropriate. Specialist advisers will be retained in the fields of law, finance and commerce, communications technology and regulatory economics.

10.5.6 states:

10.5.6 The Panel will consider advice provided by Commonwealth agencies and specialist advisers as part of its assessment process.

Senator Conroy—To confirm what Mr Albanese and I have both said repeatedly, despite the fact that Mr Billson has been unable to read the budget papers which we read out extensively this morning, Infrastructure Australia has no role in determining the outcome of the national broadband network—none, zero, never has, never been suggested. The only person who suggested it is Mr Billson. I do not want you to think for a moment that there is any suggestion that we intend to do that.

Senator BIRMINGHAM—Obviously there are a couple of issues at play there, Minister, one being the role of the ACCC potentially in that process and the value it can put in, which is covered in some ways but could well have been strengthened, and the other relating to Infrastructure Australia, which we might touch on further after the break.

CHAIR—We will break for afternoon tea and resume at four o'clock with the information you requested.

Proceedings suspended from 3.46 pm to 4.06 pm

Ms Scott—Madam Chair, would it be possible to address a number of the questions that were asked earlier that we have been able to clarify? I will ask Mr Ash to address a question I think Senator Parry asked about \$190.82 million. We think we have found the page reference and we think we can provide an explanation for that. Also, we have an answer for Senator Kemp's question about who is in receipt or is likely to be in receipt of a grant. We have some offers of grants that have not been finalised, but in principle the decision has been taken. So I think we can also answer that.

CHAIR—Yes.

Mr Ash—What we need to do is go back in history just a touch. The Communication Fund in 2005-06 earned \$86.243 million in interest and \$131.836 million in 2006-07. For the year to end at April, it has earned \$136.111 million. The full-year estimate for the current financial year is \$165,371,000, which suggests that there will be interest earned of around \$380 million as at 30 June accumulated over the three years of operation. The \$400 million figure is some

time into the next financial year as the interest continues to accrue. So that is the answer for that one.

The next answers to relate to questions 132 and 185 that Senator Kemp asked. The television black spots alternative technical solutions grant was to the shire of Yarra Ranges for black spots in their area. There was a \$40,000 grant under the telecommunications consumer representation research grants program to La Trobe University. There was one for \$49,000 to Griffith University under that same program. There was a grant of \$426,000 to the Radio for the Print Handicapped Australia Cooperative Ltd under the national transmission network residual funding pool. There was the provision of an additional phone in the Northern Territory under the Telecommunications Action Plan for Remote Indigenous Communities.

CHAIR—Thank you very much.

Senator BIRMINGHAM—Can we kick off roughly where we left off with Infrastructure Australia. The minister gave us a lengthy clarification or statement that Infrastructure Australia will have no role assessing the NBN in any way. Firstly, I refer to budget related paper No. 1.3, footnote 4 on page 42 relating to table 3.1.3. It says:

Pending the development of legislation establishing the Building Australia Fund (BAF) and closing the Communications Fund, these Portfolio Budget Statements reflect the amounts currently held in the Communications Fund.

That is the sum to which we just referred before. It continues:

Following the establishment of the BAF, the amounts currently held in the Communications Fund, together with the associated interest flows, will be transferred to the new fund for investment in the National Broadband Network and regional telecommunications initiatives.

We ascertained before quite clearly that government expects those funds to be transferred into the Building Australia Fund and you would hope that that is transferred well before they are spent on the NBN, I trust, Minister. I assume you hope that they would be transferred before, indeed, a successful bidder is announced.

Senator Conroy—I took that more as a rhetorical question, Senator Birmingham. It has been made quite clear that this money has been—call it what you like—red-circled, ring fenced. The secretary might just want to read from—

Ms Scott—This is Budget Paper No. 1. While referring to the Building Australia Fund, there is a sentence about the process of the broadband network and the Glasson review. It goes on to say:

This meets the Government's commitment to invest in a National Broadband Network with disbursements dependent on the final outcome of the recently commenced Requests for Proposals process and the Government's consideration of the Glasson Review.

While the funds go towards the Building Australia Fund, the Glasson money and the money for the National Broadband Network are dependent upon processes that have already commenced. They are not dependent upon additional processes associated with the release of other funds from the Building Australia Fund.

Senator Conroy—Just to clarify, notwithstanding the continued inaccurate commentary, including embarrassingly in a national newspaper yesterday, we have made it quite clear in the budget papers what the process is.

Senator BIRMINGHAM—Elsewhere in the budget papers it states that spending from the Building Australia Fund will be subject to rigorous evaluation by Infrastructure Australia.

Senator Conroy—And if you want to read all of the budget papers together rather than just embarrassingly missing one bit and selectively quoting from another because you do not understand how budget papers work then you might end up with the conclusions that your colleague continues to draw. But the secretary will again repeat what is clearly written in black and white in the budget papers.

Ms Scott—This is now Budget Paper No. 2. I think there is a sentence that you may have seen out of context referring to the Building Australia Fund. It says:

Spending from the fund on specific projects will be subject to rigorous evaluation.

Then it goes on to say:

With the exception of funding for the National Broadband Network, drawdowns from the BAF will not occur before 2009-10. It is expected that funding of \$400.0 million will also be available for regional telecommunications, subject to the Government's consideration of the Glasson Review.

The Building Australia Fund will be established by 1 January 2009, which I think goes to your question about the timing of that. So they are clearly foreshadowing that they will have a new substantive process associated with access to the Building Australia Fund, but they acknowledge that there is already an existing process in relation to the National Broadband Network and the Glasson review. They indicate when the fund is to be established and that, apart from these two areas, they are not expecting any other disbursements or drawdowns to occur before 2009-10.

Senator Conroy—So the advice you kept getting sent through to you on your computer continues to actually flail around—

Senator BIRMINGHAM—Minister, the statement that Ms Scott read counters the words 'subject to rigorous evaluation by Infrastructure Australia' used in relation to spending from your—

Senator Conroy—No, you are trying to take—

Senator BIRMINGHAM—It acknowledges that there are other processes. It acknowledges that that funding will occur.

Senator Conroy—No. Now you are guilty—and I am sorry you have been misled by the advice you are getting—of trying to reinterpret and, more importantly, move around words. They are quite clear and quite simple. There is no confusion of anyone—

Senator BIRMINGHAM—I am happy to take the statement you made prior to the break, Minister, at face value—that Infrastructure Australia will have no role. But there is—

Senator Conroy—There is no confusion in the government whatsoever on this matter. Those words are put in the budget papers specifically to ensure there is no confusion. No-one in the government is confused. The only people in Australia who are confused—and I am

hoping they are not going to confuse you, Senator Birmingham—are Mr Billson's office and Mr Billson. There has never been a suggestion of that. Minister Albanese and I have made it completely clear. The budget papers could not be clearer. There is no role and no process for the Building Australia Fund in assessing the National Broadband Network.

Senator BIRMINGHAM—The budget papers could use the words that you are using, Minister, and that would be clearer, in fact. That would be clearer if the budget papers used the words—

Senator Conroy—I appreciate you now have to cover for your colleague.

Senator BIRMINGHAM—I take your point on board and we acknowledge that Infrastructure Australia will have no role. Why is it necessary to put the Communication Fund into the Building Australia Fund and to take it out of it again?

Senator Conroy—We were taking the \$2 billion from the Communications Fund anyway; we have just identified a place to put it in the interim. So we were always accessing the \$2 billion. We have a piece of legislation currently before the parliament—

Senator BIRMINGHAM—You do, which of course was introduced before the Building Australia Fund was ever known of.

Senator Conroy—Yes, and we are now going to place it temporarily other than where we were originally going to place it, but it is nothing more than that. Instead of it going into bank account A, it is going into bank account B. That is a slightly simplistic description of it, but that has led to an enormous amount of frenzy and confusion in only one place.

Senator BIRMINGHAM—Does the piece of legislation currently before the parliament facilitate the transfer of the Communications Fund to the Building Australia Fund?

Senator Conroy—No, we may amend the legislation or we may withdraw and bring forward a new piece of legislation.

Senator BIRMINGHAM—Right. So in fact the government has at some stage changed its mind clearly in terms of how it is managing this money?

Senator Conroy—We have changed our mind about where we were originally going to place it, yes. But at no stage did we suggest that where we were now placing it was going to then lead to Infrastructure Australia having anything to do with the NBN process.

Senator BIRMINGHAM—The Building Australia Fund will have about \$20 billion in other funds in it, give or take a bit; is that a—

Senator Conroy—We will get those figures to confirm it. I focused entirely on the \$2.4 billion that is relevant to me.

Senator BIRMINGHAM—That might be the problem, Minister. Why, with all these other funds in the Building Australia Fund and with the large surpluses that the government is running, does the government still feel the need to raid and in fact abolish the Communications Fund?

Senator Conroy—I repeat: we had a piece of legislation before the parliament to withdraw \$2 billion out of the Communications Fund. It was going to go to bank account A, let us call it

for pure simplicity. It is now going to bank account B, but the intention of this government was always to take the \$2 billion. Whether it is stored in A or B is not a change in policy.

Senator BIRMINGHAM—In light of the strong and healthy fiscal position the government finds itself in and the billions of dollars flowing into the Building Australia Fund, did you ever consider trying to access those funds and keeping the \$2.4 billion in the Communications Fund so that you have a ready source of funds to support regional infrastructure and communications in the future?

Senator Conroy—As we stated regularly and consistently, our election commitment was to take \$2 billion from the Communications Fund and \$2.7 billion from the Future Fund. That is our stated position. That is what we will do. I do not know how much more clearer I can—

Senator BIRMINGHAM—If ever there were an election commitment that people would actually welcome being broken, it would perhaps be one that saw that money committed to future regional communications and the additional money out of the Building Australia Fund committed.

Senator Conroy—We do not work on the basis that we want to break our election commitments and just because you think people might applaud it that is what we do. We are not into core and non-core promises. This was an election commitment and, like all of our other election commitments, they have either been delivered already through the budget process or they are going to be delivered through a range of other processes, but we are delivering on all of them and we are proud of that fact.

Senator BIRMINGHAM—What commitments do you have, Minister, or does the department have about the investment from the Building Australia Fund supporting communications into the future?

Senator Conroy—There is a range of issues that will be considered. Infrastructure Australia has its own board which was recently announced by Mr Albanese and it will be considering a range of infrastructure projects, but unlike the former government we have funded \$270 million towards regional and rural telecommunications and we have locked in up to \$400 million subject to the recommendations from the Glasson report. So we have \$4.7 billion, we have \$400 million and we have \$270 million all designed to look at broadband in this country. The \$400 million and the \$270 million are specifically for regional, rural and remote Australia, making \$670 million if my maths holds up. So we believe we have got ongoing moneys and the ABG in particular is over four years—something your previous government was not prepared to commit to.

Senator BIRMINGHAM—Will the Glasson report be the last such review, Minister?

Senator Conroy—We will see what the recommendations are. I think you are jumping ahead a little bit. I think Dr Glasson is doing a tremendous job. The committee members are touring all over Australia—I mean literally all over Australia. They are doing a fantastic job and I look forward keenly to the recommendations that they will be putting forward to solve the issues. I am not suggesting for a moment they can solve them all, but we have committed \$670 million to regional and rural telecommunications. That is not to suggest—as Senator Nash will be sitting in her office typing up her press release—that we have agreed we are not

going to do anything else. That is not the case, but I look forward to her press release. I am sure it will arrive on your computer shortly.

Senator BIRMINGHAM—I think Senator Nash is sitting in another estimates committee at present.

Senator Conroy—I am sure her office is typing it up anyway.

Senator BIRMINGHAM—Do you commit to the fact that there will be some type of ongoing review process for investment in regional communications?

Senator Conroy—We are monitoring these issues but what we are focused on right now is dealing with the recommendations of the Glasson review and addressing the many telecommunications needs. The Rudd government gave a commitment to 100 per cent of Australians that they would have improved broadband in this country—100 per cent. A lot of discussion is around the 98 per cent FTTN, the national broadband network. But let me be clear: our policy document was about better broadband for 100 per cent of Australians—not 98 per cent but 100 per cent. That is why we have all of these ongoing commitments. We will be constantly monitoring it and constantly looking at where we need to improve, but as the national broadband network builds outwards and reaches the 98 per cent then you will start to see startling improvements. I know deep down you understand this and you do get it, but the new national broadband network will be something that will radically improve the capacity and the access for regional and rural Australians. This begins to end the tyranny of distance.

Senator BIRMINGHAM—Has the department started drafting either new legislation or amendments to the bill currently before the parliament relating to the Communications Fund?

Ms Scott—Senator, the Building Australia Fund is within the finance and deregulation portfolio. I would expect that they will be drafting the relevant legislation. At this stage I am not aware of any consultations with us regarding that matter.

Senator BIRMINGHAM—There are no pending legislative changes relating or no changes to legislation that have been drafted by the department that would affect the operation of the ongoing regional review of telecommunications?

Ms Scott—No, Senator.

Senator BIRMINGHAM—We note that the minister will not commit that there will be an ongoing regional review but at least we note that work has not started to remove the legislative requirement that there be one.

Senator Conroy—You are a very fair senator, Senator Birmingham—one of the fairest—and it is unusual for you to try to so blatantly verbal me. I said no such thing. In fact, I said the exact opposite. I said that we would have an ongoing monitoring dialogue and discussions with regional Australia and rural Australia to see that there are continuing improvements in broadband in telecommunications.

Senator BIRMINGHAM—Do you commit to that ongoing process enshrined in legislation in some way similar to how it currently is?

Senator Conroy—No, we commit to what we will create and that we will manage, not to mirror all the processes of the former government. The Australian people elected us last year

to progress these issues in the way that we believe should be progressed, as opposed to the 18 failed broadband plans that your unfortunate predecessors were involved in. Eighteen in 11½ years and none of them actually—

Senator BIRMINGHAM—You need not keep it exactly the same, but I was asking for you to commit to keeping a legislative requirement because—

Senator Conroy—That is exactly what you did, Senator Birmingham. You just specifically said, ‘Will you commit to keep similar to what we did?’ You actually just asked me to do that exact thing. I am actually saying to you—

Senator BIRMINGHAM—A legislative framework—

Senator Conroy—we are going to look at this. We are going to look at it in the light of the Glasson committee recommendations. We are going to be looking at what improvements can be made and where there is a need for ongoing improvements. We are focused at the moment on eagerly awaiting Mr Glasson’s report. They are doing a tremendous job.

Senator BIRMINGHAM—Minister, a clause in the RFP states the document does not amount to a process contract. Can you explain exactly what that means, please?

Senator Conroy—Are you going to merge with the Nationals, Senator Birmingham? I am just reading. Everyone is having votes on merging with the Nationals.

Senator BIRMINGHAM—A merge with the Nationals in South Australia would be a wonderful thing, Minister. That would put us into government. We would be in coalition with Senator McEwen and her colleagues.

Senator Conroy—It would put you into government, that is true.

Senator BIRMINGHAM—We could have one or two Independents sitting in opposition.

Senator Conroy—You do not know, the Nationals might share. Barnaby No. 2 on a Liberal Party ticket! I never thought I would see it.

Senator BIRMINGHAM—Queensland is a long way from South Australia—even further away from South Australia than Victoria.

Senator Conroy—I think you have a border with Queensland, don’t you, in that little corner?

Senator BIRMINGHAM—It is only a little corner.

Senator Conroy—I think there is a little sliver where you are actually right next to it.

Senator BIRMINGHAM—I am not sure how many votes are there.

Senator Conroy—We are bordered by New South Wales. We are protected by New South Wales.

Senator PARRY—You are not merging with our Nationals.

Senator Conroy—George Brandis and Barnaby Joyce on the same ticket! I would pay money to watch that. Seriously, even if Optus and Telstra turn up to that one, I am coming. That has to be worth a ticket.

Mr Mason—In relation to a process contract, the relevant provision of the RFP is clause 8.5.1, which reads:

8.5.1 This RFP is an invitation to treat and is not to be taken to be, or relied upon, as an offer capable of acceptance by any person or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds.

That is the relevant clause.

Senator BIRMINGHAM—Thanks, Mr Mason. The RFP puts conditions on prospective bidders, does it not—those who handed over their \$5 million brown paper envelopes to Ms Scott on Friday afternoon that she has not told you about, Senator Conroy?

Senator Conroy—I told you: it is that ticket I am worried about. Could you be more specific with your question, Senator Birmingham?

Senator BIRMINGHAM—There are requirements placed on those participating in the bid process—legal obligations on them.

Senator Conroy—All we can do quite genuinely, Senator Birmingham, in response to your question is to read out the section we think you are referring to. We cannot give you an interpretation or a commentary on it. We made that clear in my opening statement.

Senator BIRMINGHAM—Okay. I will listen to the section closely and see if it answers the question.

Senator Conroy—Is there a section, Don, you can point Philip to?

Mr Markus—He has read the reference to the process contract.

Senator Conroy—Just read it out again, then.

Mr Mason—Again, the process contract text is in 8.5.1:

8.5.1 This RFP is an invitation to treat and is not to be taken to be, or relied upon, as an offer capable of acceptance by any person or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds.

Senator BIRMINGHAM—That clause strikes me as relating to the government's obligations under the RFP and, indeed, seems to be the out clause for the government under the RFP. Are there legally binding obligations that exist that the bidders are bound to when they enter into this process?

Senator Conroy—You are seeking an opinion now, Senator Birmingham. I am mindful of Senator Minchin's earlier comments about inadvertent comment. We will take that on notice and anything further I can add to my opening statement we will get back to you with.

Senator PARRY—Senator Conroy, I have done some research today on this, which you are alleging—

Senator Conroy—I am very pleased. We offered to hand it out to you.

Senator PARRY—I have even chatted with Senator Minchin.

Senator Conroy—He is a good man.

Senator PARRY—These are two entirely different sets of circumstances. The sale of Telstra was subject to all sorts of regulation and the Australian stock market. This is not. Tender processes are always under the scrutiny of the opposition and of the parliament. That is what we are doing. It is a real obfuscation of your duties.

Senator Conroy—No, I am sorry, Senator Parry. You are welcome to scrutinise this in the same way I scrutinised OPEL after the fact. What you are attempting today is—

Senator PARRY—We are checking on process.

Senator Conroy—No, you are not checking the process.

Senator PARRY—We are checking on process.

Senator Conroy—You are actually seeking interpretations on the actual RFP and the process around it all. I want to make it quite clear: this is a live process for the largest tender outside—

Senator PARRY—Yes, I know. You have gone through this.

Senator Conroy—the defence department. This is a live process. You are welcome to pick over this when it is completed.

Senator PARRY—But there are some things that you are not answering because you think it can just be a catch-all that you are using. Some of these questions we are asking go to genuine aspects surrounding the confidential parts that you have to retain. I think that when we reflect upon the *Hansard* after this, you may be embarrassed by some of the questions that you have not answered. Let us hope they are forthcoming by 31 May.

Senator Conroy—You make a fair point, Senator Parry, but I am particularly mindful of Senator Minchin's comments about noting the risks for inadvertent comments.

Senator PARRY—Yes, for a different set of circumstances.

Senator Conroy—I did accept the point that was made that some appear innocuous when, in actual fact, you yourself—tongue in cheek and with a smile on your face—made the point that you were hoping to get inadvertent comment. And I am not being pejorative.

Senator PARRY—Part of the process is to trawl through these issues.

Senator Conroy—It is part of the process, but I cannot afford, with a live tender underway, to get caught with inadvertent comment.

Senator PARRY—A smart minister like you would not get caught.

Senator Conroy—I am guided by a very smart minister in Senator Minchin, who took his duties very seriously. I am guided by his experience when he not only did not answer the questions about share price but also refused to answer questions about—

Senator PARRY—It was a very limited sphere. Anyway, we will go through *Hansard* later.

Senator Conroy—It was broader than you are being led to believe. In fact, it was very broad.

Senator PARRY—I have looked at *Hansard*, I have spoken with the minister and I have spoken with others and we will just analyse this in the cool light of tomorrow or the next day.

Senator Conroy—The scoping study would have been, under the definition you are seeking to impose today, fair game—

Senator PARRY—Let us hope you reflect—

Senator Conroy—which Senator Minchin specifically ruled out.

Senator PARRY—When you leave here today, let us hope you reflect on and provide those answers on notice in a very quick fashion.

Senator Conroy—As I have said to you, we took them on notice and said that if there was anything further that we wished to add to the opening statement we would.

Senator PARRY—You have an out to reply as soon as possible. Thank you.

Senator BIRMINGHAM—Minister, in terms of the parallel process determining the regulatory framework that is operating, is the time line affected in any way by your decision related to the time lines amending the RFP process?

Senator Conroy—No.

Senator BIRMINGHAM—When would we expect to see some public work from that process?

Senator Conroy—I think it is on our website.

Ms Scott—A press release was issued on 11 April. The press release invites submissions and they are expected to be in by 25 June 2008.

Senator BIRMINGHAM—So those submissions are still due on 25 June. Is there a target time line for that body to report?

Ms Scott—This will be part of the deliberations regarding the national broadband network, but we anticipate that there will be more than simply proponents who will be interested in making submissions to this process. I imagine interested members of the public, consumer groups and users more generally will be interested in making submissions on the proposals.

Senator BIRMINGHAM—I am sure many of those interested groups will be making submissions. Is there an expected or targeted time line for that panel to report on its findings?

Ms Scott—These submissions will end up as part of the deliberations of the expert panel. They will be ultimately swept up in that process, but this work can commence earlier than some of the other processes.

Senator BIRMINGHAM—Will the findings of this process be publicly available?

Ms Scott—The outcomes? Yes. Eventually, I imagine the government's deliberations on these regulatory proposals and their final outcome will be subject to a statement by the minister or the government and could ultimately be reflected in regulation or legislation. The press release by the minister indicated that the government will make submissions publicly available but it reserves the right to not publish submissions or parts of submissions, where it considers it appropriate to do so, for confidentiality or other reasons. I think there is an emphasis that the government would like to have the submissions public, and certainly the

final outcomes of the government's deliberations will be in some way public because they will be part of the final outcome.

Senator BIRMINGHAM—Will this process result in a report being provided to the expert panel or to the minister, or is it simply a process that will provide advice to the expert panel in the expert panel's determinations of what advice it provides to the minister?

Ms Scott—The panel have shown some enthusiasm for reading at this stage, so we will encourage them, if they have the time, to read as many of the submissions as they want. We would also of course provide a summary analysis ourselves. But it is a parallel process. The department will be involved in this process. The panel will also clearly have a view, and I am sure they will make their views known to the minister. The minister will then take those views and his own considerations of those views to cabinet, and ultimately the government will have a view. We can get Philip to read you some interesting sections of the RFP, if you would like.

Senator Conroy—We could have saved time by reading the whole thing out to you. It could have saved a lot of time.

Senator BIRMINGHAM—I am sure it would not have, Minister, but I will be pleased to hear these interesting sections. Ms Scott is building them up.

Ms Scott—The day does seem particularly long, but I think this will be part of the natural highlights of it.

Senator Conroy—This will make the highlight tape.

Mr Mason—In relation to the parallel regulatory process, I have already referred to one of the pertinent clauses, clause 1.1.16., which talks about the process for obtaining submissions and referring them to the panel. The clause reads:

At the same time as this RFP is released, the Government is inviting, in a separate process, industry and public interest groups to provide submissions to the Government on regulatory issues, including consumer safeguards, relevant to the outcome of the NBN process. The closing date for these submissions is one month prior to the Closing Time for Proposals for this RFP. These submissions will be available to Proponents so that they may have regard to them in preparing their Proposals. The Commonwealth reserves the right to publish the submissions but may choose not to publish submissions or parts of submissions where it considers it appropriate to do so for confidentiality or other reasons. The Panel will be able to consider submissions (whether published or not) in making its recommendation to the Government on the NBN. The submissions will also provide a general resource for the Government in relation to the development of future communications policy and regulation.

Further into the RFP, in section 10.6. entitled 'Submissions on regulatory issues', 10.6.1. reads:

Separate to the RFP process, the Government is inviting industry and public interest groups to provide submissions to the Government on regulatory issues associated with the NBN, including consumer safeguards.

Section 10.6.2. continues:

The Panel will have access to these submissions (whether published or not) and will be able to take them into account in evaluating Proposals.

Senator BIRMINGHAM—Thank you. Yes, they were very interesting and enlightening extracts, Ms Scott. The nub of the question I was asking before, though, is: will the panel be providing a report to the minister on the regulatory framework—that is, a full report as against ongoing advice?

Ms Scott—Section 10.2.4. states that the panel will provide a report to the minister on its recommendations.

Senator BIRMINGHAM—Will that report be made public?

Senator Conroy—I would anticipate that that report will contain a great deal of commercial-in-confidence information. The process is not completed by the production of the expert panel's report, so I would anticipate the answer to that is no. I am happy to give that further thought, but I would be fairly confident that the information contained in that report will go to some very seriously sensitive commercial issues of rival bidders. I am happy to take further consideration of that, but at this stage my instinct is not to release it.

Senator BIRMINGHAM—Even if it were to be made public at the conclusion of the letting of the tender to a successful bidder?

Senator Conroy—I am happy to take that on notice and consider that, specifically at the conclusion of the process.

Senator BIRMINGHAM—Obviously it strikes at the heart, then, of whether the government has adopted the expert panel's recommendations or not.

Senator Conroy—The expert panel can make more than one recommendation. They could recommend a short list. Ultimately, it is a cabinet decision; it is not the panel's final decision.

Senator BIRMINGHAM—I recognise that, but you would recognise, Minister, that there would be some interest if the cabinet were to make a decision that did not reflect in any way, shape or form the recommendation or recommendations of the expert panel.

Senator Conroy—That view, unfortunately, is ill-formed, because the negotiations that take place after the recommendation could significantly reshape the bidding process. There is an ongoing process after the recommendation. In a normal sense I think what you are suggesting is perhaps a logical consequence, but there will be ongoing discussions and negotiations which could reshape the situation that is presented, so I would stress that the recommendations are not the final aspect of this.

Senator BIRMINGHAM—I understand that.

Senator Conroy—I and the cabinet will then consider them and engage in a process which is set out. I am happy to read you that process.

Senator BIRMINGHAM—I understand from the process established entirely that you will be negotiating in a sense with the preferred bidder at that stage on the final arrangements.

Senator Conroy—What is the section?

Ms Scott—There is another section in the RFP, section 3.1, 'Legislative and other regulatory changes', which is quite comprehensive. It states:

- (a) Proponents should provide a detailed description of, and justification for, any proposed changes (including their duration and any mechanism for regulatory review) to existing telecommunications

legislation or other regulatory measures considered necessary to facilitate the roll-out of the NBN infrastructure, to provide regulatory certainty and to enable a return on investment in the network infrastructure.

- (b) In doing so, Proponents should provide specific details of the amendments sought to existing legislation (including to particular sections of legislation and any new legislative provisions proposed. Proponents should address in detail why each proposed change to the existing legislative and other regulatory arrangements is reasonable and necessary, and why it could not be narrower to achieve substantially the same purpose, and to the extent to which the proposed changes:
- (i) promote or reduce competition in the provision of telecommunications services;
 - (ii) impact on efficient investment;
 - (iii) Impact on consumers; and
 - (iv) effect the achievement of other communications policy objectives.
- (a) Proponents should specify any changes arising from their proposed arrangements that affect, but are not limited to, the following areas of regulation:
- (i) proposed universal service arrangements;
 - (ii) consumer safeguards; and
 - (iii) network reliability regulation.

Then there is a section that goes on to require the proponents to attach a detailed description of new or altered legislative provisions they are seeking on a provisions-by-provisions basis, and then there is another lengthy section. But I will just refer you to section 3.1, under the heading 'Legislative and other regulatory changes' in schedule 2 of the RFP.

Senator BIRMINGHAM—Thank you. That is interesting information. I am not sure that it goes to the heart of whether or not the minister will find a way to make publicly available those recommendations of the expert panel that may not be commercially sensitive, but I note the minister has agreed to give that consideration and take that on notice, so I thank him for at least that consideration.

I turn to issues around potential compensation through the NBN process. It was reported in the *Australian*:

Taxpayers could be forced to compensate telecommunications companies such as Telstra for the Government's compulsory acquisition of network information for its national broadband plan, according to advice to Communications Minister Stephen Conroy.

Has such advice been given to the minister indicating that the government could be forced to provide compensation?

Senator Conroy—I am not sure that is a direct quote.

Senator BIRMINGHAM—It is not quoting you, Minister.

Senator Conroy—I did not think I said anything like that. There may be a couple of relevant lines in the RFP. This is all part of the public process that bidders have been engaged in for some months to maximise their chances of winning the bid. I do not believe that we can assist by commenting and speculating on those claims, whether they be about compensation or the cost. So I will probably take that on notice and if there is anything further that we can add to the opening statement we will get back to you.

Senator BIRMINGHAM—Okay. That is an ongoing process of bidders positioning themselves. We see that your gag order has not been terribly successful, has it?

Senator Conroy—It is the telco sector. I myself try to stay in one position but I appreciate that your instructions are one minute to run Telstra's lines and the next minute to run opposite lines. I appreciate that you may realise yourself—

Senator BIRMINGHAM—As I think I said yesterday, we are keen to represent the plurality of views that exist and ensure that they all—

Senator Conroy—You represent the plurality of views in the same sentence.

Senator BIRMINGHAM—get adequate hearings in this place. They do not get adequate answers in this place, but they all at least get adequate hearings.

Senator Conroy—You have very successfully on a number of occasions represented the plurality of views in the same sentence, and you should be congratulated on that.

Senator BIRMINGHAM—So many compliments, Minister, that are forthcoming. Has any company said that it may pursue compensation as a result of their complying with any of the government's legislative requirements in this matter?

Senator Conroy—As I said, I do not believe there is anything worth while in our commenting on the attempts to position themselves by any prospective bidder. So I am happy to take that on notice and, if there is any further information I am able to provide, I will pass it on to you.

Senator BIRMINGHAM—Minister, have you or has the department sought legal advice as to the nature of any exposure it has to compensation?

Mr Markus—The department gets advice regarding legislative options or potential legislative options from time to time.

Senator BIRMINGHAM—And has the government on this occasion—on the occasion of drafting the legislation that the minister so excitedly told us received its royal assent today—obtained advice as to any potential exposure of the government consequent on that legislation?

Mr Markus—Legal advice was obtained in the course of drafting that legislation, which generally happens for most pieces of legislation.

Senator BIRMINGHAM—Did that legal advice indicate any issues of potential exposure of the government to any compensation claims or the like?

Mr Markus—It would not be our practice to discuss the content of the legislation, Senator.

Senator Conroy—Legal advice.

Mr Markus—I beg your pardon—the legal advice. We do discuss the content of legislation.

Senator Conroy—Even I could not have wrapped that one up, Don.

Senator BIRMINGHAM—Even the minister cannot find a gag for legislation. Thank you, Mr Markus. I can see we will get no further on that line than we have on most others today. The minister and the secretary will be pleased to know that, having deleted quite a few thanks

to your non-answering today, that will be the end of questions on the national broadband network.

Senator Conroy—Thank you. I appreciate that. I appreciate the general good humour.

Senator BIRMINGHAM—Thank you, Minister—nothing if not good humoured at least.

CHAIR—Are there any other further questions on the NBN? Thank you to the officers. Perhaps you could alert us to your next topic, Senator Birmingham.

Senator BIRMINGHAM—Let us move to OPEL.

Senator Conroy—I have an opening statement when it comes to OPEL and CDMA—only joking, guys!

Senator PARRY—We have it in *Hansard*.

Senator BIRMINGHAM—There we were at five to five thinking that you were about to give us a way out.

Senator Conroy—I wish.

Senator PARRY—You would see coalition senators coming from everywhere.

Senator Conroy—Have you decided what you want to do first?

Senator BIRMINGHAM—Yes—OPEL.

Senator Conroy—OPEL.

Senator BIRMINGHAM—The department once fully supported the OPEL project, Ms Scott. Why did the opinions of the department shift?

Ms Scott—There was an important clause in the contract that was a condition precedent which went to a requirement for OPEL to satisfy us that they had met the coverage requirements. This condition precedent was the subject of consideration once OPEL had submitted their implementation plan—and their implementation plan was, I think, submitted on 9 January. We took some time to systematically look at that and came to the very careful and considered view that the implementation plan as submitted did not meet the requirements of the condition precedent. The condition precedent was inserted in the contract originally because we were very mindful to ensure that the coverage did meet our requirements. Ultimately, it did not. So that is why—

Senator BIRMINGHAM—And that condition precedent you refer to is the condition that the implementation plan demonstrated coverage of 90 per cent of underserved areas?

Ms Scott—Underserved premises. I will let Mr Bryant speak to the specifics of it, but if it would help the committee we could table a copy of the condition precedent.

Senator BIRMINGHAM—Certainly, that would be helpful. Thank you.

Mr Bryant—We have copies of the conditions precedent for the committee. I will perhaps just delay my response until the members have a copy of the document. The conditions precedent is broader than just the coverage requirement, but the coverage requirement is the key element of the conditions precedent. If you have the document in front of you, it is really the second page of that document under 1A.1(c). It sets out a process for testing and analysis

to be conducted by OPEL and within 80 business days of the agreement to provide to the department for our approval an implementation plan. The rest of that page and then over the page—the first half of the next page—sets out the requirements, particularly in relation to coverage that is required. The very relevant part really is (vii) at the bottom of the second page, which requires, under part B, OPEL to ‘demonstrate that the Required Percentage of Your number’—that is, the OPEL definition of ‘underserved premises’—is covered. As well, under (ii), at the same time we determine in our absolute discretion.

Then over the page it states:

- a) provides coverage of Underserved Premises reasonably equivalent to the Required Percentage of Our Estimated Underserved Premises;

So the issue around that was, as I think has been indicated publicly by OPEL, OPEL developed their own definition and their own database of underserved premises and wanted to use that database of underserved premises to achieve their coverage. We insisted in the agreement, under these conditions precedent, that if they did choose that option at the same time they had to demonstrate reasonably equivalent coverage of the required percentage of our underserved premises. So that is how the conditions precedent worked.

Senator BIRMINGHAM—Thank you. We might come back to the details of the conditions precedent shortly. Could we roll back to the initial estimates of coverage made by OPEL. At the outset, what were those estimates of coverage presented to the department at the time the contract was initiated or was selected as the successful bidder for negotiations?

Mr Bryant—I am happy to work through that, because you need to understand that the underserved premises count that is set up in the agreement under the conditions precedent actually reflects an area, and that is the area that OPEL was required to commit to. So bear that in mind. In fact, that required area is 17.9 kilometres on average from the base stations—the 1,361 base stations—that OPEL proposed to establish.

Senator BIRMINGHAM—Sorry, how many base stations?

Mr Bryant—It was 1,361, and that actual combined area equates to a total square kilometres of 658,426. In fact, OPEL in their final proposal to government proposed to cover an area of 630,000 square kilometres.

Senator BIRMINGHAM—Sorry, what was the first figure you quoted there?

Mr Bryant—658,426.

Senator BIRMINGHAM—Yes.

Mr Bryant—So you can see that the final requirement from the then government to cover a distance of 17.9 kilometres from base stations closely equated to OPEL’s final agreed proposal to the government.

Senator BIRMINGHAM—Okay. So 658,426 square kilometres of coverage was OPEL’s initially proposed—

Mr Bryant—No, 630,000 was what they agreed in the final proposal.

Senator BIRMINGHAM—And 630,000 is what they agreed.

Mr Bryant—Yes.

Senator BIRMINGHAM—When was that agreement struck?

Mr Bryant—That was what they agreed—that was in their final agreed proposal to the government. Then we went through a process, as you know, of negotiating the agreement. Under that, the former government required OPEL to cover the equivalent of 17.9 kilometres from their base stations. Okay? Now, in terms of how that translated into the conditions precedent, obviously we have moved from a concept of area coverage in the requirement to a concept of underserved premises covered within the agreement. The 526,474 of our underserved premises reflects a number of our underserved premises—‘our’ being as defined by the department—within that area of 17.9 kilometres from base stations.

Senator BIRMINGHAM—Right. So that is 526,000—

Mr Bryant—526,474.

Senator BIRMINGHAM—Premises within that 17.9-kilometre radius from the base station?

Mr Bryant—Underserved premises. That is the important distinction.

Senator BIRMINGHAM—When did the government come up with that estimate of 526,474 underserved premises?

Mr Bryant—During the negotiations with OPEL.

Ms Scott—That is the number reflected in the condition precedent in clause 1A.3 when we talk about ‘for the sake of clarity’.

Mr Bryant—The second last page of the document—sorry, the third page.

Ms Scott—The third page in—the third last page.

Senator BIRMINGHAM—Yes. Okay. So that was always the government’s estimate of underserved premises within that range—a 17.9-kilometre radius from the base station?

Mr Bryant—Absolutely correct.

Senator BIRMINGHAM—And OPEL were aware of that from day one?

Mr Bryant—In August of last year we in fact supplied OPEL with the database of those underserved premises in geospatial form so that they could work on them.

Senator BIRMINGHAM—So you supplied them with your database. What was their estimate at that stage of the number of underserved premises that they were going to cover?

Mr Bryant—Their estimate, again as reflected in the conditions precedent—you will see it there at the bottom of the second page—is 982,000. That is their estimate of underserved premises within their coverage area.

Senator BIRMINGHAM—What was that based on?

Mr Bryant—It was based on an estimate that they made during the development of their proposal I guess that they then put to us.

Senator BIRMINGHAM—That is also based on underserved premises within a 17.9 kilometre radius of 1,361 base stations?

Mr Bryant—No, that is not correct. That was just the number that they said they could cover within their coverage area. One assumes there would be, because they said they could cover 630 square kilometres. We had concerns about the nature of that database and that was a reason, as you can see in the conditions precedent, that we required them to meet our definition of underserved premises at the same time as they sought to address their definition of underserved premises as well.

Ms Scott—Senator, just to aid your understanding, we have the announcement. The announcement is based on the consolidated proposal that OPEL had put forward. As the negotiation starts on the final agreement that has to be signed off and cemented in place, there starts to become a divergence of views about databases and so on and underserved premises. To provide absolute clarity and to ensure that we got the outcome that we sought, we put the condition precedent into the contract. The condition precedent reflects the fact that we were very determined to ensure that the number of underserved premises that we thought were out there would in fact be serviced by the eventual outcome. At the same time OPEL considered that they could meet our requirement and demonstrated that they had a way of doing that through their estimation. But it is quite clear when you read the condition precedent that, at the end of the day, they had to meet our requirement. They could meet both, but they had to definitely meet our requirement of underserved premises. So you do have these two divergent views emerging. We thought that it would be resolved through the fact that they effectively had 80 working days under the conditions precedent to then furnish the proof that they had met our requirement.

Mr Bryant—An important point to understand as well, Senator, is that our definition of underserved premises was the basis on which we assessed the proposals originally under the program. So it seemed clear to us that having assessed OPEL on that basis they should be required to deliver that, particularly in relation to that area, as I have explained.

Senator BIRMINGHAM—When did it become clear that there was a divergence of views and opinions in the number of premises that would be serviced and the way in which that was calculated?

Mr Bryant—As the Secretary indicated, you can understand there was a period of intense negotiation to settle the agreement. We had always concentrated on our concept of underserved premises on our database which we believed to be properly and reasonably derived. It became clear to us, but not at one single point, as we worked through the process that OPEL were seeking to rely more on their definition of underserved premises and their concept of underserved premises. I think, quite properly, we were not prepared to do that because we had worked through our process and our concept of underserved premises. When we actually assessed the implementation plan, some of our concerns became a bit more apparent.

Senator BIRMINGHAM—When did you first share your concerns with OPEL?

Mr Bryant—It was quite clear from the very start that there was a difference between the two databases because their database across the country was about 1.4 million and ours was 787,000. So they had approximately twice as many as we did. There was a process again

working through the negotiations where we had discussions with them about the two databases. I think on about 19 October—I will just check my information—

Ms Scott—The fact that we had a difference of views about underserved premises probably emerged in August. We sought resolution of that through the negotiation process and the condition precedent was meant to give us comfort and I suppose give OPEL an opportunity to deliver. The implementation plan was delivered on 9 January. Between the signing of the contract, I think, on 11 September and 9 January, there were ongoing discussions between the department and OPEL on some of the testing procedures being followed.

Mr Bryant—We had eight meetings in that period between 18 September and 9 January, four by teleconference and four face to face. At the meeting on 23 October we sent our mapping people up to the Optus headquarters in Sydney to work through the mapping issues with them, and I think it became clear between the parties what the differences between the two databases were fundamentally derived from.

Senator BIRMINGHAM—Which meeting did you send a mapping expert to the Optus or OPEL headquarters?

Mr Bryant—23 October.

Senator BIRMINGHAM—What does the department define to be underserved premises?

Mr Bryant—I will take you through our methodology. That might be helpful. It essentially goes back to the concept that has been operational under the Australian Broadband Guarantee, at that time the Broadband Connect program. It was the same principle. The metro comparable standard at that time I think was 512 kilobits download, 128 kilobits upload and a one gigabyte per month download limit. Let me take you through the methodology of how we got there. As you will recall, the program operated outside of metropolitan areas so we excluded the metropolitan areas and the other areas that were in the metropolitan exclusion area operating under those programs. That was consistent with the guidelines. We removed premises within ADSL enabled exchanges that were within five kilometres of neighbourhood exchanges via copper lines and we used a software program called Street Crawl to estimate the road length from the exchange rather than the radial distance, and obviously not within areas where there are technical impediments preventing ADSL delivery such as pair gains and RIMs. We removed those premises with access to cabled broadband and premises within a metro comparable wireless broadband service area as known to us at the time and we came up with that number of 787,000.

Senator BIRMINGHAM—How did OPEL measure or define underserved premises?

Mr Bryant—There were a couple of key differences. I could talk about some of the minor differences as well, but the key difference was that they did not take into account any wireless coverage at all. So we had, as you would realise, funded under various programs wireless providers to provide metro comparable coverage. OPEL did not take that coverage into account at all. On the other side, we became concerned because in fact that was really including premises as under served when they were really served by metro comparable wireless. But on the other side of things, they excluded all premises as served that were within 4.5 kilometres, I think, of a Telstra exchange even if the Telstra exchange had not been

enabled. So in our view—and we have checked our mapping against this and it is in fact correct—that has excluded from their database a largish number of premises that were underserved because they did not have access to a broadband service.

The other concern I might point out, if we are talking about the OPEL database, is the actual number of 982,000. As I indicated to you, the former government required equivalent coverage to 17.9 kilometres from base stations. We knew our number reflected that. We did not know the OPEL number reflected that. When we got the OPEL database and tested it, the actual coverage of the OPEL defined underserved premises representing 982,000 of those underserved premises was a lot less than 17.9 kilometres—in fact, less than 11 kilometres—from base stations. So that was a concern as well, obviously.

Senator BIRMINGHAM—Do you have an estimate of the number of premises that OPEL was counting that were within the four or 4½ kilometres of non-enabled ADSL exchanges?

Mr Bryant—I do not have that readily available. I need to take that on notice.

Ms Scott—I think there is another way of approaching this that will draw out the difference. OPEL had to identify the number of underserved premises covered by OPEL's arrangement and they provided an estimate based on the department's database and then based on their own database. Based on their own database there is very little divergence between what the department estimates the number to be and what they estimate it to be. When we put that figure over the expected number of underserved premises, which is the 526,474—that figure I showed you in the conditions precedent—OPEL ended up with a figure like 71.7 per cent and we ended up with a figure of 72.12. You can see they are both in the 70s. That is the number that caused us concern because we wanted a figure closer to 90. When they compared their estimates of underserved premises covered by OPEL to their database of underserved premises, they ended up with a figure like 90. I guess that is why they felt comfortable that they were meeting what they wanted to achieve. The issue was: were they meeting what we required them to achieve? It comes back to this figure of 526,000 which is in the conditions precedent.

Senator BIRMINGHAM—There is a large disparity between OPEL's calculation that there were 1.4 million underserved premises and the department's database indication that there were only 787,000, taking on board that you are saying that there are some that the department is counting which OPEL is not counting. But there are obviously large areas that the department contends are covered that OPEL believed were underserved. Can you give me some examples of those areas?

Mr Bryant—As I said, by far the largest explanation or factor in the discrepancy was the fact that they took no account of metro-comparable wireless coverage. We have estimated there were approximately 360,000 premises that could receive metro-comparable broadband service via wireless at that time and that OPEL included in their underserved database.

Senator BIRMINGHAM—What area were they primarily in, do you know?

Mr Bryant—A range of areas. Do you mean geographically?

Senator BIRMINGHAM—Yes, geographically.

Mr Bryant—A range of areas. We have funded wireless coverage in many parts of Australia.

Senator BIRMINGHAM—I am just interested in fleshing out which areas you believe are getting satisfactory coverage that obviously OPEL believed were not.

Mr Bryant—We have mapped it all very closely. We could show you maps if you wanted us to, but I am just saying that across Australia there are a large number of wireless providers who continue to provide metro-comparable wireless coverage in many parts of Victoria, New South Wales, Queensland, Western Australia and South Australia.

Ms Scott—Just to clarify, what Simon is saying is we were servicing through Broadband Guarantee a number of service providers in areas that were being counted as underserved. We were already providing funding to another program.

Senator BIRMINGHAM—I realise you may not be able to do this now, but are you able to provide details of those areas?

Mr Bryant—We will take that on notice. We do have very detailed—

Senator BIRMINGHAM—I do not expect it to be down to the last premise—

Mr Bryant—We do have a very detailed understanding.

Senator BIRMINGHAM—Thank you. That would be helpful. What has happened to the \$958 million assigned to the OPEL contract?

Mr Bryant—If you turn to the budget papers, I think it is on page 34 of the Portfolio Budget Statement. You will see under ‘Cancellation of the OPEL Contract’, about a third of the way down the page, a saving in 2008-09 of \$634 million and of \$226 million in 2009-10. I think note 6 indicates there is a saving of \$99 million in 2007-08.

Senator BIRMINGHAM—And that revenue has been returned to consolidated revenue? It is obviously far less than the government’s much-lauded commitment to the Australian Broadband Guarantee that the minister has mentioned numerous times today. It has simply gone back into the pot; is that correct?

Mr Bryant—That is correct. It has been returned to consolidated revenue. I think we have already answered that.

Senator BIRMINGHAM—Thank you. The OPEL consortium claims it tried to meet with Ms Scott to discuss issues surrounding the contract but that a meeting would not be entertained; is that correct?

Ms Scott—I can go through those interactions, if you would like. I will just find the right part in my briefing.

Senator BIRMINGHAM—Certainly.

Ms Scott—We indicated earlier that the department formally met with OPEL regularly between the time the funding agreement was signed in September and the presentation of the implementation plan at these meetings. Amongst other things, the department and OPEL discussed the progress of the implementation plan, and the department considers that OPEL

has been given ample opportunity to clarify the requirements of the conditions precedent during that period.

The department sent OPEL its database of underserved premises. OPEL submitted its implementation plan on 9 January. The department met with representatives on 5 February. However, the CEOs of partner entities did not attend the meeting and the representatives that did attend repeatedly advised that they were not authorised to discuss the very matters that OPEL itself had raised in the plan, and they were the reasons we wanted to have the meeting.

The department sought clarification from OPEL on 19 February on aspects of the implementation plan. The department also advised OPEL at the time that it required further time to assess the plan. The CEOs of OPEL partner entities responded to the department's requests for further information on 22 February and requested a further meeting with the department. On 4 March I advised Optus by email that if a further meeting was considered necessary the department would arrange such a meeting, and I reiterated this in person to the CEO of Optus later that day when I saw him about another matter and he again raised the issue with me at a meeting.

I had already said by email that at this stage a further meeting was not necessary. You will need to remember that we were at a stage where we were going through the implementation plan and reaching final conclusions about this. We had already sought a meeting. We had had that meeting. We had had further follow-ups and I did not see any need to have a further meeting with them.

Despite the fact that I had explained that to Mr O'Sullivan, they then sent a further request for a meeting with me—or the department—on 20 March and 31 March. At that stage, however, the department did not believe that any further meetings were required as it had gained sufficient information from OPEL. We had already come to the view that the implementation plan, as submitted and as clarified, including a request in writing, did not meet the conditions precedent. I think I had given them ample opportunity to answer our issues.

Senator BIRMINGHAM—Ms Scott, the implementation plan was lodged in that first week of January?

Ms Scott—The 9th, I think.

Senator BIRMINGHAM—9 January—the second week. Why was there such a delay in assessing it and the final announcement by the department?

Ms Scott—We had already indicated in the funding agreement that we had up to 20 working days in which to make the assessment of the plan. We then held a meeting with them, as I have indicated. We undertook a series of checks and rechecks of this process because it is certainly something that we would not enter into lightly—a conclusion that we would not be proceeding with the contract. It is not the sort of thing we do on a daily basis. We had a process of checking our methodology using a number of sources and when we completed those second checks that was when we reached our conclusion.

Senator BIRMINGHAM—You initially obviously thought it would take only up to 20 working days to make this assessment. In the end it took significantly longer than that.

Ms Scott—I do not know if I would describe it as ‘significantly longer’. We had a meeting with OPEL—I just want to check the date so I do not get it wrong—on 5 February where we had a series of questions that we put to partners and thought that we would get quite definitive answers. The questions went to the core of the issues that we had under deliberation at that time, but the people who attended that meeting indicated repeatedly that they were not authorised to discuss the matters that we raised with them. We tried to reach a conclusion as soon and as safely as we could, but clearly it was prudent to take the extra time we required in the process.

Senator BIRMINGHAM—The information given to OPEL by the department about your database, was that sufficient to enable OPEL at that stage, if they wanted to, to have worked off your dataset rather than their own dataset?

Ms Scott—In fact, when you have an opportunity to read the conditions precedent you will see that, clearly, what we were attempting to achieve is to get them to focus on achieving our 90 per cent requirement on the basis of our database—on the basis of the 526,474.

Mr Bryant—And as I think I indicated, we, in fact, gave them our database of underserved premises in geospatial form in August last year—so the whole period when they were developing the implementation plan—to use that database, which they did. That is how they came up with the number of our underserved premises to be covered. As I said, the reason we included in the conditions precedent the number of underserved premises rather than an area to be covered was so to give OPEL the opportunity to target and dimension their network to cover underserved premises which was, after all, the objective of the program rather than to cover an absolute area. So the intention of that was to provide them with maximum flexibility to dimension their network to meet our requirements, bearing in mind that the former government had indicated to them that it was a non-negotiable part of the project that they cover an equivalent distance of 17.9 kilometres from base stations.

Senator BIRMINGHAM—Did OPEL convey to the department concerns about the department’s dataset or database?

Ms Scott—Yes, they did but because, as Mr Bryant explained, we had used this database to reach a view that the OPEL contract represented value for money relative to other proponents, it was the database we were determined to use to see whether their final implementation plan met our requirements or not. So we were not swayed by their arguments to deviate from our database and that is very clear from the conditions precedent. It is very clear from this document that we determine in our absolute discretion—so picking up from, we will call it, clause 7B(2)—that it provides coverage of underserved premises reasonably equivalent to the required percentage of our estimated underserved premises. I think that is pretty clear.

Senator BIRMINGHAM—What concerns did OPEL express about the government’s dataset?

Ms Scott—They favoured using their own dataset, which they indicated to us, even at the time of negotiating the final contract, showed a more favourable level of service being provided by OPEL than using our dataset. Now, we remain of the view that the dataset that needed to be utilised was our dataset and that is reflected in the contract. It is not unusual in a contractual situation that someone says, ‘Look, I have developed a better, you-beaut widget.

Can we now have reference to that you-beaut widget rather than something else?’ but for value for money purposes it was very important that we stayed with the underserved premises that we had in our database. They could use their own database, but they had to also use our database to come up with meeting our requirements of 90 per cent coverage.

Senator BIRMINGHAM—Did OPEL provide their concerns about your database to you in writing?

Mr Bryant—I would have to take that on notice. Not to the best of my knowledge. I think their concerns expressed to us were that they would have more difficulty meeting the requirement using our definition of underserved premises rather than by using their definition of underserved premises. That is clearly borne out by the implementation plan, but the reason for that is clear to us. Our underserved premises represented an area 17.9 kilometres from base stations and their underserved premises a lot less than that. Again, we have analysed the area covered in their revised estimated coverage maps. As I said, they proposed to cover 630,000 square kilometres. Our estimation is that their revised coverage is 430,000 square kilometres. Again, that kind of reflects the pro rata—the percentage of our underserved premises they cover.

Senator BIRMINGHAM—Who developed the department’s database—the department or was it developed externally?

Mr Bryant—We developed it. I have developed it, but obviously using a lot of external sources, such as the Geocoded National Address File as the primary resource.

Senator BIRMINGHAM—Has it been independently verified?

Mr Bryant—Yes.

Senator BIRMINGHAM—By whom?

Mr Bryant—Geoscience Australia.

Senator BIRMINGHAM—Are you aware whether Optus’s dataset was independently verified or checked by others?

Mr Bryant—I am not aware of that, Senator.

Senator BIRMINGHAM—Is it true that they provided their data to ACMA for testing?

Mr Bryant—No, that is not true. I should explain the role of ACMA in the process, because I think there are some misconceptions about that. We asked ACMA and we asked our technical adviser, ENEX, to assess the methodology used by OPEL in testing and remapping or producing revised estimated coverage maps under the implementation plan. Their assessment, which we agreed with completely, was that the testing process and mapping approach were sound and reasonable. They had no role, however, in respect of the numbers of underserved premises that were estimated to be within that revised coverage area—no role at all.

Senator BIRMINGHAM—I will defer to Senator Eggleston for a moment.

Senator EGGLESTON—I would like to ask some questions about the cancellation of the OPEL contract. Optus of course is owned by SingTel, which is in turn, I gather, an agent or a

sovereign fund of the Singapore government. What, if any, comment or reaction has been made by SingTel or the Singapore government about the cancellation of this contract?

Senator Conroy—I think they did notify the stock exchange. I think from recollection they indicated it would have no material effect on their business.

Mr Bryant—We have had no response in regard to that.

Senator EGGLESTON—Were there any specific or special conditions in the contract regarding cancellation of that contract by another party?

Ms Scott—The conditions precedent is really the principal element of the contract, and the reasons for the cancellation primarily relate to the fact that the underserved premises coverage was not met.

Senator EGGLESTON—So there were not any processes for dispute resolution or anything like that built into the contract?

Ms Scott—I guess the issue was that there was a divergent view emerging from about August and the conditions precedent was there to resolve this issue. It is not as though 9 January was the first time we suddenly realised there was a difference of view. The view was that the 80 days created by the conditions precedent was sufficient time for OPEL to meet the conditions precedent and to provide their implementation plan.

Senator EGGLESTON—So you are saying that from quite a period before—and when did it go back to again?

Ms Scott—I think around late August, early September there started to be increasing discussions about the database issues. In the end, it was agreed that we would proceed with the contract but only on the understanding that there would be a conditions precedent so that we could have confidence about value for money.

Mr Bryant—It might be useful for me to read the last clause of the conditions precedent which relates to that very issue you have raised.

Senator EGGLESTON—If you would do so, I would be grateful.

Mr Bryant—It says:

You and We acknowledge and agree that if We notify You under clause 1A.1 that the Funding Conditions have not been satisfied, then:

- (i) this Agreement will be deemed to have been terminated without any liability on the part of:
 - A. Us to You or to any third person ... or
 - B. You or Your Partner Entities to Us ...

So that is how the conditions precedent operated, in that there was an automatic deeming of termination.

Senator EGGLESTON—That related to funding, though. Did it not say that in the first few words?

Mr Bryant—No. The funding conditions are approval of the implementation plan. So in order for the full contract to come into operation that had to be approved, and if it were not approved and the funding conditions had not been satisfied then the agreement is terminated.

Senator EGGLESTON—So if the implementation plan was not approved then the funding did not follow through and the contract was terminated?

Mr Bryant—That is correct.

Senator EGGLESTON—So there were not any possible appeals or any question of penalties applying?

Mr Markus—The answer is no. The contract was terminated and any other provisions that might be there if the contract had continued on foot did not apply.

Senator EGGLESTON—Has there been any reaction that we know of from the Singapore government to the termination of this contract?

Ms Scott—I think that is not too dissimilar to the earlier question you asked and the answer is no.

Senator EGGLESTON—I thank you for that answer. I had heard that there was some concern in Singapore about the cancellation of this contract. That may or may not have been communicated, I suppose, to the Australian government.

Ms Scott—We have checked with the post in Singapore but there is nothing, and when the minister met with his Singaporean counterpart the Singaporean minister did not raise it as an issue of concern. So there is nothing that we have seen or that our foreign affairs has been able to tell us that would suggest that this has created concerns.

Senator EGGLESTON—And there is no suggestion that the cancellation of this contract might prejudicially affect Singapore's willingness to enter into other business arrangements with agencies in Australia?

Ms Scott—Not that I am aware of.

Senator EGGLESTON—And government agencies in particular?

Ms Scott—No.

Senator EGGLESTON—Thank you.

Senator BIRMINGHAM—Minister, do you believe that the handling of this issue reflects the numerous assurances that you gave, despite your misgivings about the OPEL proposal? These were the numerous assurances you gave that you would honour the contractual arrangements with OPEL.

Senator Conroy—I think the secretary would like to contribute something to that question.

Ms Scott—Senator, I anticipated that there might be some questions of this nature. The minister was not involved in the evaluation process. In fact, the minister did not receive OPEL's implementation plan until the department's assessment process had been completed. The evaluation was done at arms-length from the minister. The department undertook the assessment with input from our advisers. We did use a number of external sources to check our methodology. The department did not provide any draft assessment to the minister. Our assessment and recommendation to the minister was clear. It was our view, after considerable consideration, that OPEL's implementation plan did not meet the requirements of the

conditions precedent. The conditions precedent dates back to the signing of the contract on 18 September 2007.

Senator BIRMINGHAM—At no time did the minister express to you, Ms Scott, and even before the implementation plan was lodged, his displeasure with the OPEL contract?

Ms Scott—The minister at no time controlled the evaluation. At no time did he affect the evaluation. He did not have their plan. The advice that went forward to the minister was entirely the department's advice.

Senator BIRMINGHAM—Were there any discussions about the merits of the OPEL plan, Ms Scott, had with the minister?

Ms Scott—No.

Senator BIRMINGHAM—Not at all?

Ms Scott—It was done entirely at arms-length.

Senator BIRMINGHAM—Even prior to the implementation plan being lodged?

Ms Scott—Yes.

Senator BIRMINGHAM—So in the incoming briefs the minister received were there discussions about the merits of the OPEL contract?

Ms Scott—I do not have the incoming government brief in front of me, but my recollection of it is that it clearly indicated that there were requirements for OPEL to provide an implementation plan and that plan was a necessary part of the funding arrangement.

Senator BIRMINGHAM—In discussions and meetings had between yourself and the minister from the time of his appointment, were there discussions about the OPEL contract?

Ms Scott—I do not think I want to go through all of our discussions on this or any other issue, but it would not be surprising that he was interested in this process. But at all times we did not volunteer or provide any information about the implementation plan. It was strictly done at arm's length.

Senator BIRMINGHAM—There was a degree of media speculation about the delays in relation to the implementation of the plan in terms of consideration once it was lodged. Did the minister or his office seek information from the department about the consideration in that time?

Ms Scott—At one stage the plan did not arrive on the day we anticipated and then when it did arrive there was a lengthy delay before the plan was finally released to us, and there was interest in the minister's office about whether we had actually got the plan. But from that point onwards the department did not reveal the contents at any stage and did not provide the contents of the implementation plan or our assessment to the minister's office.

Senator BIRMINGHAM—Is the department aware that the original—

Ms Scott—Until we provided the assessment, I should say. The lawyer on my left reminds me that we eventually gave the assessment to the minister's office.

Senator BIRMINGHAM—We figured eventually the minister came to have it, indeed.

Ms Scott—It is very good to have lawyers with you.

Senator BIRMINGHAM—Is the department aware that the OPEL map of Australia and its apparent links and other maps appear to still be available on the BroadbandNow website?

Ms Scott—I am happy to be corrected, but the BroadbandNow website, the last time I looked at it, is an archived website. You can still find press releases of the previous government, but they are archived sites. In fact, I will be very disappointed if that is not clear. I will be happy to get the names of the officers concerned, but I am hoping that they would be archived websites.

Senator BIRMINGHAM—If I look at the fine print, I can see the mention of it being archived.

Ms Scott—Does it say that, Senator? I would be comforted to know that it does.

Senator BIRMINGHAM—Yes, it does, Ms Scott.

Ms Scott—I am sure that would be a relief to a number of my officers.

Senator BIRMINGHAM—I am sure it will too. If we accept your figures rather than OPEL's, the advice was that OPEL would have covered 72 per cent of underserved households. What is the alternative plan for the 72 per cent of premises?

Ms Scott—What is the alternative plan?

Senator BIRMINGHAM—Yes.

Ms Scott—Some of these places will now ultimately benefit from the national broadband network. I suppose some places may be in the two per cent that we have spent a fair slice of the morning discussing.

Mr Bryant—I would make the point actually that any premise that is underserved will benefit now from the Australian Broadband Guarantee—any of these premises.

Senator BIRMINGHAM—How many premises does the funding for the ABG support?

Ms Scott—We indicated this morning—just to summarise, just to make it easier for everyone—that it is approximately four per cent of premises.

Mr Bryant—As I explained this morning, we are doing a recount of underserved premises because you will appreciate that services supported by our programs are rolling out all of the time. The numbers we are talking about here are a snapshot in time. They go back to the end of 2006 because that is the only way you can sensibly do that kind of comparative competitive process under a program. So life has moved on since then and the actual number of underserved premises as we speak we consider to be considerably less than that 787,000. The exact number is something that we are working on at the moment.

Senator BIRMINGHAM—Has the department ever been asked to look at the maps that Senator Conroy produced claiming to identify the extent of OPEL coverage when he was shadow minister?

Ms Scott—While Minister Conroy has been our minister or prior to that?

Senator BIRMINGHAM—Either.

Ms Scott—I do not recall any time in the time that the minister has been our minister that he has asked us to do that or we have done that work.

Mr Bryant—As a point of clarity, Senator, I am not certain what maps you are referring to.

Senator BIRMINGHAM—Minister, there was some debate about it, as I recall, in the previous parliament.

Senator Conroy—Yes, we did. We hired some independent experts to do a calculation based on the laws of physics which we produced during the election campaign and publicised where we were able to draw from information that had been circulated by the former government.

Senator BIRMINGHAM—Who did you engage, Minister?

Senator Conroy—I think the company was called Magenta. I could be wrong on that. I am sure you have it written down there.

Senator BIRMINGHAM—I was going to say: is it Subrepublic? That does not sound close to what you were guessing.

Senator Conroy—Subrepublic does not ring a bell. I am sure we will be able to get the name for you shortly. I am sure my office is watching. Before you rush to get excited about it, we never for a moment suggested that it was independent advice in the sense that we had hired an academic. It was a company hired and paid for by the ALP. There was no suggestion that it was not paid for by the ALP or it was produced any other way. It was money spent by the ALP to generate those maps using a company which, I think from recollection, had at least one employee who had in a previous incarnation worked for the ALP. So not for a moment were we hiding any of those facts. We were in fact at pains to list the names of people on the information when we produced it. But I am sure my office will be able to come up with that name for you shortly.

Senator BIRMINGHAM—That is okay, Minister. You have probably comfortably—

Senator Conroy—Covered the next four questions.

Senator BIRMINGHAM—dealt with those issues in the revelations that you have made there, so thank you very much for bringing all of that forward and making it easier for all of us.

Senator Conroy—Happy to speed your journey.

Senator BIRMINGHAM—If only we could have done that all day long, it would have been a much easier day. Minister, are you confident that the 72 per cent of underserved households will be appropriately covered by either the NBN or the ABG?

Senator Conroy—Our election commitment is to improve the broadband services to 100 per cent of Australians. Some 98 per cent will receive coverage from the national broadband network and for the remaining two per cent we are going through a tender process at the moment or a request for the best available suggestions on new technologies—satellite, broadband, microwave. So our commitment is actually to reach 100 per cent of Australians with better broadband than they currently get.

Senator BIRMINGHAM—What are the time lines that the OPEL group has to pursue any action as a result of the government's decision?

Mr Markus—I would be reluctant to give legal advice to OPEL. I think that would really be a matter for them, with respect.

Senator Conroy—Excellent answer, Don.

Mr Markus—I could not really comment any further on that.

Senator BIRMINGHAM—The potential still exists for them to take action if they wish. Is that right?

Mr Markus—As far as I am aware. I could not comment any further about that.

Senator BIRMINGHAM—Were there any restrictions in the contractual arrangements entered into that would have put a time period on how long OPEL had?

Mr Markus—No, I am not aware of any such provisions.

Senator BIRMINGHAM—Okay. So general commercial provisions would apply then? And, no, Mr Markus, I will not provide them with advice as to their rights under those provisions just looking at the content there.

Mr Markus—Thank you, Senator.

Senator BIRMINGHAM—I think that brings to an end questions relating to OPEL.

CHAIR—Yes, Senator Birmingham. So I take it that you are intending to resume questions after dinner on other issues? Are there any other further questions, or would you like to get back to me about that?

Senator BIRMINGHAM—I can attempt to plough on to CDMA and other issues if we wish to try to get everything done without a dinner break. I am in the hands of the committee. We do not have many hours—

Senator Conroy—If I can offer a suggestion from experience of being in your position right now, Senator Birmingham, I suspect your digital switch questions will be able to be pursued simply and easily by just you. However, I suspect in relation to CDMA the hordes may descend upon you. So you may want to get your digital switch questions out of the way before you are joined by many of your colleagues who are eager to assist you in the process of asking your CDMA questions. It also helps us to organise which staff to stay the longest.

Senator BIRMINGHAM—I am happy to attempt them in an alternate order. If the minister's assessment of how many colleagues might descend to deal with CDMA is correct, probably we should take a break of some description.

CHAIR—We will suspend proceedings and resume at seven o'clock.

Ms Scott—There was an earlier question today about the timing of the responses to the draft new guidelines for the Australian Broadband Guarantee. Mr Bryant gave an answer that people had until Wednesday next week. They actually have until tomorrow, but we are happy to take responses after that date provided they get them in by next Wednesday.

CHAIR—Thank you very much for that, Ms Scott.

Proceedings suspended from 5.58 pm to 7.04 pm

CHAIR—We will resume proceedings.

Senator BIRMINGHAM—Thank you, Chair. Can we turn to the digital switch-over, please. We will start with an update, from the department's perspective, as to progress on the switch-over, with how many households are now estimated to have made the switch-over and other relevant statistics.

Ms Scott—I will refer to my colleague, Andy Townend, who is in charge of the Digital Switchover Taskforce. I am sure he will be able to enlighten you.

Mr Townend—I think your question was about digital take-up. The most recent figures that we have are those from the ACMA survey that was recently published, and they estimate that 42 per cent of households in Australia have digital television on at least one set in the home. If you were to include those watching the terrestrial channels on pay television, that would increase to approximately 55 per cent.

Senator BIRMINGHAM—How much has that increased by over the last 12 months?

Mr Townend—The figure that came out of the previous ACMA survey was in the region of 30 per cent, I believe—just a little less than 30 per cent. It is probably worth noting as well that in terms of the actual coverage of digital television—I think there was some discussion of that yesterday during the ABC session—just over nine out of 10 homes can receive all of the digital television services and approximately 96 per cent of homes in Australia could receive at least one digital television service if they chose to do so. That has been achieved by converting 55 per cent of the transmitter sites that are owned by the broadcasters.

Senator BIRMINGHAM—What volume of digital television is being broadcast at present?

Mr Townend—At present each of the broadcasters simulcasts their analog service in standard definition. The broadcasters also have a quota for high-definition broadcasting. I cannot give you the details of that quota right now, but we can certainly look for them. There are also two additional standard definition channels in digital: ABC2 and an additional channel from SBS.

Senator BIRMINGHAM—The minister announced a new plan for the switch-over task force earlier this year. Minister, prior to that you indicated that there were savings of \$20 million when you axed Digital Australia.

Senator Conroy—There certainly were.

Senator BIRMINGHAM—Where have those savings gone?

Senator Conroy—The department of finance took them towards the budget bottom line. I can promise you they did take them.

Senator BIRMINGHAM—Did the department of finance provide new appropriations for the Digital Switchover Taskforce?

Senator Conroy—The digital action plan was really just a press release with some funding for Mr Townend and some of his colleagues. There was no actual money for programs. We were able to successfully convince the cabinet that we could progress with a ‘that’s not a plan, this is a plan’ type of approach. So we were able to gain new funding and a new allocation that contributed \$37.9 million, which activated a series of programs, as opposed to a staffing allocation with no money for programs and a very inflated definition of what it was actually going to do. I am sure Mr Townend will be able to take you through all the initiatives that we funded that were not funded by the previous government.

Senator BIRMINGHAM—How much was returned to the Treasury?

Senator Conroy—Was it twenty? We had to gain some new funding but we also absorbed the savings and provided savings from existing programs within the department, so we went through a process of reallocating money as well as gaining some new money from the cabinet process.

Senator BIRMINGHAM—Of the \$37.9 million allocated to the switch-over task force, how much of that was reallocated?

Ms Scott—I will take that in parts, if that is all right. I will get Mr Townend to read out the savings from the closure of the digital action plan and Digital Australia, and then we will answer the question about the reallocation.

Mr Townend—The savings from the closure of the digital action plan in relation to Digital Australia and the department over three years—2007-08, 2008-09 and 2009-10—were \$2.098 million, \$4.644 million, \$4.917 million, coming to a total of \$11.659 million. Savings related to the digital action plan in relation to ACMA over the same period were \$1.435 million, \$1.239 million and \$1.290 million—a total of \$3.964 million, coming to a total of \$15.623 million. That was in the three years ending 2009-10.

Senator BIRMINGHAM—They were the total savings from the programs that were cut in the minister’s first wave of reform—the axing of Digital Australia and the axing of the digital action plan—so that is \$15.623 million. Minister, that is a few million dollars shy of the \$20 million that I think you were generally quoted at the time.

Senator Conroy—I am sorry; we were conferring. What was the full question?

Senator BIRMINGHAM—Mr Townend just took us through the savings measures that have been taken, which total \$15.623 million according to Mr Townend. I am fairly sure you were broadly quoted as talking about a \$20 million saving at the time.

Mr Townend—If this helps, the total figure that was in the digital action plan was \$21.9 million. That was allocated as follows: Digital Australia, \$15.2 million; capital to establish Digital Australia, \$1.4 million; ACMA, \$5 million; and capital for ACMA testing equipment, \$0.3 million, coming to a total of \$21.9 million. That money was either spent or absorbed within the department or ACMA.

Senator BIRMINGHAM—Whether we take it as a saving of \$15.623 million or a saving of \$21.9 million we have a new expenditure of \$37.9 million. Could you break that expenditure down in terms of programs that it is committed to.

Mr Townend—That was \$37.9 million: \$8.5 million for the Australian Communications and Media Authority to undertake technical switch-over related projects, including an evaluation of transmission reception; \$4.8 million for a digital tracker to measure six critical success factors; \$1 million over two years to conduct research into the multiple-unit dwellings issue; \$6.7 million for a logo and labelling scheme; and \$16.9 million for the Digital Switchover Taskforce, which will coordinate and oversee the transmission to digital.

Senator BIRMINGHAM—Is the funding for the Digital Switchover Taskforce, that \$16.9 million, solely for staff resources?

Mr Townend—That is correct. I will clarify. That would include the salaries and on-costs associated with people, the running costs of the office, travel costs and associated costs.

Senator BIRMINGHAM—That does not appear to compare particularly favourably with the \$15.2 million that you cited as the cost for the establishment of Digital Australia.

Mr Townend—The \$15.2 million that I quoted was over three years; the \$16.9 million is in fact over four years. Equally, the Digital Switchover Taskforce has a number of specific initiatives that it has now been asked to carry out over that period.

Senator BIRMINGHAM—I note that it has some specific initiatives which we will turn to. I note also that the minister's much lauded savings do not appear to add up to terribly much in the end but we are delighted that there are some plans in place.

Senator Conroy—Can I say to you that maybe the maths are not working out in your head at the moment but I assure you they were taken by the department of finance.

Senator BIRMINGHAM—They appear to have been taken on one hand and given back on the other. Perhaps if we could clarify that: how many extra funds were appropriated from the department of finance towards the Digital Switchover Taskforce?

Ms Scott—\$37.9 million was provided for the digital task force and its initiatives and that was announced in March.

Senator BIRMINGHAM—Some of that was internal reallocation, though, from what the minister seemed to be intimating before?

Ms Scott—We had to cover some of the initial costs of the digital task force prior to the decisions taken by the government. We also offered savings from the PAFO program—Protecting Australian Families Online—reflecting that some elements of that were not continuing. But the initiatives that Mr Townend read out represent new initiatives that did not exist previously.

Senator BIRMINGHAM—So the \$37.9 million is new appropriation?

Ms Scott—Yes.

Senator BIRMINGHAM—Okay, thank you. So the department of finance did take it all back from the minister's initial savings but has given it back plus some for this process; as long as we are clear on that. Mr Townend, \$6.7 million for the development of a logo and labelling scheme: what progress have you made in that regard at this stage?

Mr Townend—At present we are going through the stages of appointing an agency to assist us in researching what kind of logo and label we might need. We are also working

through an industry advisory group, which contains members of the broadcasters, the retailers, manufacturers and others. We are looking at existing initiatives in the marketplace—for example, the HD Tick that was launched a little less than a year ago by the supply chain—and also looking at what the Freeview initiative that has been announced by the free-to-air broadcasters might be.

Our main objective is to make sure that, during the switch-over process, the public are properly informed about what digital switch-over means for them so that they understand the options available to them and that, when they purchase equipment, they do so understanding what the implications of digital switch-over are for them so that they do not unknowingly buy equipment that is not fit for purpose at the point of switch-over. As I say, at the moment we are conducting our initial research and consulting with the industry. They are the first steps.

Senator BIRMINGHAM—It is obviously important, with the numbers you said before, of 55 per cent now, if you include pay TV subscription, or 42 per cent of households, being digitally equipped. Those numbers will grow quite rapidly from hereon in. Getting such programs operational quickly is going to be important or they will come almost too late, the way people are moving. The ABC indicated yesterday that new content is helping to drive that take-up. What type of evaluation are you undertaking of the industry's own initiated tick? Are you looking at its recognition in the marketplace?

Senator Conroy—I think the tick program was introduced out of sheer frustration by the suppliers because of the lack of an action plan by the previous government, so we are keen to ensure that we work with the sector rather than sit on our hands and do nothing, as the previous government did, other than put out press releases announcing action plans. We are assessing it, Andy?

Mr Townend—We are. An important thing to note with that particular tick is that it is called an HD Tick. That tick signifies a particular level of high-definition television reception—that is, equipment. It does not necessarily help people through the switch-over process itself, where people need to understand that they will need to either upgrade or adapt their existing television or purchase a new television. In terms of evaluation, one of the key initiatives that we will be implementing over the coming year is the digital tracker. That will help us monitor six critical success factors: awareness, understanding, attitudes to digital television, intention to convert, actual conversion and satisfaction. We will be measuring that both demographically and by region. That will give us a rich dataset to help us understand precisely how the country is converting to digital television and what we need to do in order to help people over the line and encourage them to convert to digital.

Senator BIRMINGHAM—When will the first of the research under the tracker be undertaken?

Mr Townend—We anticipate that some activity will be undertaken during the last quarter of this year and we would hope to publish results early in the new year. We have not appointed the company to carry out that research yet but that would certainly be our ambition.

Senator BIRMINGHAM—How frequently do you expect that research to be undertaken?

Mr Townend—We will have that research undertaken once a quarter and will publish that research together with a report. That will take us on considerably from the past, where we

have had an annual survey of digital uptake. This will be a very live, real tool which will help us, as I say, understand what needs to be done in order to drive the process towards digital switch-over.

Senator BIRMINGHAM—Have you determined how many households will be market researched or surveyed each quarter, or is that still for negotiation?

Mr Townend—Not at this stage; that is for negotiation. However, we do want a statistically significant sample to allow us to gauge progress both demographically and by region. It is quite likely that the way that will work is, in tandem with a switch-over timetable, that that tracker will be weighted towards those areas which are switching over first during the process. In parallel with setting up the digital tracker, we are working with the broadcasters to determine what a suitable timetable for switch-over will be. We have been asked to report to the minister in the third quarter of this year what that timetable is.

Senator BIRMINGHAM—Is it possible that the HD Tick could be a satisfactory logo, or is that already too identified with a specific product?

Mr Townend—At this stage we have not ruled anything in or out. The primary reason that we need a brand or a logo is to help people understand that they need to act by the time the analog television signals are switched off. We will conduct some research. The tracker will help us, but also the research that we are doing into branding and labelling will help us with that. It is possible that a tick which purely tells people about a particular standard of high-definition television may not help us with all of the things that we need to do. For example, we would like to use that logo of the tick—the brand, whatever it becomes—as an accreditation not only for digital equipment which will work after switch-over but also to advise people that analog equipment itself will not work after switch-over unless it is adapted. We would also like to investigate its use by the antenna installation industry in order to give people comfort that antenna installers that they ask to give them help are trained and qualified—are not going to rip them off, basically.

We are also doing a lot of work with multiple-unit dwellings. It may well be that we can use a mark to accredit those buildings which have been upgraded to receive digital television. So the logo that we want to use could well be broader than the existing high-definition tick, although we will take that into account in our consideration.

Senator BIRMINGHAM—Have you had discussions with local government authorities or planning bodies in relation to high-rise buildings and apartment blocks that may currently be under construction or planned?

Mr Townend—Yes, we have. On our industry advisory group we now have a representative from the Institute of Strata Title Management, who is helping us shape some of our work on the multiunit dwelling issue. We also have a working group comprising several people working both in the building industry and the supply chain industry. We are working with the Australian Building Codes Board to develop a handbook containing guidelines, which we will issue to all of those who have responsibility for these kinds of buildings. We are presenting a draft of that handbook to the Building Codes Board in July. I am going to be addressing the board and the document will be presented to them in July. Our intention would then be to publish that document as quickly as possible afterwards and make sure that that

document is provided to all of those in the industry with responsibility for this issue. The handbook will set out what switch-over is, what it is about, what the implications are for high-rise buildings, and similar buildings, and also start to scope some of the action that those with responsibility for those buildings can do to upgrade those buildings.

Senator BIRMINGHAM—Is it still an option to have test beds for the switch-over—that some regions may be switched over prior to the end date? I note the speculation that Tasmania and Mildura have been cited as possible test beds.

Mr Townend—We are working right now with the broadcasters to determine what a switch-over timetable might look like, what the areas might be and the sequence in which they would be switched over. It almost certainly would make sense to start in regions where we can learn something but also in areas which are more ready for switch-over than others. Tasmania and Mildura have been mentioned in that capacity, largely because take-up in those areas is greater than elsewhere. In both cases that has been because of the availability of a third commercial network in digital form only. So, yes, it remains a possibility.

Senator BIRMINGHAM—You are very tech savvy down in Tasmania, aren't you, Senator Parry?

Senator Conroy—They just cannot afford broadband.

Senator BIRMINGHAM—Minister, Mr Townend has made reference to the switch-over program and timetable several times. It seems odd that the timetable is being worked on, but of course a deadline already exists. Wouldn't it have been better for you to have all of this research done and advice done and then set the end date of that timetable as part of a holistic approach?

Senator Conroy—I have made this point publicly before and I am happy to make it again: the free-to-air TV networks had been very slow in helping drive digital uptake. We did not have an EPG until just before the election. We did not have serious conversation about a Freeview box similar to what they have in the UK. The thing that has crystallised the activity now is that we have set a date. Without getting too political, the previous government had a target; it was 'some time between here and here and maybe', and 'It's just a target, it's not a firm deadline'. That encouraged the free-to-air networks to sit on their hands a little bit and the Rudd government's decision to say, 'No, there is now a firm switch-off date,' has helped transform the debate. The free-to-air networks, to give them absolute credit, have really taken the bit between their teeth.

As I mentioned just before the election, when you have an EPG you may think, 'Why on earth didn't we have an EPG before?' Because they did not want to produce one. They sat on their hands and really slowed the whole process up, because digital technologies and the applications that flow from them flow from the EPG. We now have an imminent announcement around a Freeview box to be launched, similar to the UK, which will encompass perhaps up to 15 channels, if not more, depending on where things get to.

So the key to the transformation in the debate in the last six months has been a firm switch-off date with a government that said, 'No, 2001 it was introduced and we have actually got to get a move on.' So it would have been nice if this work had been going on over the last few years under the previous government. It was not. There were countervailing pressures; I am

very conscious of the strengths of some of the countervailing pressures. But what has really driven it is the actual putting the line in the sand and saying, 'That's the end.'

We have now seen enormous interest in pursuing this, with very positive response: more content on the HD channels, desire to introduce the Freeview box, and very serious discussions among the free-to-airers about where the black spots are—'How we can identify it?' 'What do we need to drive take-up?'—all the sorts of things that Andy has talked about. So the actual date has been the catalyst, without wanting to generally get into too much of a political debate. It was the end point that actually meant that people who have been sitting on their hands—

Senator BIRMINGHAM—You may be right, Minister, I do not know. The end date that you have chosen was the end date of the target range that the previous government spoke of.

Senator Conroy—Helen talked about 2010 to 2012 and, because we had not made a lot of progress, after consultation, I moved it out to the end of 2013. So I actually went past the end date.

Senator BIRMINGHAM—You in fact went past that.

Senator Conroy—But that was because, as I said, the industry had not responded to a target. They had, I am sure, frustrated the previous minister at times as well.

Senator BIRMINGHAM—Mr Townend, will you be undertaking work to assess what it will take to encourage lower income Australians, pensioners and others, to shift over?

Mr Townend—The digital tracker that I have referred to will of course give us that kind of information in terms of regions and demographics. That will give us an idea of the rate of take-up within those particular groups.

Senator BIRMINGHAM—I realise that will give you an idea of the rate of take-up and probably, given the six different areas you are surveying at least, it may give you some of the hesitations—or is it purely quantitative work that the tracker will be doing?

Mr Townend—The tracker will be principally quantitative work. We may supplement that from time to time with additional modules, which will give us particular information about particular groups about which we are worried. The existing 42 per cent take-up of digital television has principally been driven by flat panel high-definition television screens. Those, by their very nature, tend to be more expensive. As switch-over approaches, particularly as more channels become available, the price of set-top boxes, for example, could reasonably be expected to fall. That should remove many of the barriers for some of those particular groups that you have rightly mentioned, and we will keep a careful eye on that.

Senator BIRMINGHAM—Will you be undertaking any research at this stage into whether subsidies or some type of incentives may be required to shift people in such low-income brackets?

Mr Townend—We will naturally keep that under consideration, but at this stage that is all I can say. We will obviously keep an eye on similar schemes in the United Kingdom and the United States of America.

Senator BIRMINGHAM—Mr Townend, how much of the work that you are currently doing were you already doing as part of Digital Australia?

Mr Townend—I joined Digital Australia on 22 August last year. I spent about two months meeting stakeholders and starting to think about the work that would be involved in Digital Australia. That came to a halt when the election was called. So the work that I am talking about here I was not engaged in.

Senator BIRMINGHAM—Thank you. I am not sure this is a question directly for you; the minister or Ms Scott may need to jump in. Can one of you confirm that a grant of \$600,000 will definitely be provided to address television black spots in Kalorama North and South with a proposed fibre-optic solution being considered for about 450 premises?

Senator Conroy—The officer who is handling that has gone home. We are just seeking to confirm that for you.

Senator BIRMINGHAM—Thank you.

Senator Conroy—We can jump to another band of questions, just while we are doing that, if you want to proceed and then we can come back to that.

Senator BIRMINGHAM—Yes, that is the end on these.

Senator Conroy—Only if it is possible.

Senator BIRMINGHAM—Yes, unless Ms Scott is about to—

Ms Scott—I have found something. I will need to do a more thorough search. At page 99 of Budget Paper No. 2 there is a section on television black spots and \$850,000 in 2008-09 is a contribution towards improving television reception in the following locations: Broadford, King Island, Elizabeth, Salisbury and surrounds. I think my colleague Mr Rizvi has found some additional information.

Mr Rizvi—Funding is to be rephased, Senator Birmingham, from 2007-08 into 2008-09, to enable two fairly well advanced projects, Kalorama North and Kalorama South, to be funded in 2008-09.

Senator BIRMINGHAM—That funding is for \$600,000 across those projects combined?

Mr Rizvi—Yes, \$600,000 for the two combined, which is the government's contribution to those two projects.

Senator BIRMINGHAM—Excellent. Thank you. In terms of the transmission of digital signals, how will communities—and I cite an example of Healesville in Victoria—be guaranteed that when the analog signal is switched off they will not be left high and dry? This is an area that has had problems as a TV black spot in the past, in terms of getting a signal.

Mr Townend—There are various answers to that. We are working with broadcasters on the switch-over timetable and part of that discussion is about how the coverage in analog can be replicated in digital. You are quite right to point out that there have been black spots in analog and there will be black spots in digital. ACMA will be carrying out research to assist in identifying where those black spots might be, and the solutions for those black spots are something which we will be considering as part of our program of work.

Senator BIRMINGHAM—When do you expect ACMA to be able to identify potential black spots?

Mr Townend—They will be carrying out that work throughout the switch-over program. One of the difficulties with television broadcasting is that you can predict what the coverage will be but you cannot guarantee what that coverage will be. It is a characteristic of the transmitter itself and also the installation in-home. Any coverage figures you give are always predictors. However, I would point out that over nine out of 10 homes already have digital coverage with all the channels and 96 per cent have coverage of at least one, and that is with only 55 per cent of transmitters converted. So the research from ACMA will assist us during that process. Inevitably, though, some of the black spots will emerge as we go through the switch-over rollout program and, as we develop the timetable, we are also considering what solutions may be appropriate for these kinds of circumstances.

Senator PARRY—How can you predict but not guarantee? It does not follow. Surely your modelling would be based on whatever proven data you would have for the signal to reach?

Mr Townend—You can predict what terrestrial coverage might be. But, in terms of guaranteeing that people have continued access to television, that may not necessarily involve terrestrial television. There may be some cases where satellite transmission and reception is a better alternative than terrestrial.

Senator PARRY—Which means your modelling is at fault in the first place, if you are saying that you can predict—

Mr Townend—No. The difficulty with predicting television coverage is manifold. You know the characteristics of the transmitter, you can estimate the characteristics of the reception device in-home and the cabling but you can never guarantee what that will be. Equally, television transmission in terrestrial form is susceptible to variations in the weather, in terrain, in clutter, in the number of trees there are, and so on.

Senator PARRY—So you cannot predict a minimal model?

Mr Townend—No, you cannot.

Senator PARRY—‘The signal will only go this far under these circumstances’?

Mr Townend—You can estimate, you can predict where the signal might go in a given set of circumstances, but those circumstances themselves usually vary over time and due to things like the weather. Equally, although you can predict where that signal ought to be, if someone has a particularly poor installation, even though the broadcasters could legitimately say, ‘We are providing coverage to that person,’ they may either not receive a signal or have very poor reception. It is as much an art as a science, although you can get very close to the answer.

Senator PARRY—Thank you. I have learned something.

Senator BIRMINGHAM—Mr Townend, how many transmitters in Australia are owned by the networks and how many are community or privately owned transmitters?

Mr Townend—There are 1,025 transmitter sites across Australia; 480 of those are operated by the broadcasters and 532 are retransmission sites which are either self-help transmitters or analog black spots.

Senator BIRMINGHAM—Whose responsibility is it to upgrade or switch over those 532?

Mr Townend—That is currently a matter under consideration.

Senator BIRMINGHAM—Who owns most of them?

Mr Townend—Bear with us for a second and we will have the answer.

Mr McMahon—Self-help facilities are often operated by local authorities.

Senator BIRMINGHAM—Are you able to tell me in terms of those two categories how many transmission sites have already undertaken the switch-over?

Mr Townend—Yes. There is a total of 480 broadcaster controlled sites; 122 have completely converted and 140 are partially converted. What that means, essentially, is that at each site each of the broadcasters will have their own transmission facilities. So at some of those sites every single broadcaster has converted their equipment; at others, not all of them have converted. That is why there is a difference between the 91 per cent or so who have got all services and 96 per cent who have got at least one service. The self-help and black spot transmitters have not yet started to convert.

Senator BIRMINGHAM—None of them have started to convert at this stage?

Mr Townend—No, not yet.

Senator BIRMINGHAM—It is obviously a major area of concern and there is work to be done.

Mr Townend—It is certainly one of our priorities to assess how we can resolve that, yes.

Senator BIRMINGHAM—What work is being undertaken with the owners of those sites or local communities to try to progress that?

Mr Townend—Currently we are assessing what appropriate technical solutions might be available. That is being done by the department and by ACMA. At present we have not directly consulted with the owners of those sites.

Senator BIRMINGHAM—Mr Townend, thanks very much for your information. It is very helpful.

Mr Townend—Sorry. Could I just come back to you on the—

Senator BIRMINGHAM—Certainly come back. We will clarify anything.

Mr Townend—I mentioned high definition at the start and the quota for the number of hours of high-definition television program per year. It is 1,040.

Senator BIRMINGHAM—Thank you very much.

CHAIR—There are no further questions on that one.

Senator BIRMINGHAM—CDMA. I am not seeing the hordes rushing. This is the last bundle that I have got. Mr Rizvi, welcome. We seem to have seen so much of you in past estimates that it has been a shame to see you sitting in the backblocks this time.

Mr Rizvi—Thank you, Senator.

Senator Conroy—We have missed you, too.

Senator BIRMINGHAM—I am not even a veteran of these things yet. How many complaints were received by the various hotlines established to handle the CDMA switch-off?

Mr Rizvi—We can provide you with the number of calls to our hotline. I will divide those up into a series of time frames because that is how I have got the data here. In terms of the calls to the department's hotline between the period August 2007 and mid-January 2008—that is, the time of the minister's first decision in regard to CDMA—our hotline received 1,349 calls. Would you like me to continue with the different periods?

Senator BIRMINGHAM—Yes, please.

Mr Rizvi—From mid-January to 25 March we received a further 231 calls to the hotline and then from 26 March to 19 May we received 207 calls.

Senator BIRMINGHAM—How would you characterise the calls that were received?

Mr Rizvi—The calls will relate to a range of issues. Sometimes they will, in fact, be specifically CDMA and Next G issues. Sometimes they will be billing issues and those sorts of things. Where they are CDMA and Next G type issues, the customer will generally have a concern about reception, that the reception is inadequate. They will not always know the reason for the inadequate reception. Where a person calls us, our first approach is to ask them whether they have made contact with the Telstra hotline. If they have not made contact with the Telstra hotline we encourage them to do so and seek to have their matter resolved that way. Where they come to us and say, 'We have contacted the Telstra hotline and I'm still having difficulties,' it is at that point that we will take their details and we will refer their case directly to Telstra ourselves, and we will then proceed to follow up that matter with Telstra.

Senator BIRMINGHAM—Were all of the complaints that you forwarded to Telstra yourself satisfactorily addressed?

Mr Rizvi—Of the complaints—the hotline calls—that we have referred to Telstra, I will go through those three blocks again, if that is okay. Of the first group I have here, Telstra reported on 844 of the referrals. They advised that 59 of those callers they were unable to contact when they rang back and they advised us that, in the bulk of remaining instances, they had satisfactorily resolved the issues that the individual customer had. They resolved them through a range of measures. Sometimes that would relate to modifying the equipment, perhaps putting an internal antenna on. It might involve changing the settings of the handset. Sometimes it would involve changing the handset over altogether and providing the customer with a new handset.

There are two types of antenna that might potentially be used. One might be a car antenna on top of the car or, alternatively, in some handsets they are able to add an antenna as a supplementary accessory to the handset itself. Depending on the circumstances, it could have been either solution.

Senator BIRMINGHAM—And in the other two time periods?

Mr Rizvi—In the other two time periods, of the 231 calls received in the period mid-January to 25 March, approximately 143 cases were handset or coverage related, of which 54 were referred to Telstra.

Ms Forman—The most recent feedback we have had from Telstra was from the calls in that group and the following group. They have advised that, of those 12 that we have not had feedback on, they are still following up, and four of the callers that they contacted of the remaining group were still to have further follow-up, so obviously their problems had not been resolved on the first assistance. Generally when Telstra follows up with these callers they will try a solution and then follow up with the customer and see whether that has resolved the problem and, if not, they will try a next step.

Senator BIRMINGHAM—What steps has the department taken to satisfy itself that callers to the hotline had their issues satisfactorily addressed, other than receiving the word of Telstra?

Mr Rizvi—In instances where the caller has not had their problem satisfactorily addressed, we usually find that the caller will ring us back and say so. That will trigger us to go back to Telstra and start the process again, where those people have rung us back.

Senator BIRMINGHAM—There was no proactive follow-up by the department of any of the complainants?

Ms Forman—We did a survey of customers to test that very issue. In most of those cases we found that the problems had been resolved. In around 40 or so—this was of the initial 1,300—we returned to Telstra and said, ‘Look, we are not entirely satisfied with the solution you have put in place for these callers,’ and they proceeded to follow up again with those people.

Senator PARRY—Were all 40 resolved successfully, the 40 you referred back to Telstra?

Ms Forman—In the main. In some cases the customer remains dissatisfied, even though the problem has been largely resolved.

Senator PARRY—But Telstra completed everything it could possibly do.

Ms Forman—Yes.

Senator BIRMINGHAM—How many CDMA services had not been converted to another network at the time of the shutdown?

Senator Conroy—Telstra regard that as confidential information that they do not want to release until their annual financial statements. So there is some information which we have been made aware of, but on a confidential basis. There is information that I do not have at this stage, but Telstra have indicated that they would like to release some of that information as part of their annual report; it falls into market-sensitive information which they have provided to us on a confidential basis.

Senator BIRMINGHAM—Your understanding is that that information will be publicly released?

Senator Conroy—As I say, it is commercial information. I will double-check and, if I am wrong in what I am saying, I am happy to come back to you on notice. I think they indicated that some of it would certainly be available and I do not think that they have released any of that information publicly at this stage. Any information we have is only given to us on the basis of commercial confidentiality.

Senator BIRMINGHAM—If you could take it on notice.

Senator Conroy—Yes, I am happy to. If I can add any more to the answer, I am happy to supplement that.

Senator BIRMINGHAM—Thank you. Minister, in terms of releasing information, have you given any further thought to releasing the reports that you used to make your decision about the timing of the network shutdown?

Senator Conroy—It falls into two categories. Some of it is commercial-in-confidence information and some of it I think can be made available. I am happy to release information that does not fall into the commercial-in-confidence category. I am sure you understand.

Senator BIRMINGHAM—Yes.

Senator Conroy—I think there is some information we can release, so we will have a talk with the department about that.

Senator BIRMINGHAM—Those reports that are not commercial-in-confidence that Telstra would be relaxed about being released?

Senator Conroy—Yes. There is certainly some information we can provide to the committee to allow it to have a look at.

Senator BIRMINGHAM—It is just that in the previous matter it has been suggested to me that the CDMA figures used to be in Telstra's annual reports but may not have been included in their last update.

Senator Conroy—As I said, I apologise if I am either verballing Telstra or giving you the wrong information, and I am happy to correct it if I am, but I have a recollection that in the discussions they were very concerned about ensuring that the information was not released by us and that they were going to release some information as part of their annual reporting process, because of issues of commerciality.

Senator BIRMINGHAM—On that issue of releasing those numbers on notice, if Telstra are not going to release it in their annual report, will you undertake to ask Telstra about it?

Senator Conroy—I can ask them about it. They have only given them to us on the basis that we would not release them but, if they do not release them, I am happy to raise the matter with them.

Senator BIRMINGHAM—Thank you, Minister. In terms of the equivalency of service, we see a lot of the issues that Telstra recommended people resolve, related to the appropriate handset, and we recognise that Telstra worked very hard to try to deliver those appropriate handsets, but there was also a lot of advice suggesting that people needed the additional antennas that Mr Rizvi spoke of before—either external antennas to the handset or, indeed, car aerials. How do you rationalise equivalency of service if somebody says, 'Well, I could

stand in the paddock on my phone before and had coverage on the CDMA, but now I have to sit in the car and can't leave the car if I want to get coverage on the Next G'?

Senator Conroy—They should be contacting Telstra as a matter of urgency to ascertain why some areas are not receiving as strong a signal from Next G as CDMA. They should do that urgently. Telstra complied with the licence condition set down by Minister Coonan in your former government. I was enforcing the licence condition put in place by the previous government. It did not require absolute equivalence in a literal sense. It did not require the sort of test that you are suggesting. If the licence condition had included those things, then it may be possible to have a different sort of discussion with Telstra, but we enforced the licence condition as was put in place by your former government. I have seen at various times your shadow minister on this issue talk about wanting a no disadvantage test; Mr Billson has regularly called for a no disadvantage test. It is just tragic that he did not, when he was a minister in the previous government, call for it. A no disadvantage test may have meant that that particular path was not available to Telstra.

Senator BIRMINGHAM—Minister, it was up to you. The licence condition—

Senator Conroy—No, the licence condition was put in place by Minister Coonan, and it did not include a no disadvantage test, despite your shadow minister calling for one. He had the opportunity when he was in government to do it.

Senator BIRMINGHAM—The licence condition did deal with levels of equivalence, and it was up to you to determine those levels of equivalence.

Senator Conroy—It did not, though. It did not call for a no disadvantage test, which, in a legal sense—not in the political sense that you are now trying to perhaps point to, but in a legal sense—may have been a mechanism that could have dealt with some of the issues you have described. But the condition that was in place did not.

Senator BIRMINGHAM—I understand the condition that was in place and, regrettably, obviously there are people who are dealing still with some disparity of service, who should take on board your advice that they should contact Telstra. Obviously many have and, as we have acknowledged, Telstra have been working to try to address problems, but obviously some remain.

Senator Conroy—I think there will be improvements in the technologies of the handsets over time. There already has been a quantum improvement in the sensitivity of the handsets.

Senator BIRMINGHAM—Yes.

Senator Conroy—You have seen the blue tick phones come on the market, and I anticipate that, as all mobile phone technologies improve, there will be further improvements that may ultimately see that equipment unnecessary.

Senator BIRMINGHAM—Sure.

Senator PARRY—Minister, just on that point of the improvement in technology, under the licence conditions is there a certain power setting or radiation emission maximum that is applicable?

Senator Conroy—I do not think so, but I would defer to Mr Rizvi.

Mr Rizvi—There is a requirement that the coverage be equal to or better. Common feedback I am getting on blue tick phones is that people can feel them now: they burn their ears; they can feel a stronger level of ‘power’.

Senator Conroy—I do not think we have received any evidence of that. We would certainly be genuinely interested if you have someone who would like to talk to the officers about that.

Senator PARRY—I swapped over, and I have noticed it with this phone, and I have heard other people say the same thing.

Mr Rizvi—Certainly the phones have to be tested and have to meet minimum Australian standards before they can be allowed onto the Australian market.

Senator PARRY—So there must be a maximum emission standard?

Senator Conroy—As I think Abul is saying, that is probably more to do with the actual standard, though.

Senator PARRY—Who administers the standard?

Mr Rizvi—The standard is administered by ACMA, and we can get you more information on the standard and how it operates.

Senator Conroy—Yes, I am happy to do that.

Senator PARRY—Thank you.

Senator Conroy—I thought you were looking a bit sunburnt on one side!

Senator PARRY—I do swap around.

Senator BIRMINGHAM—Sunburn is not a natural thing for a Tasmanian.

Senator PARRY—We’ve got to get it somewhere!

Senator BIRMINGHAM—I cannot remember whether it came up in the last estimates hearings or in other discussions, but there was a suggestion made at one stage that, once the CDMA network was switched off, Telstra would have the capacity in some way to increase the strength of signal from Next G. Was that an accurate suggestion?

Senator Conroy—I did hear that. I think we are able to respond and say that Telstra are not making that claim in any discussions they have had with us. In fact, they have gone out of their way to make the point that they are not making that claim. There was some sort of urban myth evolving that they needed to close down CDMA because that would help with the signal strength. That is definitely not the case. They specifically made that point, I think, to us.

Senator BIRMINGHAM—I did not think it made a lot of sense and I am glad we could clarify that. This is probably other information you will have to get from Telstra, if at all possible: how many CDMA customers are still to formally establish an alternative mobile service?

Senator Conroy—We are happy to seek that information from Telstra. Whether or not they are willing to give it to us on anything other than a confidential basis, I do not know, but we are happy to take it on notice and come back to you.

Senator BIRMINGHAM—Thank you, Minister. That brings me to an end, Chair.

CHAIR—Well done, Senator Birmingham! No further questions? Thank you very much, Senators.

Senator Conroy—And congratulations! I have done many gruelling days doing what you have done and I know how tiring it is.

CHAIR—That completes the examination of the Broadband, Communications and the Digital Economy portfolio. Senators are reminded that written questions on notice should be provided to the secretariat by close of business Friday next week. I thank very much the minister and the officers for their attendance. Tomorrow we commence examining the Environment, Water, Heritage and the Arts portfolio.

Committee adjourned at 8.05 pm