



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

ESTIMATES

(Additional Estimates)

MONDAY, 8 FEBRUARY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Monday, 8 February 2010**

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Feeney, Fisher, Ludlam and Marshall

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fieravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Abetz, Back, Barnett, Brandis, Mark Bishop, Crossin, Feeney, Fielding, Hanson-Young, Humphries, Hutchins, Ludlam, Marshall, McLucas, Parry, Pratt, Trood and Xenophon

Committee met at 9.01 am

ATTORNEY-GENERAL'S PORTFOLIO**In Attendance**

Senator Wong, Minister for Climate Change and Water

Attorney-General's Department**Management and Accountability**

Mr Roger Wilkins AO, Secretary

Ms Renee Leon, Deputy Secretary, Strategic Policy and Coordination Group

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

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

Outcome 1—An equitable and accessible system of federal civil justice**Program 1.1—Access to Justice and Social Inclusion****Sub Program 1.1.1—Access to Justice**

Mr Matt Minogue, Acting First Assistant Secretary, Access to Justice Division

Ms Catherine Fitch, Acting Assistant Secretary, Administrative Law Branch

Ms Vicki Parker, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Mr Andrew Henderson, Acting Assistant Secretary, Federal Courts Branch

Ms Kelly Williams, Special Adviser, Federal Courts Branch

Sub Program 1.1.2—Social Inclusion

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Ms Amanda Davies, Special Advisor, National Human Rights Consultation Response Team

Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch
Mr Kym Duggan PSM, Assistant Secretary, Indigenous Policy and Service Delivery Branch
Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch
Ms Tamsyn Harvey, Assistant Secretary, Native Title Unit

Program 1.2—Legal Services

Sub Program 1.2.1—Civil Law

Dr James Pople, First Assistant Secretary, Civil Law Division
Ms Janette Davis, Assistant Secretary, Office of Legal Services Coordination
Mr David Bergman, Assistant Secretary, Bankruptcy Policy Branch
Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

Sub Program 1.2.2—Classification and Copyright

Mr Julian Yates, Acting First Assistant Secretary, Territories and Information Law Division
Ms Helen Daniels, Assistant Secretary, Copyright and Classification Policy Branch
Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch

Sub Program 1.2.3—Legislative Drafting and Publishing

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

Sub Program 1.2.4—International Law

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law
Mr Stephen Bouwhuis, Assistant Secretary, International Law and Trade Branch
Dr Annemarie Devereux, Assistant Secretary, International Security and Human Rights Branch

Sub Program 1.2.5—Constitutional Policy and Law Reform

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division
Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit
Mr Greg Manning, Assistant Secretary, Strategic Policy and Law Reform Branch
Ms Marjorie Todd, Assistant Secretary, National Legal Profession Reform Project

Outcome 2—Coordinated federal criminal justice, security and emergency management activity, for a safer Australia

Program 2.1—National Security

Sub Program 2.1.1—National Security Resilience Policy

Mr Mike Rothery, First Assistant Secretary, National Security Resilience Policy Division
Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch
Mr Alex Webling, Acting Assistant Secretary, Protective Security Policy Branch
Ms Ayesha Perry, Assistant Secretary, Emergency Management Policy Branch
Ms Sheridan Evans, Assistant Secretary, Identity Security Branch
Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch

Sub Program 2.1.2—Emergency Management

Mr Tony Pearce, Director-General, Emergency Management Australia
Ms Diana Williams, Assistant Secretary, Protective Security Coordination Branch
Mr Ken Grant, Director, Protective Security Coordination Branch
Ms Emma Appleton, Acting Assistant Secretary, Crisis Coordination Branch
Mr Kevin Rheese, Acting Assistant Secretary, Crisis Support Branch

Mr Peter Willett, Acting Director, Crisis Coordination Branch

Ms Rheannon Nicholson, Assistant Director, Special Projects, Crisis Support Branch

Sub Program 2.1.3—National Security Capability Development

Mr Martin Studdert AM, First Assistant Secretary, National Security Capability Development Division

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Mr Craig Harris, Assistant Secretary, National Security Training, Education and Development Branch

Mr Jim Anderson, Acting Assistant Secretary, Counter-Terrorism Capability Development Branch

Sub Program 2.1.4—National Security Law and Policy

Mr Geoff McDonald PSM, First Assistant Secretary, National Security Law and Policy Division

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

Ms Belinda Moss, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

Dr Karl Alderson, Assistant Secretary, AusCheck Branch

Program 2.2—Criminal Justice

Sub Program 2.2.1—Criminal Justice

Ms Elizabeth Kelly, First Assistant Secretary, Criminal Justice Division

Dr Dianne Heriot, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Sarah Chidgey, Assistant Secretary, Criminal Law and Law Enforcement Branch

Sub Program 2.2.2—International Crime Cooperation

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

Mr Steven Marshall, Assistant Secretary, International Crime Policy and Engagement Branch

Ms Alex Hutton, Special Adviser, International Legal Assistance Unit

Ms Susanna Ford, Acting Assistant Secretary, International Crime Cooperation Central Authority

Outcome 3—Assisting regions to manage their own futures

Program 3.1—Services to Territories

Mr Julian Yates, Acting First Assistant Secretary, Territories and Information Law Division

Mr Liviu Mihov-Nicotodis, Acting Assistant Secretary, Territories West Branch

Ms Alison Green, Acting Assistant Secretary, Territories East Branch

Strategic Policy and Coordination Group

Finance and Property Division

Mr Stephen Lutze, General Manager, Finance and Property Division

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Priorities and Coordination Division

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr David Finlayson, Assistant Secretary, Public Affairs Branch

Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch
Mr Greg Manning, Assistant Secretary, Strategic Policy and Law Reform Branch
Ms Marjorie Todd, Assistant Secretary, National Legal Profession Reform Project

People, Information and Technology Division

Ms Michele Kane, Acting General Manager, People, Information and Technology Division

Administrative Appeals Tribunal

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

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer
Ms Jane Bailey, Executive Director, People and Business Support

Australian Customs and Border Protection Service

Mr Michael Carmody, Chief Executive Officer
Mr Michael Pezzullo, Chief Operating Officer
Ms Marion Grant, Deputy Chief Executive Officer
Ms Linda Smith, Deputy Chief Executive Officer
Mr Neil Mann, Deputy Chief Executive Officer
Mr Steven Groves, Chief Financial Officer
Ms Robyn Miller, Acting National Director, Cargo
Ms Jan Dorrington, National Director, Passengers
Ms Sue Pitman, National Director, Trade and Compliance
Rear Admiral Allan Du Toit, Commander, Border Protection Command
Mr Demetrio Veteri, Deputy Commander, Border Protection Command
Ms Roxanne Kelley, National Director, Enforcement and Investigations
Mr Nigel Perry, Acting National Director, Maritime Operations Support
Mr Jeff Buckpitt, National Director, Intelligence and Targeting
Dr Ben Evans, National Director, Law Enforcement Strategy
Mr Geoff Johannes, National Manager, Trade Measures, Trade Measures Branch

Australian Federal Police

Mr Tony Negus APM, Commissioner
Mr Peter Drennan APM, Deputy Commissioner, National Security
Mr Mike Phelan APM, Deputy Commissioner, Close Operations Support
Mr Roman Quaedvlieg, Deputy Commissioner, Operations
Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

Ms Louise Vardanega PSM, Acting Chief Executive Officer
Mr David Riggs, Chief Financial Officer

Australian Human Rights Commission

The Hon Catherine Branson QC, President and Human Rights Commissioner
Mr Graeme Innes AM, Disability Discrimination Commissioner and Race Discrimination Commissioner
Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination

Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner

Ms Susan Roberts, Executive Director

Mr David Richards, Manager, Finance and Services, Chief Financial Officer

Australian Security Intelligence Organisation

Mr David Irvine AO, Director-General of Security

Mr David Fricker, Deputy Director-General

Australian Transaction Reports and Analysis Centre

Mr John Schmidt, Chief Executive Officer

Ms Jane Elizabeth Atkins, Acting Executive General Manager, Intelligence

Mr Peter Clark, Acting Executive General Manager, Supervision

Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer

Classification Board

Mr Donald McDonald AC, Director

Mr Jeremy Fenton, Acting Deputy Director

Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch

Classification Review Board

Ms Victoria Rubensohn, Convenor

Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch

CrimTrac Agency

Mr Jeff Storer, Acting Chief Executive Officer

Ms Nicole McLay, Chief Finance Officer

Mr Stewart Cross, National Manager, Law Enforcement Information Services

Mr Peter Bickerton, National Manager, Background Checking Services

Ms Theresa Van Gessel, Manager, Policy and Legal

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Mr Grahame Harriott, Executive Director, Corporate Services

Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Mr Peter Bowen, Chief Finance Officer

Mr Gordon Foster, Executive Director, Corporate Services

Federal Magistrates Court of Australia

Mr Richard Foster PSM, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Mr Grahame Harriott, Acting Chief Finance Officer

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Jeff Smart, Manager, Corporate Services

CHAIR (Senator Crossin)—I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed additional expenditure for 2009-10 and the particulars of certain

proposed additional expenditure for 2009-10 and related documents for the Attorney-General's, and Immigration and Citizenship portfolios. The committee will report to the Senate on 23 February 2010 and it has set Friday, 26 March 2010 as the date by which answers to questions on notice are to be returned.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings but, if you need assistance, our secretariat has copies of the rules. I want to particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised. The statement will be incorporated in *Hansard*.

The statement read as follows—

Resolutions and Orders of the Senate relating to the Estimates Committee process —May 2009

The attention of Senators and witnesses is drawn to the Standing Orders of the Senate which govern the operation of the Senate and its Committees. These are to be found at the following weblink,

http://www.aph.gov.au/Senate/pubs/standing_orders/index.htm

The following resolutions relate to matters and issues commonly arising in Senate Estimates Committees. The Committees and their witnesses must comply with these resolutions.

Parliamentary privilege

Procedures to be observed by Senate committees for the protection of witnesses

In their dealings with witnesses, all committees of the Senate shall observe the following procedures:

1. A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.
2. Where a committee desires that a witness produce documents relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents be produced shall be made (whether or not an invitation to produce documents has previously been made) only where the committee has made a decision that the circumstances warrant such an order.
3. A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the committee's order of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures. Where appropriate a witness shall be supplied with a transcript of relevant evidence already taken.
4. A witness shall be given opportunity to make a submission in writing before appearing to give oral evidence.
5. Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.
6. A witness shall be given reasonable access to any documents that the witness has produced to a committee.
7. A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for that decision.

8. Before giving any evidence in private session a witness shall be informed whether it is the intention of the committee to publish or present to the Senate all or part of that evidence, that it is within the power of the committee to do so, and that the Senate has the authority to order the production and publication of undisclosed evidence.
9. A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.
10. Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.
11. Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
12. Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
13. Where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (12) is not taken in respect of the evidence, the committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.
14. A witness may make application to be accompanied by counsel and to consult counsel in the course of a meeting at which the witness appears. In considering such an application, a committee shall have regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness shall be notified of reasons for that decision.
15. A witness accompanied by counsel shall be given reasonable opportunity to consult counsel during a meeting at which the witness appears.
16. 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.
17. Reasonable opportunity shall be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence.
18. Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or

threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

(Extract, Senate Standing Orders, p.103)

Accountability

7 - Senate and Senate committees —claims of commercial confidentiality

The Senate and Senate committees shall not entertain any claim to withhold information from the Senate or a committee on the grounds that it is commercial-inconfidence, unless the claim is made by a minister and is accompanied by a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of the information.

(30 October 2003 J.2654)

(Extract, Senate Standing Orders, p.121)

45 - Public funds

The Senate reaffirms the principle, stated previously in resolutions of 9 December 1971, 23 October 1974, 18 September 1980, 4 June 1984 and 29 May 1997, 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.”.

(Extract, Senate Standing Orders, p.136)

Public interest immunity claims

(1) If:

- (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
- (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer’s statement under paragraph (1). the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice for or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

CHAIR—The committee will begin today's hearings with the Australian Human Rights Commission and then we will follow the order as set out in the circulated program, which of course has been agreed to by the committee. We are aiming to complete the examination of interstate agencies by the lunchbreak and we anticipate completing the remaining agencies by the dinner break. Irrespective of where the committee is up to on the program, it will begin examination of the Australian Security Intelligence Organisation immediately after the lunchbreak if they have not already been called before lunch. Proceedings will be suspended for breaks as indicated on the program.

[9.03 am]

Australian Human Rights Commission

CHAIR—I welcome the Hon. Senator Penny Wong, the Minister for Climate Change and Water, who is representing the Attorney-General and the Minister for Home Affairs. Good morning, officers of the Australian Human Rights Commission. I particularly welcome Mr Mick Gooda, who is now our Social Justice Commissioner. I understand this is your second week in the job. You have one over the President, Ms Branson, who actually started her first week in that position at estimates. You have had a week's grace on her. We welcome you to our Senate estimates hearing. We wish you the best of luck and many happy days in your new position. Minister Wong, do you have an opening statement?

Senator Wong—No.

CHAIR—Then we will proceed to questions.

Senator BARNETT—It is good to welcome you back, Ms Branson, and to welcome Mr Gooda in his new role.

Ms Branson—Thank you, Senator.

Senator BARNETT—I want to follow up some questions we had earlier. Firstly, can you give us an update on the status of the freedom of religion inquiry—where you are up to and the position ahead.

Ms Branson—I refer that question to Commissioner Innes.

Mr Innes—A total of 2,025 submissions have been received on that piece of research. The report is in the process of being prepared and we expect to deliver the report prior to June this year.

Senator BARNETT—Thank you. An answer to a question on notice from me following the last estimates indicated that the total cost to date was \$294,112. It was question No. 9. Can you give us an update on the costs to date?

Mr Innes—I think that covered the estimated as well as the money already expended. I will check. The amount spent to date is \$278,627.

Senator BARNETT—Perhaps you could look at question No. 9 from last estimates and, on notice, provide an update report on who is undertaking that research. If there are any changes, let us know. You have indicated there that the major report will be drafted by the research team, which consists of Dr Dellal, Professor Bouma and Professor Cahill.

Mr Innes—Yes. There have not been any changes in the research team; I can tell you that.

Senator BARNETT—But if there are any changes to the answer to that question, perhaps you could let us know on notice.

Mr Innes—If there are changes, I am happy to let you know.

Senator BARNETT—Moving to another topic, the Durban I and Durban II conferences and your support for both those conferences, at the last hearing we were talking about costs of some \$11,000. But in an answer to a question on notice, I understand that the cost is now \$27,839.05. That is obviously somewhat higher than we had first envisaged. Ms Branson, I assume your position has not changed since last time, in terms of your support for both Durban I and Durban II, and you agree with the cost given in the answer to the question on notice.

Ms Branson—We attended Durban II in circumstances which we have discussed before. The cost of our attendance is given in the previous answer.

Senator BARNETT—Have you had any further communications with either the minister or the department regarding your position in support of Durban II conference outcomes? If so, can you advise the time, date and details of those communications?

Ms Branson—There have been no communications.

Senator BARNETT—The federal Minister for Foreign Affairs, on behalf of the Australian government, boycotted the conference. Your commission attended. You are saying that since the conference you have had no contact with the federal minister, Mr Smith, or indeed the Attorney-General or any government official representing either those ministers or their departments?

Ms Branson—I have had no communication with Minister Smith. I have, of course, been in communication with other people but not directly on this topic.

Senator BARNETT—So you as a commission have not been counselled or disciplined or in any way communicated to by the government to advise that it is their view that you should not have gone or that you spent too much or that your views were totally out of step with the Australian government with respect to the Durban II conference?

Ms Branson—No.

Senator Wong—Senator, if I may, I think we traversed this in some detail on the last occasion, and the government's view on the conference I think I put on the record. But you did use the phrase 'counselled' then. They are an independent statutory body. It would not be normal for a minister to counsel them simply because they took a view different to that of the government.

Senator BARNETT—In such circumstances, Minister, I thank you for your response because at the last hearing it was somewhat of a surprise and indeed perhaps a shock to some people that an independently government funded, taxpayer funded entity would proceed and attend a conference which was boycotted by the Australian government because of the potential anti-Semitic and anti-Jewish expressions, indeed as expressed by the President of Iran, at that conference. I think that decision was for very good reason, so there was some shock and dismay, not just on behalf of the coalition but across the country, that the mission did attend. And of course the boycott was announced a number of days before the conference. What I am asking is whether the government has expressed any view whatsoever, whether it is counselling or otherwise, to the commission to express its views, its disappointment, its whatever, with respect to the fact that the commission attended and at estimates confirmed its support for the outcome of the Durban II conference.

Senator Wong—To whom is that question addressed, Senator?

Senator BARNETT—You have interposed. I put the question to you, Senator Wong.

Senator Wong—If the question is to me representing the Attorney-General I will take it on notice. If the question is to the Minister for Foreign Affairs, whom you have referenced, you should put that to the Minister Representing the Minister for Foreign Affairs in the appropriate estimates committee.

Senator BARNETT—Could I put a further question to you, Minister. Could you either answer the question through Mr Wilkins or take on notice to confirm the fact that the government has not communicated in any way, shape or form with the Australian Human Rights Commission with respect to its views in support of the Durban II conference outcome?

Senator Wong—The government's views on the Durban II conference are on the public record.

Senator BARNETT—That was not the question.

Senator Wong—I know, but I think it is important because—

Senator BARNETT—That was not the question.

Senator Wong—If I can finish, Senator—

Senator BARNETT—I have asked a question. You are not answering the question.

CHAIR—Senator Barnett, can you let the minister finish, please.

Senator Wong—Thank you, Chair. The government's views on the conference are on the public record. As I previously indicated, the government had a different set of views to those expressed by the Human Rights Commission. They are an independent statutory agency. I think any attempt to suggest the government has a different set of views—I am not assuming

you are doing that, Senator, but if there were an attempt it would be inaccurate. If the question is—I am not sure what the question is, actually, so perhaps you could indicate to me what the question is.

Senator BARNETT—I will ask the question again. Could you please advise—and if not you, then Mr Wilkins—whether the Attorney-General or the department or indeed the government has communicated in any way, shape or form its views to the Australian Human Rights Commission since the outcome of the Durban II conference, where the commission outlined its support for the Durban II outcome, and that was done at the October estimates. So I am asking whether the department, the government or the minister has communicated in any way, shape or form with the commission.

Senator Wong—Other than the fact I put our position on the record on the last occasion—is that what you mean by ‘other than that’, Senator?

Senator BARNETT—I am asking you if you have communicated with the commission.

Senator Wong—They were next to me when I put our position on the record.

Senator BARNETT—Since the estimates?

Senator Wong—Is the question: since I put the government’s position on the Durban II conference on the record at the last estimates, has there been any further communication of the government’s position to the commission? Is that the question?

Senator BARNETT—I will ask it again. You are getting close to the question but you keep avoiding answering the question, Minister.

Senator Wong—Actually, I am asking for some accuracy and I are making the point that on the last occasion I in fact put the position on the record, so it seems a little odd to be asking us when we last communicated.

Senator BARNETT—I know what you said last time; it is on the *Hansard*. We know what Minister Smith has said—and this is prior to October last year. We have had estimates were Ms Branson has confirmed on behalf of the commission their support for the outcome of the Durban II conference. That was confirmed at estimates. That would have been, I hope, to the dismay and disappointment of the Australian government, as it is to the dismay and disappointment of me and many others across the country. The question is: has the government communicated in any way, shape or form with the commission since the last estimates with respect to that matter?

Senator Wong—In relation to the question insofar as it is addressed to the Attorney-General, as I indicated I will take that question on notice.

Senator BARNETT—Can Mr Wilkins advise anything further?

Mr Wilkins—I have nothing to add to what the minister has just said.

Senator BARNETT—So that means the department has not communicated any views on behalf of the government to the commission since last estimates on that matter.

Mr Wilkins—No, because the government’s views are patently obvious. They are out in the public; everybody can read about them.

Senator BARNETT—Thank you. I have concluded on that particular matter. I am happy to go to the next matter. This is an important matter, an answer to question on notice No. 7 relating to Australia's antiterrorism laws, which the commission believes are not adequately meeting Australia's international obligations. You have set out there in some detail that the Australian government and its current antiterrorism laws are not meeting our international obligations. So here we have an independent taxpayer-funded commission advising this committee and the public—and me directly—that there are numerous pieces of legislation, which I will name: the ASIO Act 1979, the Crimes Act 1914, the Criminal Code Act 1995 and different aspects of that legislation that breach our international obligation and breach, in your view, international law. You specifically identify Australia's international obligations with respect to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Convention on the Rights of the Child. You say that the commission's view is that some provisions of Australia's antiterrorism laws do not adequately meet the obligations set out in these treaties 'as set out in the table above' and then you have listed several pages where we act in breach of these international obligations. You explain the inadequacy of them. For example, under the ASIO bill, you say that 'provisions amount to the arbitrary detention as there are not police restrictive means to achieve the aim' and that there is limited judicial review—again, not the least restrictive means—and a lack of judicial oversight. Ms Branson, I do not know if it comes as a shock to the Australian government, because I assume that you liaise and communicate your views from time to time with them. You have expressed your views in submissions on those bills, as you have indicated in the answer. Have you had further discussions and communications with the government with respect to the fact that these bills are currently breaching international law?

Ms Branson—As the answer indicates, what was given in answer to that is a summary of what is contained in submissions that have already been made to government. Apart from making the submissions in response to requests for submissions, we have taken the matter no further so far as I am personally aware.

Senator BARNETT—Can you give us any benchmarking that you use as a commission in terms of the implementation of antiterrorism legislation and how it is normally assessed against international obligations. Are there any particular benchmarks that you use? Can you advise us of what benchmarks you apply? May I say that the government, when it introduced these laws—and I am sure the government stands behind these laws—would have an entirely different view from you. They would say that it is not in breach of the international law, and we will ask the minister and the department shortly if that is their view. But you can see that you have an entirely different view from the government on these matters.

Ms Branson—I am not aware of that one way or the other. We were asked to place a submission before the government with respect to international conventions and our security legislation and we did so. Our benchmarks are the international conventions to which Australia is a party and such jurisprudence as is available to us on their interpretation.

Senator BARNETT—Firstly, tell us about the jurisprudence that you have relied upon that is available to you and can you advise us what that is. Secondly, can you advise what international criticisms you have received of Australia's legislation that you have referred to

so that you can assist us to build some sort of credibility for the claims that you have made. You have made claims here—four pages—that these bills are breaching international law. So we would like to have further evidence to support your view.

Ms Branson—I am not in a position today to give you detailed legal analysis of a complex topic of this kind. I simply do not carry in my mind—

Senator BARNETT—Can you give us an indication of the views and the reasons that you have put forward to back up your claims here. There are several pages. This is quite a radical and concerning revelation, certainly to the Australian government and indeed to others who are watching and listening, where you say that these laws are in breach of our international laws. You must have some evidence to support your claim.

Ms Branson—Our detailed submissions are available, but I do not think I can be expected to attend a Senate estimates hearing with details of international jurisprudence in my mind and to recite it to this committee. The submissions, which are detailed analyses, are all available publicly. The links to them are given at the foot of this paper. I cannot usefully add anything beyond that.

Senator BARNETT—Are there any clear solutions to the concerns raised in the legislation?

Ms Branson—Human rights involves a balancing of competing interests on all occasions. It is the case that it is possible for different people to reach different conclusions on that balancing exercise. We have not sought to suggest precise answers to any of the issues raised, but we have sought to raise the issues where we understand, for reasons which are contained in the submissions, the links to which are contained in this answer, that Australia's position should be reviewed to be consistent with international obligations set out in the submissions.

Senator BARNETT—So a person being dealt with under these laws, in your view and in the view of the commission, is likely to have had their human rights violated?

Senator Wong—I think you are asking Ms Branson for a legal opinion. She has indicated the submission, which has been given to the Senate committee, and she is giving you her views about that. I am not sure it is really appropriate for you to be asking—is there something very amusing, Senator?

Senator BARNETT—It is rather amusing. Ms Branson has a very distinguished background in the law of this and is quite able and capable to answer such a question.

Senator Wong—I am raising whether it is an appropriate question for an estimates committee to be asking a public officer for legal advice and a conclusion on certain facts. I am perfectly aware of her capability.

Senator BARNETT—Does Ms Branson hold the same view as the minister?

Ms Branson—My answer is that without knowing the particular facts of the particular case the question cannot be answered.

Senator BARNETT—But it is fair to assume as an objective observer that, if these particular laws you have referred to are currently in breach of our international obligations,

then somebody being dealt with by that law may—and I underline ‘may’—have their human rights violated in some way.

Senator Wong—That is the same question, Chair.

Senator BARNETT—No, I am asking ‘may’.

Senator Wong—Just because you say ‘may’—

Senator BARNETT—I am not saying ‘would’; I am saying ‘may’.

Senator Wong—‘Would’, ‘may’ or whatever verb, it is exactly the same question. You are asking Ms Branson to go beyond a policy analysis which the commission has put to the Senate quite properly to the point of giving a legal opinion on some unidentified facts. It is precisely the same question and I raise this same issue with it.

CHAIR—Senator Barnett—

Senator BARNETT—It would be good if Ms Branson had the opportunity to answer the question.

CHAIR—Senator Barnett, I am the chair and I ask you to be silent when I call you, thank you. I think at this point in time, unless you have some specifics of an issue—

Senator BARNETT—Yes, I do, Chair. Let me go on.

CHAIR—that you want to further question about, I will ask you to move on because Senator Pratt has indicated she wants the call.

Senator BARNETT—I will conclude on this very important matter. I would like to table the answer to question on notice No. 51, where I asked the department the total cost of legal aid provided to five Sydney terrorists who were arrested in November 2005 and have since been found guilty of terrorism offences. The answer was, to my astonishment, \$10.117 million for legal aid assistance to these five terrorists. Tabled before us this morning, just in the last 20 minutes, is a letter from the Attorney-General’s Department, signed by Katherine Jones on 5 February, to Julie Dennett, the committee secretary, varying that answer to the question I put in October. The variation says that, rather than for the five terrorists, the \$10 million cost applied to the nine persons who were charged in that matter.

CHAIR—Senator Barnett, is this a question for the Human Rights Commission?

Senator BARNETT—It is. I would like to table that and I would like to give it to Ms Branson. I would like Ms Branson and the minister to have a look at it because it relates directly to my questions regarding the antiterrorism laws. I put the department on notice that I will be coming back to this and seeking further and better particulars this afternoon when we get to the access to justice and cross-portfolio matters. Does that surprise you, Ms Branson?

Senator Wong—Senator, why is this a question for the Human Rights Commission? This is a question of opinion. It is perfectly legitimate for you to ask questions of the department about this. The answer was provided by Ms Jones, who is at the table, and the department is appearing subsequently after the agencies, but putting—

Senator BARNETT—Let me draw it together.

Senator Wong—If I could finish, Senator.

CHAIR—Senator Barnett, I ask you again to wait until the minister has finished.

Senator Wong—Putting a series of questions that are clearly seeking an opinion to the officer at the table is not appropriate. That is not the practice of Senate committees.

Senator BARNETT—Opinion?

Senator Wong—Questions of opinion.

Senator BARNETT—Hardly—

Senator Wong—It is not a question of fact.

Senator BARNETT—Let me ask the questions and conclude my question before you interrupt me, Senator Wong. Ms Branson, in light of the answer to the question regarding the antiterrorism laws which you believe are in breach of our international obligations, which is in contrast to no doubt the Australian government's view of these particular laws, can you therefore understand the merit of providing such high sums of money through legal aid for alleged terrorists?

Ms Branson—Madam Chair, am I required to answer this question?

Senator Wong—I object to the question. That is the same question. The officer is being asked to offer an opinion on a particular legal matter and on a particular policy matter. It is not appropriate.

CHAIR—Senator Barnett, you are asking the Human Rights Commission to give their view about the amount of these costs.

Senator BARNETT—The merit of it.

CHAIR—I actually do find that that question is out of order. If you have questions of the Human Rights Commission and their activities, please proceed.

Senator BARNETT—Madam Chair, through you I want to put the department on notice that I will be pursuing this matter with some vigour with the department and I will be doing that later in the day. I will conclude there with Ms Branson.

Senator PRATT—I would like to begin by asking some questions about the Human Rights Commission's view of a human rights act for Australia, noting, of course, that the Human Rights Commission supports such an act. Does the commission support a model similar to the Victorian charter or the ACT model? What is the commission's view on the differences between those proposed approaches?

Ms Branson—The submission of the Australian Human Rights Commission to the national consultation on human rights is a substantial document and it is on the public record. It records exhaustively the views which have been reached by the Australian Human Rights Commission as a commission.

Senator PRATT—Yes, I know that. I do in fact have it before me and I am just seeking a statement from you today as to that effect.

Ms Branson—I cannot add anything to that submission, which does indicate support for a human rights act of the broad kind which we see in operation in Victoria and the ACT, which

is a form of the dialogue model of human rights act, an act which does not detract from the powers of parliament.

Senator PRATT—No problem. I did have some specifics regarding some of those questions, but I will move on to another area. In relation to the commission's activities around the consultation for a human rights act, what are the commission's views about the manner in which it conducted its own consultations and on how effective they were—for example, things like the tool kit which was developed by the commission?

Ms Branson—The commission did develop a number of tools to assist members of the community participate in the national consultation. They were targeted to different audience groups. The feedback we have with respect to them has been positive and we believe they were found to be useful. We also conducted workshops with young people around Australia with external funding which was provided that purpose and we also believe that those workshops were of value.

Senator PRATT—Are there particular difficulties in engaging with young people? Why was it identified that you needed a specific approach to target young people?

Ms Branson—I will refer that question to Commissioner Innes, who was the commissioner responsible at the time.

Mr Innes—I would not say there are particularly difficulties in conducting the consultations with young people, although my experience with my teenage daughter might suggest otherwise. Rather, to actively involve young people one needs to use different methods and approaches. So the consultations with young people which were carried out with the support of the people at the Foundation for Young Australians were targeted to be of particular interest or relevance to that demographic and they were conducted in a way which would appeal. There was more online consultation and online material and young people were provided with opportunities to speak to the commission in an environment which they would regard as safe and comfortable, particularly disadvantaged young people, so young Indigenous Australians, young homeless Australians and young Australians with disabilities.

Senator PRATT—It is great to see the commission taking up that work. I would like to know a little bit more about how you structured that series of seminars—unfortunately, I was unable to participate in any of them myself—in terms of the thematics that you took people through. What areas of human rights debate did you look at?

Mr Innes—The seminar was broadly structured in the same way as the other consultations we conducted but more towards issues of relevance to young people. The seminars varied depending on the groups to whom we were talking. We took people through areas of human rights that may be involved. For instance, in one of the workshops I did in Brisbane with homeless young people, we took people through the issues that might affect them as a result of homelessness such as the right to accommodation, health and education, as well as race and disability issues. Then we talked about how those things might change if Australia had a human rights act and what form it might take. It was a relatively free-form seminar but with that sort of broad structure I have outlined.

Senator PRATT—Thank you. I am not sure this is covered in your National Human Rights Consultation submission but one of the key issues that is currently being debated,

which is a little bit wrong headed, are arguments about a human rights act potentially undermining the democratic process. I would like to use estimates today to have the position of the Human Rights Commission on that question put on record.

Ms Branson—Again, I think our views are in our submission but they could be summarised in this way: because a human rights act would be an ordinary act of parliament, it would not prevent parliament either amending or repealing it or indeed passing any act at any time that it wished to pass. What it would require would be in effect more deliberate discussion and consideration of human rights issues because, on the model that we envisaged, there would be parliamentary scrutiny through a committee of human rights compliance. For that process to work well it is likely there would be compatibility statements as well, which would be provided to the parliament when a bill entered the House. One would assume there would be an open and deliberate consideration of human rights issues and their appropriate balancing, and then a decision would be made as to the appropriate outcome by the elected parliament.

Senator PRATT—I did have some further questions about a human rights act but I think they probably go to questions of your positions that you have already put forward in your submission. For my next question, I would like an outline of your approach to the circumstances under which the Human Rights Commission would intervene in court cases.

Ms Branson—In considering whether or not to ask a court for leave to intervene, the commission considers, firstly, whether there are significant human rights issues that are likely to arise in the litigation and, secondly, whether they are issues on which the commission may be able to put helpful submissions to the court—that is, submissions relevant to the jurisprudence touching on that right and its implementation. Finally, we consider whether those submissions are likely to be put by a party such that there would be nothing added as far as the court or the parties are concerned by the commission intervening.

Senator PRATT—Thank you very much.

Senator BARNETT—Do you support the Attorney-General's call for a referendum on the bill of rights?

Ms Branson—I am not aware that the Attorney-General has called for a referendum. The commission itself has not called for a referendum because no constitutional change is envisaged.

Senator BARNETT—So that means you do not support a referendum?

Senator Wong—She answered the question, Senator.

Senator BARNETT—I am trying to understand what is inside her mind.

Ms Branson—The commission has not called for a referendum. The commission took the view that a referendum was not something we should consider in our submission because we were not pushing for constitutional change.

Senator BARNETT—So if one were called, what would the commission's view be?

Senator Wong—For goodness sake, Senator, that is ridiculous. It is ridiculous to have Senate committees where senators ask hypothetical questions.

Senator BARNETT—It is not hypothetical, Senator.

Senator Wong—It is a hypothetical question: ‘If there were one called, what would your position be?’—

Senator BARNETT—The Attorney-General—

Senator Wong—if I could finish—he has not and so that is incorrect.

Senator BARNETT—has floated the idea, and the commission would be fully aware of that.

Senator Wong—You are asking a hypothetical question in order to elicit an opinion. On both counts it is not the type of question that is ordinarily asked and answered in estimates. You can do better than that, Senator.

CHAIR—Senator Barnett, before you respond, we have been 40 minutes into the estimates process today and I think senators at this table get a fair go at asking questions for lengthy periods of time. I just simply ask that, at least, people are not interrupted while they are providing an answer to your questions or else it will frustrate this process even more. I understand that the Human Rights Commission have provided a submission to the process and Ms Branson has put the position of the Human Rights Commission. So let us proceed with other questions about this area at this point in time.

Senator BARNETT—Chair, I do not have any further questions at the moment other than to say in a question to the minister that those types of lectures are not appreciated at the beginning of estimates. We do the very best we can to put the questions and members of this committee, including me, do not appreciate being lectured by the minister.

Senator PRATT—This is not an opportunity for commentary.

CHAIR—You have no other questions for the Human Rights Commission?

Senator BARNETT—No.

CHAIR—Mr Gooda, no doubt you will be hoping each and every estimates is as smooth as this. Thank you for your attendance.

[9.42 am]

Classification Board

Classification Review Board

CHAIR—Welcome. Mr Yates, I do not mean to single you out but I wondered why you were here so early and if you had a change of roles.

Mr Yates—Senators, I am looking after the Territories and Information Law Division and the copyright and classification branches come within my purview at the moment.

CHAIR—I see. I thought you were just deadly keen to get here 10 hours before you needed to.

Mr Yates—I am always keen, Senator.

CHAIR—Mr McDonald and Mr Fenton, welcome to our estimates process today. Do either of you have an opening statement?

Mr D McDonald—Thank you, Senator. I do and I am thankful for the opportunity of making an opening statement. As you have already noted, I am joined today by my board colleague who is the acting deputy director, Jeremy Fenton. Since we last met with the Senate committee, the Classification Board has continued to work efficiently to classify films, computer games and publications and so fulfil its statutory duty and its role in the National Classification Scheme. As you know, the National Classification Scheme is a cooperative scheme between the Commonwealth and all Australian states and territories. The board's fundamental role is to make classification decisions. On the other hand, the states and territories are primarily responsible for enforcement. Customs and Border Protection Service regulate what can and cannot be imported into Australia.

In the first half of this financial year the board received 3,783 applications, including applications to classify 2,471 films, 617 computer games and 155 publications. These figures are generally consistent with the number of applications the board has received over the previous two years.

In estimates hearings senators have expressed concerns about the illegal sale of some adult magazines—concerns shared by the board. Continuing the practice I have described to you in recent hearings, I have called in for classification 440 adult films and 36 adult magazines since July 2009. Unfortunately, none of the publishers of these films and magazines complied with these notices; thus, they have all been referred to relevant state and territory law enforcement agencies for appropriate attention and action. I am not in a position to advise you what actions these agencies may or may not have taken with regard to these referrals.

The board continues to audit adult magazines that are covered by a serial classification declaration, and since July the board has revoked the classification of seven magazines which featured content not permitted in the classification. This revocation also applies to future issues of that publication covered by the declaration. While the board has been conducting rigorous audits since the first serial declarations were granted, our audit schedule will be increased from this year onward to include an audit of every periodical covered by a declaration to ensure that publishers do not abuse the system by including higher level or entirely illegal content.

Since we last met, the board has also given further consideration to the issuing of serial declarations. When deciding whether to issue a serial classification declaration, the board considers, among other things, the classification history of the periodical, statements from the applicant about the content of future issues and how the applicant intends to comply with conditions imposed by the board. Given the recent history of noncompliance by some distributors, the board has been tending to issue shorter serial declarations—up to 12 months, rather than 24 months.

Overall, I can assure you the board will continue to work with the Attorney-General's Department, officers of the Classification Liaison Scheme, industry and law enforcement agencies to increase the industry compliance with state and territory classification laws.

On another matter, at the October meeting I expressed my concerns about consumers sometimes missing the very important advice that the board gives about films and computer games—advice such as, for example, 'strong violence' and 'coarse language'. Providing such

advice is a statutory requirement. Since then the board has started working with the department on a project to improve access to and understanding of consumer advice. During the first half of this year we will discuss options for improvements with industry and consumer representatives. The aim of the project is to increase the prominence of consumer advice on advertising and at points of sale and thereby to help Australians make more informed choices about what they and their families view for entertainment. I hope to report to senators about the progress and success of this project at future hearings.

2010 will be a period of some change for the board. Deputy Director Olya Booyar recently left to take up a senior Public Service position as her three-year term of appointment was drawing to a close. The board's senior classifier, Jeremy Fenton, currently acting as deputy director, will leave the board in May having served his full seven-year term. Other long-serving members have recently left or will soon leave the board. This week advertisements have been placed on the internet and in newspapers across the country, including the regional press, to fill these positions. Members are appointed by the Governor-General on recommendation of the Minister for Home Affairs after consultation with state and territory censorship ministers. I look forward to welcoming our new members. Thank you for this opportunity.

CHAIR—Thank you very much, Mr McDonald. Ms Rubensohn, do you have an opening statement that you want to make?

Ms Rubensohn—I do not, Chair.

CHAIR—All right. We will go to questions. Senator Barnett, do you want to start?

Senator BARNETT—Thank you. Welcome back, Mr McDonald. I presume you can table your opening statement for us.

Mr D McDonald—Yes.

Senator BARNETT—It sounds almost like the white flag going up in terms of the success of our classification system across the country. That is my feedback. Nevertheless, let me go straight to questions. You have outlined that 440 adult films and magazines were called in since July last year, and none have been complied with. That must be extremely disappointing and confirms that the system is not working. You indicate you have referred those matters to state and territory law enforcement agencies. Do you have a similar view, that the system is not working? What feedback have you had from state and territory law enforcement agencies?

Mr D McDonald—Perhaps the department can provide information on the response of the state and territory law enforcement agencies, because the board does not deal directly with them.

Senator BARNETT—Perhaps we can come to that in a minute. At the last estimates, we talked about community concern about the so-called teen porn titles depicting little girls as eager for sex with older men and rape and incest themes being sold in corner stores, milk bars, 7-Elevens and petrol stations, including McDonald's fuel zone. I would like to ask some further questions about the lack of compliance. You have indicated that you had zero per cent response to the call-in notice. On this lack of enforcement of the classification laws, you made it clear last October that none of the call-in notices for adult publications from 2008 up to

October 2009 had been complied. We have today heard that some 440 publications have been called in and none have complied with. So we have a zero success rate. Does this suggest that the distributors of adult publications hold the board and our classification system in contempt? What is the power of a call-in notice if it is ignored?

Mr D McDonald—A failure to comply with the call-in notice is in fact to render that publication, whether it is a film or a magazine, an illegal product.

Senator BARNETT—And it remains in the community, Mr McDonald.

Mr D McDonald—It may or may not.

Senator BARNETT—Why would you say that it may not? On what basis would—

Mr D McDonald—Retailers may well withdraw them from sale.

Senator BARNETT—Would you like to further expand on your response to the fact that we are getting zero per cent compliance with your call-in notices? What other powers exist under the call-in notice in terms of getting enforcement?

Mr D McDonald—Enforcement, as I said at the outside and as I have said before, rests with state and territory enforcement authorities. It is for them to prioritise these matters and act on them.

Senator BARNETT—Can you list the titles that you have called in and the distributors of those titles?

Mr D McDonald—I will provide you with a list.

Senator BARNETT—Thank you very much. And likewise for the ones from 2008 to 2009? We have not concluded that. You did not get success there. Have you monitored that progress of your call-in notices for 2008 up to October 2009 and what has been complied with and what has not? Can you give us an update report on those magazines?

Mr D McDonald—The publisher to whom the call-in notice is sent is required to respond within three days, so the monitoring can effectively end three business days after it is required. However, the community liaison officers, on their visits to premises, look out for these titles and act if they see them. What the states and territories do is for them to account for.

Senator BARNETT—These distributors, it seems, are having a field day. Are there any particular distributors that you can identify as being particularly troublesome in not responding to your call-in notices? Can you identify them, please?

Mr D McDonald—I can provide the names of those distributors.

Senator BARNETT—Can you do that now?

Mr D McDonald—I cannot do it right now, but I will take it on notice.

Senator BARNETT—How long will it take, Mr McDonald? Don't you have a file there now with the names?

Mr D McDonald—No, I do not.

Senator BARNETT—Are there any that come to mind in terms of being particularly troublesome in not responding? Are there half-a-dozen distributors that are the absolute worst around—that never respond; that are shameful in their contempt for the board and their contempt for Australia's laws?

Mr D McDonald—I will provide the names in response to that on notice.

Senator BARNETT—My question was: are there any that are particularly troublesome. Are there half-a-dozen? Are there a dozen?

Mr D McDonald—There are probably half-a-dozen in total—in respect of magazines. In respect of films there are probably fewer than that.

Senator BARNETT—Let me ask you about the called-in titles. Were any imported by Namda and/or Windsor Holdings, whose general manager is David Watt, who is also an office bearer of the Eros Association, which launched the Australian Sex Party.

Mr D McDonald—Namda is the holder of serial declarations for a number of titles which have been subject to call-in.

Senator BARNETT—How many? You do not know?

Mr D McDonald—I would prefer not to say. I would rather give you accurate information in my response.

Senator BARNETT—Sure—but dozens and dozens?

Mr D McDonald—Well, there would be several dozen.

Senator BARNETT—What about Windsor Holdings?

Mr D McDonald—I cannot answer that question.

Senator BARNETT—How many of the revoked titles have been previously given category 1 serial classification by the board? I am happy for you to take that on notice if you do not know.

Mr D McDonald—Yes, I think it would be better if I did. There would be a number of them.

Senator BARNETT—Does the board consider the evidence that the serial classification system should be scrapped?

Mr D McDonald—You will have learned from my opening remarks that we have restricted the range of it and have increased the controls around it. Serial classification relies on trust. As the board learns that there are some publishers or distributors who are not worthy of that trust then they do not receive a serial declaration in the future. I am expecting fewer difficulties with the serial classifications in the future.

Senator BARNETT—You said in October that you had called in 386 unclassified films for classification between 2008 and 2009, and in the first quarter of 2009 the figure was already 441. Have any of the call-in notices for these 827 films been complied with since we last met?

Mr D McDonald—None.

Senator BARNETT—How many of the publications and films were referred to law enforcement authorities in the states?

Mr D McDonald—All of them.

Senator BARNETT—Perhaps at this juncture, bearing in mind that answer, is the department able to respond to the response from the law enforcement agencies in terms of the outcomes?

Mr Yates—At this stage it is inappropriate for us to comment on the outcomes because those investigations by the state and territory authorities are still underway. We do not have any direct knowledge of those results other than they are underway at this stage.

Senator BARNETT—Thank you. We will come back to those related matters. Have you conducted any further audits of adult publications since October?

Mr D McDonald—We have, and as a result of that several serial declarations have been revoked.

Senator BARNETT—How many?

Mr D McDonald—As I said in my opening remarks, every publication that carries a serial declaration will be audited at least once during the term of that declaration.

Senator BARNETT—How many have you audited since October?

Mr D McDonald—We will provide that as factual information.

Senator BARNETT—Can you provide a list of the audited titles and the distributors for each title, on notice?

Mr D McDonald—Yes.

Senator BARNETT—Thank you. How many publications have been refused classification in the past 12 months?

Mr D McDonald—We will take that on notice.

Senator BARNETT—I am trying to find out whether there has been an increase in the number of publications refused classification. Perhaps you could look.

Mr D McDonald—I understand that. We will provide comparative information.

Senator BARNETT—Thank you. Have you also increased auditing of classified periodicals in the last 12 months?

Mr D McDonald—Yes.

Senator BARNETT—At the last estimates you indicated, ‘The department has improved communication lines with enforcement authorities at the state, territory and Commonwealth levels.’ In terms of those improved communication systems, can somebody perhaps explain how that is being done?

Mr Wilkins—We have a much more active liaison, working groups et cetera, with the states and territories, but it is very much a matter for the states and territories to enforce these laws. We can mainly deal with policy issues with them. There are liaison people who, as their

name implies, look at the industry and talk to the states and territories and provide them with information. So all of that is happening.

Senator BARNETT—Have you established a special working group?

Mr Wilkins—There is a special working group under the Standing Committee of the Attorneys-General of the states, territories and the Commonwealth.

Senator BARNETT—Going back to the board, have you notified the Australian Customs Service of the names of the distributors who are responsible for the distribution in Australia of the imported magazines contemplating material that would be classified but which has been refused classification?

Mr D McDonald—Departmental officers have done that on our behalf.

Senator BARNETT—We will get to Customs later today. I want to ask about the censorship arrangements with SCAG, unless other senators have a question on classifications for the board. I have related questions on SCAG.

Senator FEENEY—I want to ask you some questions concerning classification of computer games. I note on 14 December last year the Minister for Home Affairs, Brendan O'Connor, released a consultation paper to discuss the notion of whether there should be R18+ classification for computer games. From the submissions already received have you been able to identify the main issues that are being ventilated through that discussion paper?

Mr D McDonald—That consultation process is ongoing, as your question implied. The collating of those responses is the responsibility of the department and it is my understanding they have begun to do so. There a very large number of responses.

Senator FEENEY—Have you undertaken any kind of review or assessment of the submissions received to date?

Mr D McDonald—No, we will do it when the process is complete. But, in any case, the result of that consultation will be information for the government and for the state and territory governments. It is not a matter for the board itself. The board does not have a view about R18+ classification for games. That is a matter for legislators.

Senator FEENEY—So you are not intending to make a submission?

Mr D McDonald—No.

Senator FEENEY—The consultation period ends at the end of February. Is that correct?

Mr D McDonald—That is correct.

Senator FEENEY—Could I ask the department some questions pertaining to this consultation paper. Are you in any position at all to tell us about the submissions received to date?

Mr Yates—I will ask Ms Helen Daniels, Assistant Secretary, Copyright and Classification Policy Branch, who has some information on that.

Ms Daniels—As of 1 February, we received 6,239 submissions: 5, 465 have been by email, 447 by fax and 327 by post.

Senator FEENEY—That total number of submissions is obviously an impressive, but it is not unknown that you will receive a lot of submissions in similar or precisely the same terms, particularly those you have received by email. Are you in any position to give us a sense of how many of those submissions might be characterised as substantive? Do you have any internal classification system for identifying how many of those submissions might be more than a page?

Ms Daniels—The discussion paper encouraged people to respond by a template—and of course we will accept and look seriously at submissions that do not use the template. A lot of those received so far have used the template, and that includes a list of questions with a range of answers in them. So far the department has processed, for want of a better word, about 1,100 of those. They have been using the template so that makes the processing a little easier.

Senator BARNETT—So 1,100 used the template?

Ms Daniels—Have been processed by the department out of the 6,000 so far.

Senator BARNETT—How many used the template?

Ms Daniels—Can I take that on notice?

Senator BARNETT—Sure.

Ms Daniels—I will give the answer for the ones received to date.

Senator FEENEY—Is the department in any position now to provide us with advice about what the main issues are?

Ms Daniels—The majority received so far are tending to support having an R18+ classification for computer games, but, as I said, we have only processed about 20 per cent. Until the consultation process is finished, it is difficult to make generalisations. But of those to date that we have looked at that is certainly the position.

Senator FEENEY—When you say that the majority support the creation of such a classification, would you say it is the overwhelming majority? Can you give us an indication?

Ms Daniels—I would say the overwhelming majority. As at 28 January, 11 of the 1,084 processed submissions opposed an R18+ classification for computer games.

Senator FEENEY—Of those you have processed so far, you say the overwhelming majority support the classification. Can you give us any idea of what the top issues might be, what the top drivers might be, for that opinion being put forward?

Ms Daniels—Consistency across other media, particularly DVDs, would be one and the fact that a lot of adults are gamers.

Senator FEENEY—That is all I have on R18+.

Senator BARNETT—Of the 20 per cent that you have assessed to date, you are saying that an overwhelming majority support the R18+ classification?

Ms Daniels—Yes, that is to date.

Senator BARNETT—Of the ones you have looked at are they mostly email or a variety of email and post?

Ms Daniels—They are mainly email because that is the way the majority have come in.

Senator BARNETT—Of the 5,465 by email what proportion—and you have indicated you will take this on notice—are the template version?

Ms Daniels—A very high proportion, but I would prefer to take that on notice to give you the correct figure.

Senator BARNETT—That is fine. In the template version there are asterisks if you want to nominate your gender, age and gaming habits. I am not suggesting a preconceived view by the department, but is there a tendency to push submitters into a certain answer, because there must be a little bit of pressure if you are putting on gender, age, gaming habits and other personal questions. The issue of privacy is also of concern. Can you tell us about your response to the privacy issues in particular?

Senator FEENEY—Perhaps you might tell us what information you are seeking to ascertain from respondents' gaming habits. Senator Barnett is creating a mystique around that terminology which it does not deserve.

Ms Daniels—For those that who decide to answer those questions on what the department is seeking, we are hoping to get at a more complete picture so that we can advise ministers about the situation in relation to R rating plus. The Commonwealth does not have a position on whether there should be an R rating plus category for games or not. The discussion paper is intended to be even-handed.

Senator BARNETT—That is really the point. If people do not participate in gaming practices, how are you still encouraging them to make a submission? Are you still encouraging them to make a submission?

Ms Daniels—The department seek submissions from everyone. I am imagining those who are putting in text based submissions will probably come in in the next few weeks as opposed to the template version. Of course, we will be analysing all submissions received. We do not yet have many submissions from bodies representing particular sectors, for example. Those submissions are yet to come in.

Senator Wong—When Senator Barnett is referring to 'gaming habits', is this the question which says, 'Do you play computer or video games, yes or no'? Is that what you mean by 'gaming habits'?

Senator BARNETT—That is my understanding, yes.

Senator Wong—And, 'How frequently do you play? How long do you play in an average session'?

Senator BARNETT—That is right. There are a lot of people who have views on this—and Mr Wilkins, you are looking at me quizzically—who do not play computer games but are fully aware of the impact of R rated computer games. I hope you understand the thought behind it.

Senator Wong—Absolutely. I was just a little confused as to the non sequitur in the question which suggests that, because the department has the question 'Do you play computer or video games, yes or no', that that somehow is skewing the questionnaire or the submission.

Senator BARNETT—I am not saying that is skewing the questionnaire. I am saying that you are setting up a system whereby you have answers from people who do not participate in gaming and those who do participate in gaming. That is correct, is it not?

Senator Wong—It says, ‘Yes or no?’

Ms Daniels—That is correct, but they are both equally valid and they are answers we will advise the minister of.

Senator BARNETT—You have said in your discussion paper, ‘Please use the submission template attached to this paper.’ You have an optional 250 words but there is no encouragement to use as much length and time as they wish. It just seems you want the formulaic responses set out in the department’s discussion paper.

Ms Daniels—We knew it would be a large consultation process. We were trying, in an attempt to put some indicators to those who wanted to put in submissions. We wrote to various organisations to seek their views as well. So it is not just the template which will form part of the consultation process, but as a lot of individuals will be having a view on this issue, we thought a template was a sensible way to go.

Senator BARNETT—But you have made mandatory answering those questions about gender, age and gaming habits, is that right?

Ms Daniels—In relation to mail and email, I do not know whether they are mandatory.

Senator FEENEY—I do not think any component of the survey could be characterised as mandatory. No-one is obliged to fill in any part of it.

Senator BARNETT—So you are not setting up a system where you are going to put more weight on certain answers. How will you assess the answers and the submissions when they come in? Will they all be equally weighted?

Ms Daniels—Yes, we have to give the minister an analysis of all submissions received. So on those arguments for and against which were raised in the paper our intention would be to give the minister and ministers an assessment against each of them.

Senator BARNETT—Right. How much weight are you going to be giving to the quantity of the responses, compared to a response from perhaps entities that might put in a more substantial submission? How will you assess it?

Ms Daniels—In our advice to the minister, we would give both quantitative and qualitative advice on what was received.

Senator BARNETT—I am advised that in the US the unmodified version of the game *Left 4 Dead 2* was given a ‘mature’ rating—so, suitable for persons aged 17 and older—but was classified ‘refused classification’ in Australia. ‘Mature’ games in the US may contain intense violence, blood and gore, sexual content and strong language. What is the minister’s intent in wanting to open the possibility of these extremely violent and sexually explicit interactive games being made available in Australia? That is a question for the minister. I am happy for you to take it on notice, Minister.

Mr Wilkins—That is one for the Classification Board.

Senator BARNETT—I am happy for the board to respond.

Mr D McDonald—Senator, I can give you the history of the classification of that game in Australia—this is *Left 4 Dead 2*. On 15 September 2009, the Classification Board classified an original, unedited version of *Left 4 Dead 2* as RC—that is to say it was refused classification. In the board’s view, the game was unsuitable for a minor and contained violence that was more than strong in impact. The interactive nature of the game increased the overall impact of the frequent and intense depictions of violence. This, coupled with the graphic depictions of blood and gore, combined to create a playing impact that was considered high. The distributor applied for a review of this decision and, on 22 October 2009, the Classification Review Board met and also classified the game ‘RC’—in other words, they refused classification. A modified version of the game was later submitted to the Classification Board and was classified MA15+, with consumer advice of ‘strong, bloody violence’.

Senator BARNETT—All right. Thank you for that. Did the minister want to respond to that question as to why the minister or the government would want to make such a video game legal?

Senator Wong—I am not sure I have got any instructions or advice from the minister about the view on that specific game. I would have to take that on notice. I am not sure I can agree with the assertion you have just made either.

Senator BARNETT—I am happy for you to take it on notice.

Mr Wilkins—Can I just comment on that, Senator. The Classification Board classifies according to the existing law. The discussion paper is out there precisely because the government is trying to elicit what the public view is and it will then make some policy decisions on the basis of that. So that is the position. The government has not got a concluded view on this issue.

Senator BARNETT—Thank you, Chair. I have another topic to move to, if I could, in terms of an update on the activities of the censorship working party since October, and could the department provide a copy of the agenda for the April meeting of the censorship ministers.

Ms Daniels—Senator, in April 2009, ministers agreed to establish an intergovernmental working party to develop proposals, in consultation with law enforcement agencies, on strengthening and harmonising classification offences and penalties, reforming serial classification declarations and other means to regulate offensive publications. The compliance and enforcement working party is chaired by the department and includes representatives from all states but not the Northern Territory, who are unable to attend. Since the last estimates, it met on 18 November and on 3 February, and the working party plans to report on progress to censorship ministers in April.

Senator BARNETT—Do have an agenda yet for the April meeting?

Ms Daniels—No. There are a list of things the working party are looking at that we will be reporting to ministers on.

Senator BARNETT—Can you advise the committee of that list?

Ms Daniels—That includes strengthening and harmonising offences and penalties for publications and films, the reform of serial classification declarations, display requirements

on labelling requirements, whether there should be single category or a merging of category 1 and category 2 restricted classifications, and limiting the sale of restricted publications to adult-only premises.

Senator BARNETT—Have public submissions been invited on any of those matters?

Ms Daniels—Public submissions have not been invited, but we have received submissions from a couple of stakeholders via the department that we have sent on to the working group members.

Senator BARNETT—So you are not intending to get public feedback on those matters?

Mr Wilkins—We are in the process of policy development and reporting to ministers. Once ministers have had a chance to look at the conclusions of the working group and form some preliminary views about policy directions then it might be appropriate to go out and seek some public input about that. But it would be premature at this stage to widely canvass it. As Ms Daniels said, there are interest groups whose views might have some currency and input into this process.

Senator BARNETT—In October I asked a question on notice, No. 40, with regard to the letter sent to law enforcement agencies from the former Minister for Home Affairs, Bob Debus, on 4 February 2009, as to the response received from the various law enforcement agencies. I got a response to that. I received a list of those who responded. However, I asked for the response received. I would like to request a copy of those responses and have them tabled, please.

Mr Wilkins—I think we will probably need to consult with the ministers in the states and territories. As you would appreciate, this is a matter of Commonwealth-state relations so provided the state and territory ministers are happy with that, we could provide that.

Senator BARNETT—I appreciate that and fully understand where you are coming from. If the answer is no, perhaps you could summarise for the committee the content of such a letter if they are not willing to provide a copy of it.

Finally, in the hearings last October, we were told that the A-G's Department notified the relevant law enforcement agencies of failures of distributors of adult magazines, titles and films to comply with classification laws. Can you advise how many notifications you have received, what action is being taken in each instance and what other action law enforcement officers take to enforce compliance with the classification laws?

Ms Fitzgerald—If a call-in notice is not complied with or there has been some other potential breach of classification laws that is discovered by classification liaison scheme officers, generally what happens is those potential breaches are referred to the relevant state or territory law enforcement agency. We do that through a formal referral process. However, law enforcement agencies do not generally provide us with advice as to what they do next.

Senator BARNETT—What is the formal notification process? Is it a letter?

Ms Fitzgerald—Yes.

Senator BARNETT—Does it come from the department?

Ms Fitzgerald—It comes from me. What will happen is the director of the board will, for instance, issue a call-in notice and then there will be no response after the statutory three-day period. Once that time has expired, I will then send a letter to the law enforcement contacts that we have—we have a particular contact in relevant jurisdictions—advising them of the potential breach and any other relevant information that we have about the particular matter.

Senator BARNETT—So for the 440 publications that Mr McDonald referred to this morning and the 81 call-in notices of adult publications that we referred to back in October, you have sent a letter to each state and territory law enforcement agency with respect to each of those?

Ms Fitzgerald—Yes, that is right. We send them to the relevant jurisdiction.

Senator BARNETT—So it may be the AFP and, indeed, Customs. Do you communicate with Customs as well as the AFP?

Ms Fitzgerald—We regularly communicate with Customs but they are not an enforcement body in relation to the type of offences that I am talking about. The types of offences that I am talking about are found in the state and territory legislation. So, if for example, we found that a distributor that we knew was based in New South Wales had not complied with a call-in notice I would write a letter to the state and territory law enforcement official in New South Wales. Similarly, if they were distributing out of Western Australia or Tasmania I would write to the law enforcement official in that state.

Senator BARNETT—Understood. Are you saying there are no responses to date? Or have you got some responses and if so what sort of response have you received?

Ms Fitzgerald—The way the system is set up is that the information flow is one-way to them. The law enforcement official is under no obligation under the scheme to report back to me as the assistant secretary or indeed to the director of the board. We may receive a follow-up inquiry from a police officer in a particular jurisdiction. He might receive my letter and might want some information. Let me give you an example. Last week officers of the classification liaison scheme who report to me were speaking with Victoria Police—I will not mention the particular instance for obvious reasons—about a referral letter that had gone to them. They wanted some specialist advice about the particular types of product that they were likely to encounter if they indeed undertook some sort of operation in relation to that jurisdiction.

Senator BARNETT—Let me ask you specifically: have you received any advice or communication from a law enforcement agency confirming their success or otherwise with respect to following up this illegal activity?

Ms Fitzgerald—What I am saying to you is that we are regularly in contact with particular jurisdictions and we regularly receive follow-up information from jurisdictions but it is not in the manner of a formal communication like my communication is to them. Indeed, they do not necessarily contact the Attorney-General's Department once they have finalised a particular investigation.

Senator BARNETT—So you have no knowledge or understanding of any success or otherwise by the law-enforcement agencies with respect to the call-in notice?

Ms Fitzgerald—I will have information if the law enforcement official provides it to me but if they do not then I will not.

Senator BARNETT—But, more often than not they do not. It is uncommon that they do. Is that a fair comment?

Ms Fitzgerald—Yes. It is not routine, it is not mandated.

Mr Wilkins—It is an unknown unknown.

Ms Fitzgerald—Indeed.

Senator BARNETT—To sum up, the department and the government are oversighting a system that you have confirmed today, and which you confirmed at least in part in October, is in failure, a system that is not working. The call-in notices are not working. What we do know is that we have teen porn titles depicting little girls, inappropriate behaviour and all sorts of inappropriate filth out there in the community—whether it be in service stations, bookstores, corner stores, milk bars, 7-Elevens or whatever. We are overseeing a system in failure. That seems to be confirmed again today by the opening statement from Mr McDonald and the evidence that we have had before this committee. Is that correct?

Mr Wilkins—I think that overstates the position considerably.

Senator BARNETT—That is how I see it.

Mr Wilkins—There are obviously shortcomings in the system and we are trying to address those. That is undoubtedly the case.

Senator BARNETT—But you have been doing that for years.

Mr Wilkins—There is always room for improvement.

Senator BARNETT—Indeed.

Mr Wilkins—For example, the minister has now stiffened the penalties under the customs legislation and regulations to try to ensure that people have appropriate negative incentives to report matters and to make them available. That gives Customs more power. Of course there are problems with this system and it is under considerable strain with the emergency of new technologies, the burgeoning of publications et cetera. So it is silly to pretend that there are not a whole bunch of questions and some quite radical challenges to the system of classification—for example, with the R-rated games question. That is a whole new genre of material that may or may not come within the classification scheme. Also, there is the federal system—in other words, the fact that we rely on the states to basically enforce the law while the standards are made at a national level. All of that needs to be kept under close review, and it is being kept under close review. There are significant challenges for us all in doing that.

CHAIR—It is 10.30, so we are going to break for morning tea. Before we do, are there any other questions of the Classification Board and the Classification Review Board?

Senator FEENEY—I have one, which I am happy to deal with now.

CHAIR—With my indulgence you can deal with it now.

Senator FEENEY—The opportunity to ask it now just seems too good because Mr Wilkins referred just a moment ago to the change in the customs regulations and I want to ask

a couple of quick questions about those government changes. I understand they date to only December 2009. I was wondering if you could tell us what problem those changes to regulations will assist us in addressing.

Ms Daniels—In the broad, the intention is to provide a greater disincentive for the importation of offensive publications and other objectionable goods.

Senator FEENEY—How do they do that? What are the new penalties?

Ms Daniels—The new penalties are for up to five years in prison and apply to the import and export of commercial quantities, which are 25 or more copies, of objectionable goods and to imports for a commercial purpose, such as selling, exhibiting or displaying it in public.

Senator FEENEY—Can you tell me what the breadth of goods is that the new penalties apply to? Are we talking just about magazines or film?

Ms Daniels—No, it is broader than that. It applies to DVDs as well, to a whole range of material beyond classification 2.

Senator FEENEY—What were the penalties previously? How significant an increase in penalties are we talking about?

Ms Daniels—Can I take that on notice, just to be sure what the previous ones were, so that I can give that accurately? It is monetary and imprisonment.

Senator FEENEY—You will take that on notice?

Ms Daniels—Yes.

Senator FEENEY—Thank you kindly.

Proceedings suspended from 10.32 am to 10.52 am

Senator Wong—Chair, I think Mr Wilkins has an issue to raise arising out of the previous questioning.

Mr Wilkins—Chair, you might recall that in response to a question from Senator Barnett, the department indicated that we were prepared to table for the committee the titles of the 440 films and the magazines that were the subject of the question. Last estimates the committee took the view that it did not want to publish these names. We are perfectly happy to provide them to the committee. It is really a question for the committee as to whether you want us to now hand them up and make them public.

CHAIR—My understanding is that that is not what we have done on previous occasions. There is an issue, I think, with making them public, but the committee could deal with it by way of correspondence. We may need to get advice about how we are going to deal with this.

Mr Wilkins—We will hold off then.

CHAIR—We will get back to you about that.

Senator BARNETT—The reason I want to make this report public, unlike last time where there was an advice that it could be of concern for some reason, is that these publications are already in the public arena. They are being sold at milk bars, seven-elevens, petrol stations and bookstores all around Australia. These are already in the public arena. The submission was to make them public, so the public has a right to know the level of filth that is already in

the public arena. I am happy to seek advice from the Clerk of the Senate, and/or her officers, to take advice on that. But that is the reason and motivation behind my previous request.

Senator Wong—Madam Chair, that is obviously a matter for the committee, and we will await your views about that. I think the alternative view might be that, by making them public in this way, the Senate would actually be assisting in advertising the filth.

CHAIR—As I said, we are going to take advice about how to best handle that. Mr Wilkins, we will come back to you with that.

Mr Wilkins—Thank you, Chair.

Senator BARNETT—I think we are agreed on the fact that it is filth, Minister. That is good news.

CHAIR—I think the minister was simply quoting your words, Senator Barnett, as opposed to espousing her own view. We have already talked about matters of opinion and views today. We are now going to deal with a couple of changes to the program. There has been a request to have the Family Court and the Federal Magistrates Court just a bit later. I think we are waiting on Senator Brandis to ask questions in that area. So we might proceed to the Federal Court and then to the High Court. The other thing I need to advise people from the department is that to enable Minister Wong and Minister Ludwig to swap responsibilities later this evening and to ensure that they also have a decent dinner break we are going to move our dinner break to 7 pm to 8 pm.

Senator Wong— Both Senator Ludwig and I are most grateful, Chair, for the committee's assistance.

CHAIR—We are here to assist, always.

[10.56 am]

Federal Court of Australia

CHAIR—Welcome. Mr Soden, do you have an opening statement at all that you wanted to provide to the committee?

Mr Soden—No thank you, Madam Chair. I have no opening statement.

CHAIR—Thank you. We will go to questions then.

Senator ABETZ—As indicated, I have a few questions on the Federal Court registry in Hobart. I am sure you would have anticipated that. Can you tell us what savings have been made to date?

Mr Soden—Senator, the savings projected are still in the order of about \$200,000, hopefully to be achieved by the balance of this financial year.

Senator ABETZ—How many people are employed at the Melbourne registry as of this date? Do you know?

Mr Soden—I would have to take that on notice.

Senator ABETZ—All right. Can you tell us how many people are employed in the Hobart registry as well as at this date?

Mr Soden—I am hesitating, Senator. It probably would be preferable for me to take that on notice.

Senator ABETZ—Yes, that is fine. I am more than happy for that to occur. Can you also then tell us the capital costs of any extra video linkages et cetera between Hobart and Melbourne? Can you advise us as to any travel allowance costs et cetera that have been incurred to date?

Mr Soden—Again I would have to take that on notice.

Senator ABETZ—When did these changes start?

Mr Soden—July last year.

Senator ABETZ—We have now had the experience of six months. I would be very interested in the experience of the first six months. Who is the person actually responsible for the Hobart registry?

Mr Soden—At the moment, we have appointed an acting district registrar who is actually the registrar of the Family Court in the registry in Hobart. That is, of course, to comply with the statutory provision that is now in force from 2 January for a district registrar in each registry in each state. I would have to say that at the moment ultimately it is me, overseeing the implementation of the recruitment of the new district registrar.

Senator ABETZ—So there is going to be a district registrar specifically tasked to look after Hobart?

Mr Soden—Absolutely, Senator. The advertisements are out and interviews for that position—

Senator ABETZ—When did they go out?

Mr Soden—From memory, it was 10 December and I think the second one was 16 January.

Senator BARNETT—How did you advertise?

Senator ABETZ—We in the coalition had a few issues going on in early December; that is undoubtedly why I missed the advertisements—so thanks for telling us.

Mr Soden—The advertisements were placed in the Hobart *Mercury*, the Launceston *Examiner* and the Burnie *Advocate* along with usual APS employment gazette.

Senator ABETZ—Was it advertised nationally in the *Australian* or the *Sydney Morning Herald*?

Mr Soden—I am not sure.

Senator ABETZ—Take it on notice. When do you hope to have that position in place?

Mr Soden—Very soon. The interviews for the position are taking place this Thursday. As soon as we can get a person on full time we will.

Senator BARNETT—How many applicants?

Mr Soden—There were seven applicants.

Senator BARNETT—How many interviews?

Mr Soden—I do not know; I will take that on notice.

Senator ABETZ—Given the new legislative requirement, can I ask the minister—in the event the Administrative Appeals Tribunal are listening, if I can get here when they are up I will be asking the same thing—about cost sharing? I understand that was part of the problem last time. The former registrar did a lot of AAT work but the AAT were not making a financial contribution to that. Has there been some further discussion with the AAT to seek to resolve that?

Mr Soden—They can confirm—yes there has been some discussion and there has been agreement reached about the contribution they are going to make towards the funding of the staffing in the Hobart registry, including a contribution towards the cost of the district registrar.

Senator ABETZ—Would that have happened without questions at Senate estimates? You do not have to answer that! There was a slight legislative amendment. It is pretty extreme when Senator Bob Brown and I are on a unity ticket! We got that through the Senate. That is how obvious it was to everybody that this should happen. It did happen and you are implementing that. That seems good. If the AAT can come on board to share the costs then that is a very good outcome. In general terms, are you satisfied with the cost agreement or arrangement with the AAT—is it a fair and reasonable one?

Mr Soden—Yes, we are satisfied with the arrangement.

Senator ABETZ—Unless the AAT want to give prior notice that they disagree with this evidence, I do not think I will have to come back for the AAT. This is very good news and I thank all those who were responsible for making this all work out—albeit with a little help from the Senate.

Senator BARNETT—I will follow on from Senator Abetz and acknowledge his advocacy of that with Senator Bob Brown, and put on record the Law Society of Tasmania's strong advocacy for a sensible outcome whereby Tasmania is treated the same way as other states. In an answer to a question on notice from me at the last estimates, No. 31, it was confirmed that \$941,566 was spent on the capital upgrade at the Federal Court and then a further \$477,155 was spent on the upgrade through until April 2009. Can you confirm those figures? Secondly, have any further significant costs been expended on the Federal Court in Hobart since the answer to that question was given?

Mr Soden—Not that I am aware of.

Senator BARNETT—So in terms of likely cost, we are looking at the video link and maybe travel between Hobart and Launceston—or is that going to be incurred in the normal course of business?

Mr Soden—The question asked by Senator Abetz along those lines I have taken on notice and will provide all that information. Senator Abetz was interested in what the difference might be. We will have to go back and have a look at that. I do not think there is going to be a substantial difference in those costs.

Senator BARNETT—All right. Since 2 January this year it is the legal requirement to have a registrar in each state. Is it your understanding that that was the date?

Mr Soden—The amendment came into effect on 2 January.

Senator BARNETT—Have there been any other changes to work practices since that time? You are saying that you are the responsible officer, effectively, for the time being.

Mr Soden—Yes, the district registrar in Tasmania will report to me. We are in the process of doing the recruitment. That will all be sorted out, Senator.

Senator BARNETT—What is the likely commencement date? Can you give us a bit of a feel for when this new person will commence?

Mr Soden—As I said in answer to the question from Senator Abetz, interviews are held this Thursday and the decision, I expect, will be made very quickly. It all depends how soon the person could start. We would have the person on as soon as they are available—they might want to give some notice. A month, perhaps; possibly shorter, possibly a little bit longer.

Senator BARNETT—Very good. In terms of communications with the Law Society, are they content and pleased with the outcome, as far as you are aware?

Mr Soden—As I understand it, yes.

Senator BARNETT—Very good. In answer to question No. 30 on notice from me you have listed all the consultations you have had with the Law Society, the Small Registries Review and members of profession, and you list there a letter from Duncan Kerr MP to the Chief Justice, and the Chief Justice's response, as of July 2009. Can you take on notice to see if you could have those letters tabled—you will probably need to talk to the authors of that correspondence—and, if not, advise the content of those letters?

Mr Soden—I do not see a problem with that.

Senator BARNETT—Thank you, and likewise the 30 June 2009 letter sent to the Chief Justice from John Corcoran, President of the Law Council. Clearly, you got some pretty heavy representations, in addition to fellow senators on this committee and the Senate resolution. Could you seek advice as to whether the letter from the President of the Law Council on 30 June 2009 could be forwarded to the committee?

Mr Soden—Yes, we will take that on notice.

Senator BARNETT—That is all I have on that matter. Unless other senators have questions on that, I have questions on another matter.

Senator FEENEY—I have some questions for the Federal Court. Could I ask those now?

CHAIR—Yes.

Senator FEENEY—Mr Soden, I want to ask you first about the Federal Court's e-court strategy. Can you tell us whether there are any plans to expand the existing e-court strategy?

Mr Soden—I am hesitating because there have been a number of e-court strategies, enhanced from time to time.

Senator FEENEY—Perhaps you could articulate those for us.

Mr Soden—The court has taken a decision to move to an e-services environment, which is set out in the e-court strategy. That includes a comprehensive e-lodgement system. It includes

an e-court. It includes electronic litigation, where appropriate. We have not resiled from any of those initiatives. We have talked about the possibility of moving to a complete electronic filing system. We have talked about the possibility of that being a compulsory requirement into the future, to shift everyone from a paper focus to an electronic focus and then move to a paper on demand scenario. It is an all-encompassing strategy. It is progressing.

Senator FEENEY—Presumably the Commonwealth courts portal sits at the heart of that strategy.

Mr Soden—It is part of that strategy. The portal is a key part in managing the identity of the people accessing the systems.

Senator FEENEY—Given that work, have you been able to set out what the implications are for the court in terms of workload and staffing going forward?

Mr Soden—Not yet in the detail that we will need to do in the near future. We certainly have it on the agenda, but we need to go through some fairly intensive analysis of the consequences of the complete take-up of these services. That work is under way; it is not completed yet.

Senator FEENEY—What can you tell me about practice note 17 issued by the Chief Justice?

Mr Soden—I can tell you the logic of it. It is very comprehensive in its detail. I cannot remember the title of it. It is a practice note that provides information and requirements to practitioners about the court's expectation for what I would describe as electronic litigation or electronic trials or using electronic material in trials. An important element of that—and it is good that I have this opportunity to get it on the record—is it is not a practice note that focuses on only how to use electronic material in the courtroom; the essence of the practice note really is around a process of managing the proceedings to ensure that the extent of the issues in dispute are minimised and, if they are or can be converted into electronic form, the practice note sets out how to do that.

An important component of the practice note is there should be no assumption that there needs to be the engagement of substantial IT providers by firms or parties. It sets out a very simple way in the smaller cases to manage electronic information. So, to reinforce, the essence of the practice note is a combination of management procedures by the court to efficiently use electronic information in an electronic courtroom.

Senator FEENEY—Given that, are you then in a position to measure what efficiencies you have gained through the use of technology driven by the practice note?

Mr Soden—We are relying on a number of assumptions that have been reported in numerous areas about the savings that can be made by relying on electronic information rather than paper. We do not have anything specific in mind to measure those other than to proceed on the assumption that there will be some time savings—

Senator FEENEY—In terms of court time?

Mr Soden—Time savings in terms of court time, practitioner time and therefore cost to client savings. There are a number of savings that will flow from these initiatives.

Senator FEENEY—What has been the impact of the case management reforms since the passage through the Senate of the Access to Justice (Civil Litigation Reforms) Amendment Bill?

Mr Soden—There has not been any formal measurement of the impact. It is fairly early days. Those provisions commenced in the beginning of January this year so it is a little too early to say. We will need some time to be able to look at the consequences of those provisions.

Senator FEENEY—Thank you. I have no further questions.

Senator BARNETT—In answer to question on notice No. 38 from me, regarding the stratsec report on access to network vulnerability assessment and application vulnerability assessment, you have attached the elodgement security assessment report. Thank you for that. The report is still under review, according to the answer. I would like a situation update in terms of your response to that report. However, it has identified five recommendations of an immediate or high priority, including performing a security risk assessment detailing the consequences should threats associated with elodgement be realised. That was planned for early 2010.

Mr Soden—Yes. I will have to take that on notice. There is some work in progress in relation to that. That is a very good example. We have engaged consultants to have a look at some of those issues to make sure that elodgement is secure and will work properly. That is a work in progress. I would need to take that on notice and come back to you with the details.

Senator BARNETT—It is already early 2010. I thought you might be aware of that matter because it is listed as being an immediate or high priority. It is looking at the security risk assessment detailing the consequences should threats associated with elodgement be realised.

Mr Soden—My recollection is that that was completed and it was all okay, for want of a better term, but I would like to take it on notice to give you precise information.

Senator BARNETT—Likewise with Senator Feeney, have you had a look at the Senate report on Australia's judicial system and the role of judges which came out in December? Have you considered it and given any thought to how the court might respond to that report?

Mr Soden—We have had a look at that report. There are, of course, a number of issues in it for us. How we respond to that report is—to be frank—yet to be worked out.

Senator BARNETT—Right, so it is work in progress for the court, is it?

Mr Soden—It is on our agenda, yes.

Senator BARNETT—You are not waiting for the government to respond before you respond?

Mr Soden—I think we are.

Senator BARNETT—Because it talks about the complaints mechanism which, of course, the courts are responsible for themselves as independent entities.

Mr Soden—Under the present system we have our complaint handling system, yes, but any other initiative may come from elsewhere.

Senator BARNETT—All right. Thanks for that.

CHAIR—Are there any other questions to the Federal Court? There are not, so thank you very much, Mr Soden and your people this morning.

Mr Soden—Thank you.

CHAIR—Senator Brandis and Senator Barnett, do you want to proceed to the High Court or will we go back to the Family Court? What would you like to do now that you are here?

Senator BRANDIS—I am in the hands of the Chair. I do not really have anything for the High Court so perhaps they could be disposed of quickly and then we could deal with the Federal Family Court of Australia and Federal Magistrates Court.

CHAIR—We will have the officers from the High Court of Australia then.

[11.16 am]

High Court of Australia

CHAIR—Mr Phelan, good morning to you and your staff. Do you have an opening statement that you want to provide?

Mr Phelan—No.

CHAIR—Okay, we will go to questions then.

Senator BARNETT—Mr Phelan, welcome back. Just following up some answers you have given to some questions on notice from the last estimates, and specifically to start with No. 116 with regard to your proposed operating loss for this year. Can you give us an update on the financial status of the High Court and its likely outcome for the 2009-10 year?

Mr Phelan—Yes. The Attorney-General approved the court's estimates for 2009-10 consistent with section 36 of the High Court of Australia Act. That included an operating deficit of \$0.57 million for this financial year. We are on track for a deficit of that nature.

Senator BARNETT—All right, thanks very much. In terms of taking that into account, can you advise about the opening hours of the High Court to the public and if they have increased since October last year or are they the same? Can you give us an update in terms of opening hours for members of the public?

Mr Phelan—The opening hours essentially increased by the opening of the High Court building on Sunday afternoons between 12 pm and 4 pm. To fund that we have closed one or two courtrooms on lowly trafficked parts of the day but the building itself has remained fully open during those periods of time. So overall there has been an increase in hours in which the public can visit the court, receive a lecture about what the court does and have a tour of the court.

Senator BARNETT—All right. Can you give us a situation update in terms of where the public can go? I think in October last year you had some work being done in the forecourt and elsewhere around the building. You had some issues with a leaky roof earlier and possible rain damage. So can you give us an update report with respect to both those matters?

Mr Phelan—I am pleased to report the roof repair saga has come to a conclusion. We have successfully replaced the roof. There are a couple of niggling water leaks that are being fixed now but, essentially, that has been concluded.

Senator BARNETT—Where were those leaks?

Mr Phelan—The current links are above courtroom 2. We never cease to be surprised by the design elements of that building and we have discovered something new above that courtroom which is causing some minor leakage on occasions.

Senator BARNETT—And some headaches as well.

Mr Phelan—Yes, for me and the manager of corporate services in particular. We are examining that now with some expert assistance. It is a very difficult place to get into. It is a long way up and there seems to be some cavity above the courtroom which is causing some grief. Essentially the roof exercise is over. In relation to the other matters—

Senator BARNETT—Just on the roof and leaks, can we stop you there for a moment and interpose and ask about courtroom 2. Have those leaks limited the operation of courtroom 2 or the usefulness and effectiveness of it?

Mr Phelan—Not at this point in time. There have been occasions when some unsightly sludge has drifted down the wall, but it is not affecting the ability of the court to receive and deal with oral argument. We do have other courts available if—and I say this as a big ‘if’—some issue arose as to its availability to either repair the roof or some problem occurred.

Senator BARNETT—The unsightly sludge has not distracted the careful thinking of the High Court justices or indeed the defendants or the accused in their activities?

Mr Phelan—Only me, Senator.

Senator BRANDIS—I am sure they barely noticed it, Senator Barnett.

CHAIR—It would probably take much more than sludge, I suspect.

Senator BARNETT—Going to the second part in terms of access for members of the public.

Mr Phelan—I have spoken at some length in previous hearings about some of the problems in the forecourt area. I will not dwell on those other than that the fencing has remained. We managed to start up the water feature briefly but had to switch it off because the water losses with the leakage became too severe—about 7,000 litres a week.

Senator BARNETT—In loss?

Mr Phelan—Yes.

Senator BARNETT—Is that right?

Mr Phelan—That is correct.

Senator BARNETT—That is a significant quantity of water leaking from your water feature.

Mr Phelan—We have had to stop that and we fenced that up just before Christmas. We are now in a position where we have undertaken a significant number of reviews and

consultancies which have identified fully the issues that need to be resolved. We are working very closely with the government, as part of the budget process,—I cannot say more than that—at ways in which we might be able to fund the remediation of that area, or at least the most egregious concerns to open that area for public access.

Senator BARNETT—The water feature only got started last year some time and you are saying you closed it just before Christmas?

Mr Phelan—My colleagues remind me that the water leakage amount was not just leakage as there was also evaporation in that, especially during the hot days before Christmas, but it was running at around about 7,000 litres. We had it going for a few months. It uses potable water so every time there is a leak we have to get a truck from one of the recycled water areas and get it around. It will require about one million dollars worth of fixing to enable it to operate in a way that it does not draw on drinking water. The other parts of that and the rest of the forecourt are being looked at with the government as part of the budget process.

Senator BARNETT—Have you put that request to the government to access the million dollars to fix the water feature? Is that part of your discussions with the government?

Mr Phelan—Yes, Senator, that is correct.

Senator BARNETT—Are there other specific requests you have put to the government with respect to the forecourt or other parts of the building to remedy what is clearly—whether they are design flaws or whatever—the structure and ongoing maintenance of the building?

Mr Phelan—I can say that we have focused very much on the forecourt including the water feature, which is an integral element of it, so it has focused on that and nothing else at this stage.

Senator BARNETT—Can you advise what the response has been to date?

Mr Phelan—I cannot. It is really now bound up in the final stages of the budget building.

Senator BARNETT—So it is part of work in progress in your budget discussions.

Mr Phelan—That is correct.

Senator BARNETT—In terms of the forecourt, are there other specific initiatives you are seeking to do or improve that cost funds? If so, what are they and how much?

Mr Phelan—There are a number of issues in relation to the building which we believe at this stage we can manage with the recurrent equity injections we will get in future in respect of the building and what is in it. It does include issues to do with air conditioning and some asbestos that I think we mentioned before was located in areas that are not affecting the operations of the court but will need to be removed in due course. We have a number of other less significant issues.

It is a significant recurrent exercise. We have a very good asset management and asset replacement strategy and plan that looks at the costs. We have got nothing, really, that I can identify in the short term that should excite us or need the involvement of the government in funding, beyond the forecourt.

Senator BARNETT—At the October estimates we did touch on air conditioning and the asbestos issue in part of your roof. Can you give us an update on the remedial measures required and the cost to fix those problems?

Mr Phelan—Yes. In relation to the asbestos issue, over the years, as knowledge about asbestos has evolved, the court has had a number of reviews of asbestos. It never ceases to amaze me, can I say, that the further we go down this path, we get another consultant in and they continue to find more. We had a more recent one which contained a very full audit of the building and it found four areas where it recommended the asbestos be removed as soon as practicable, and there was a list of other asbestos material which was not requiring that sort of attention.

I will go through the four areas. There were some millboards in the electric duct heaters in the air conditioning. We immediately put in place some monitoring of particle content of our air and that found that there was absolutely no risk at all; nevertheless, those areas remain under monitoring, pending the replacement ultimately. There were some lighting issues in the judges floor which we managed to remove very quickly. There was some formwork in various parts of the western wall of the building, and that has been removed. And a service hatch was found that was in a potentially dangerous situation, so that has been removed.

So all of the other three of the ‘soon as practicable’ list have been removed safely, with experts and with full air monitoring that revealed zero asbestos in the air. What we are now doing as part of the millboard exercise is continuing to monitor as required, but getting a fuller consultancy in relation to the 30-year-old air-conditioning system in the building to see whether, as part of our upgrade or replacement as required, we will get into those sorts of areas and just replace the millboards.

Senator BARNETT—Can you advise the cost to date on remedying those concerns?

Mr Phelan—So far, not significant. I do not know that we have a precise amount. It was probably done with day labour, to be frank.

Senator BARNETT—I am happy for you to take on notice, regarding the consultancies and the reports, to advise us of the names and titles and provide a copy of the reports, if that is possible—

Mr Phelan—Certainly.

Senator BARNETT—and, secondly, the costs for those.

Mr Smart—Senator, were you after a copy of the consultants’ report itself?

Senator BARNETT—Yes, thank you. And can you provide your remedial plans to fix the problems? We need an outline of your plans to fix the problems, and the likely costs, if you can take that on notice.

Mr Phelan—Certainly.

Senator BARNETT—In sum, it seems that you have had a litany of problems with this building. Would that be a fair assessment?

Mr Phelan—It is a 30-year-old building. The full responsibility did not pass to the court for some time. There are some issues which reflect the age of the building and, as I have

indicated in previous hearings, I think there are some issues which may well have reflected the compression of the timeframe in which the final stages of the building were completed. There were some papers released recently which indicate that right at the end there were some industrial issues. There were also some cost pressures and I think there was a pressure in respect of the Queen arriving at the end of May 1980 to open the building. Some of the plans and diagrams and a few other things may have been lost in the fullness of time. The roof is certainly an issue which I suspect had something to do with design because the problem has been around some considerable period of time.

The other issues, I daresay, including some in the forecourt issues probably reflect more the fact that it is a 30-year-old building and now that we have a forward-looking asset management approach to the building we can routinely deal with them as part of our ongoing requirement to invest in the building to avoid these problems recurring. It is not really a litany of problems; it is series of problems built up over time which we are now having to address as real problems rather than a problem with the building per se.

Senator BARNETT—Sure. I understand that. The options you are looking at in forward planning, the asset management plan, as you call it, the forward-looking approach so that you can deal with these problems, would one of the options be relocation?

Mr Phelan—No. The building is very robust and strong. What we are dealing with are various of the elements within it which need to be repaired, as in any building.

Senator BARNETT—Sure. Perhaps when you take on notice to come back with the consultancy reports and your remedial plans for the future you could outline for the committee your asset management plan and the likely future costs.

Mr Phelan—Certainly, Senator.

Senator FEENEY—You touched earlier on the fact that since October last year the High Court has extended the hours of public access on Sundays. Can you tell us when the change was made?

Mr Phelan—On the long weekend in October.

Senator FEENEY—And that change—from noon to 4 p.m. on Sundays—was driven by what?

Mr Phelan—We believe, particularly from things people have told us when visiting the court, that it is a time of the weekend when people want to visit the High Court. They are there because of any number of reasons inclusive of the brand new National Portrait Gallery and the National Gallery of Australia, which are our neighbours. They are wandering across in front of the building and historically for the last decade have seen a closed edifice on a very significant and important building. The justices of the court were very keen to ensure that the importance of the court and the importance of the rule of law were such that visitors would be able to visit the court on weekends. Because we had to reduce staffing to staff some of the other courtrooms but keeping the building open, we could only afford to open it for that limited period on Sunday afternoons. That was the advice our staff told us was about the best time when we were likely to attract promenading Canberrans and others.

Senator FEENEY—And tourists hopefully.

Mr Phelan—And tourists who were visiting the precinct.

Senator FEENEY—To what extent are your opening hours to the public now in alignment with your neighbours?

Mr Phelan—Certainly, the opening in the morning on weekdays is similar. I think we possibly shut a little bit earlier on weekdays, we do not open on Saturdays and they do—all of them—and we do not open on Sunday mornings. But at least we are offering an opportunity on Sunday afternoons, and we are getting sometimes over 100 people, which is very good just a four-hour slot. And these people get individual—

Senator FEENEY—That leads to my next question. Can you give us any sense of what the response of the public has been to this opening on Sunday?

Mr Phelan—I think it has been very good, since we do not have an advertising budget. We just put a little sign out on the forecourt, and of course the forecourt is constrained by the fencing that is preventing people from moving naturally across to the court itself, but—

Senator FEENEY—And access is free, I am assuming?

Mr Phelan—It is.

Senator FEENEY—And the visitors are screened, I am assuming?

Mr Phelan—They are not, no. We do not have screening in the court. When visitors arrive, they receive a pamphlet, and we have some court guides who are available to show them around our main court, courtroom No. 1, the Constitutional Court, and the main features of the building and explain to them the significance of the building itself, some important cases perhaps and also the significance of various elements within the building.

Senator FEENEY—Do you keep track of how many people visit?

Mr Phelan—We certainly do.

Senator FEENEY—So can you tell me that?

Mr Phelan—Not offhand. It varies quite a lot. It can be, on a bad weather day, down to as low as, say, 30 or 40 people, but much higher on occasions where we have had a function—for example, there was a moot presided over by the Chief Justice on a Sunday afternoon, and we had, I think, several hundred people on that particular day.

Senator FEENEY—Are you able to take that on notice perhaps and provide us with more forensic figures?

Mr Phelan—We can, yes. We have done it on the basis of trialling it. What we intend to do is review it mid-year in the light of other funding priorities of the court. But we are also firmly of the belief that, when we can improve the signage in the precinct and really tap into what is a very strong east-west movement of people from the Gallery to the Portrait Gallery and Reconciliation Place—which continues, but now is hidden by very high fencing to prevent people being injured in our forecourt—when all that is fixed, we should be able to attract very significant numbers of people. What we are also looking at is the potential to have some events periodically. I mentioned before we had the major final of the universities' law mooting, where we actually had, as I said earlier, a Chief Justice of Australia presiding over this on a Sunday afternoon, to demonstrate. We had a huge number of people who came in

and just had a look at that. A few other instances like that might well be what we have in mind for the future—not just for attracting people for the sake of attracting people into the place but because we believe we have got a very important message there and a very important building, and it needs to be used by and be available to the public.

Senator FEENEY—I strongly agree and I commend you on that work. Thank you very much.

Senator BARNETT—Chair, just a quick follow-up. In the answer to question on notice No. 117 from the last estimates it says:

The Court has a separate report with options to fix the cascade waterfall's leaks, collect and store non-potable water and upgrade pumps and filters.

When you come back to us on those reports, could you give us an update on that report.

Mr Phelan—We certainly will.

Senator BARNETT—Thank you. Thanks, Chair.

CHAIR—Thanks, Mr Phelan. We do not have any other questions for you, so thank you for your attendance this morning. I now call officers of the Family Court.

[11.39 am]

Family Court of Australia

CHAIR—Mr Foster, welcome to you and your staff. Do you have an opening statement that you want to make before we go to questions?

Mr Foster—No, chair, I do not.

Senator BRANDIS—Can I show you the letter that you tabled at the last Senate estimates hearings; that is, a letter from the Attorney-General to the Chief Justice last October in which the Attorney-General says:

You will be aware that the High Court found in its decision in *Lane v Morrison* that the Australian Military Court was unconstitutional. The Government is considering how it will respond to this decision. This may have implications for the proposed restructure of the Federal Court. As a result, the introduction of a Bill to implement the restructure of the federal courts has been delayed.

You will recall, Mr Foster, I asked you questions about this on 19 October at the last hearing of this estimates committee. Could you please tell us where things have moved in relation to what I might for brevity, call the Semple report proposed reforms since you were last here on 19 October last year?

Mr Foster—In relation to the integration of the courts administration or in relation to the structure of the courts?

Senator BRANDIS—Both, really. You told us on the last occasion that the administrative integration of the courts had been substantially completed.

Mr Foster—Yes.

Senator BRANDIS—We learned then, following *Lane v Morrison* that there had been a delay in the pursuit of the integration of the courts themselves. I would like to know if you could take us through, perhaps chronologically—Mr Govey, you might be able to help here as

well I suspect—where the Semple report reforms are at or if they have not progressed any further—perhaps you could tell us that?

CHAIR—Senator Brandis, just hold that thought for one minute. I understand with Mr Foster being here we have got the Family Court and the Federal Magistrates Court chief executive officer and acting chief executive officer but I think—if I am right—your question is more to do with the Federal Magistrates Court, perhaps?

Senator BRANDIS—No, it bears upon both.

CHAIR—My question, though, is whether Mr Agnew would need to come to the table as well, as part of your other complementary staff, Mr Foster. I am just checking to make sure that you have got the right people at the table.

Senator BRANDIS—That is fine. All I want to know is the answers to my questions, and I do not mind who answers the questions as long as I get the answers.

CHAIR—I had a feeling we probably needed another person at the table.

Mr Foster—I think it is really a question that should be directed to the department, not to me.

Senator BRANDIS—In fairness to you and the committee, because I am sure you have some insights into this Mr Foster, it is probably a question I should ask at this point rather than in questions to the department later on in the day. Mr Govey, you were one of the main driving forces behind the Semple report proposals. Where do they stand, and can you take us, chronologically, to where, if at all, the matter has progressed since 19 October last year?

Mr Govey—Work has been continuing in the department on legislation and on the options for implementing the government's decision. But as that letter you refer to makes clear, we have also been working on reform of the military justice system. We have had discussions on an ongoing basis with the Department of Defence over this period. It is now a matter for government in terms of the timing and the particular outcomes, particularly on the military justice reform.

Senator BRANDIS—I take it from what you have just told us that the further prosecution of the Semple reforms and the repair to the military justice system following *Lane v Morrison* are now linked?

Mr Govey—That is correct.

Senator BRANDIS—Is Ms Sandra Power here—

Mr Govey—I do not think so.

Senator BRANDIS—who is described in the Attorney-General's letter as the action officer on this matter?

Mr Govey—Ms Power has subsequently moved from the area in the Access to Justice division that was handling this and is now in the Constitutional Policy Unit in the department.

Senator BRANDIS—I see. Well, who is the action officer now? Or is there not one at the moment?

Mr Govey—There are a series of action officers, but I think Ms Kelly Williams would be regarded as—

Senator BRANDIS—Is she here?

Mr Govey—She is.

Senator BRANDIS—Perhaps she could come to the table, too. What I would like to learn with particularity, Mr Govey and Ms Williams, is what specific steps have been taken within government since the Lane v Morrison decision. You told us in your earlier answer that there had been discussions with people from the Department of Defence—presumably they are legal people—when was the first of those discussions?

Mr Govey—I think that occurred before Ms Williams was involved and I would have to take it on notice.

Senator BRANDIS—Was it shortly after Lane v Morrison?

Mr Govey—Fairly soon afterwards, yes.

Senator BRANDIS—It may be necessary for you to take some of these questions on notice—that is fine—but, to the extent to which you can help us now, that would be better. I would like to know, please, when each such meeting occurred, from the time of the first meeting to now. I assume there has been a series.

Mr Govey—There has been a series of meetings.

Senator BRANDIS—About how many would you say?

Mr Govey—I would hesitate to estimate it, because I have been involved in some of those meetings but not all of them. Of course, a number of discussions have taken place over the phone as well.

Senator BRANDIS—Can you tell us, please, who were the participants in each of those meetings?

Mr Govey—We will take that on notice.

Senator BRANDIS—I assume that those meetings were minuted. Can you produce the minutes of those meetings, please?

Mr Govey—I would need to take on notice exactly what records were kept and whether it would be appropriate for them to be made available.

Mr Wilkins—Senator, I have been to some meetings on this topic is well, quite independently of that, and they certainly were not minuted. There has been a variety of people talking on this topic, including ministers, ministers' staff, CEOs of departments at deputy secretary level and presumably other people. I think it is going to be almost impossible to give you the information about who has met with whom on this topic in any way that we could guarantee that we have given you accurate information, because I have no idea. I see the Chief of the Defence Force or the head of the defence department on a regular basis on a number of issues, and this has been one of them.

Senator BRANDIS—I suppose that is a fair point to make. I suppose there is a difference between something coming up in a discursive conversation which relates to a lot of different

topics and a specific meeting directed to the link between the simple reforms and fixing up the military justice system. I am really more concerned with the latter. Can I perhaps approach this way: has there been an IDC set up between A-G's and Defence, specifically to look at this issue?

Mr Govey—Not a formal IDC.

Senator BRANDIS—Well, an informal IDC?

Mr Govey—An 'informal IDC' I would describe as people meeting between the two departments on an as needs basis, and certainly that has happened.

Senator BRANDIS—Okay. Well, that is what I want. Do not worry about the casual, secretary-to-secretary level remarks at the Commonwealth Club one night over dinner; I am not concerned about that, Mr Wilkins. I am concerned about the occasions when officials have met to specifically turn their mind to what is to be done about the military justice system following *Lane v Morrison* and how that bears upon the simple proposals for the effective elimination of the Federal Magistrates Court. Do you follow me?

Mr Govey—I do. We will take that on notice.

Senator BRANDIS—Have any decisions been made yet?

Mr Govey—Not that I am aware of. You mean government decisions about what options? Not that I am aware of.

Senator BRANDIS—What options, what different models, are under consideration, Mr Govey, to deal with military justice?

Mr Govey—I should modify the previous answer I gave you in the sense that, at the broadest level, the government did announce that it was looking to rely on a chapter III court. I was not intending to refer to that as it is more below that level.

Senator BRANDIS—I understand. I do want to drill into the detail of this, Mr Govey.

Mr Govey—There may be some limits on how much I can help you in that regard, Senator, but what I can say in just looking at it generally, the government has an option, once it has made that first decision about relying on a chapter III court, of either establishing a new chapter III court to deal specifically with military justice or relying upon the existing court structures.

Senator BRANDIS—You may or may not be aware, Mr Govey, that when the Semple report was published the opposition, specifically me, said that it was a bad idea to abolish the Federal Magistrates Court and, when the *Lane and Morrison* decision was delivered later in the year by the High Court, I pointed out that that was a very good example of why it was such a bad idea to abolish the Federal Magistrates Court, because one of the ways in which the chapter III problems arising from *Lane and Morrison* could have been overcome would have been to divisionalise the Federal Magistrates Court and have a military justice division. Is that option under consideration?

Mr Govey—I think it is fair to say that that would be one of the available options.

Senator BRANDIS—Okay. Within government how far has this progressed? Has it gone to cabinet for example?

Mr Govey—I do not think it would be appropriate for me to talk about that.

Senator BRANDIS—I think I can ask whether, in fact, something has happened without asking what the substance of it was. I think we have established that in the past that I can ask whether a matter has been the subject of a cabinet paper.

Mr Govey—I will look to the minister but my understanding was that the cabinet agenda was also confidential unless the government made a decision to take a different view and make an announcement.

Senator BRANDIS—Rather than delay by having an argument about it, what I would like to know is how far we have got? We have this letter, unfortunately undated, from the Attorney-General to the Chief Justice of the Family Court, which we established was sent on, I think, Thursday, 15 October last year. It was tabled in estimates on 19 October last year saying that, as a result of Lane and Morrison, decisions in relation to the further integration of the Family Court and the Federal Magistrates Court have been delayed. You have agreed with me that these two issues now are linked, which obviously they are. I would like to know, given that we know from the Attorney that Lane and Morrison was an event which precipitated a delay, what has happened in the months since other than these meetings and how far down the track we are in moving towards a resolution of this problem?

Mr Govey—Senator, for your information, the letter was dated 16 October. I am not sure that there is much more that I can add to what I said before. We have been working with some intensity in the intervening period to look at all the issues.

Senator BRANDIS—You mentioned that there were options being considered. Is there a preferred option or has any even preliminary decision been made as to a preferred option?

Mr Govey—Senator, I think the advice that we give the Attorney on this is not something that I can disclose.

Senator BRANDIS—I am trying to identify a stage earlier than advice to government. Does the department or the informal IDC have a tentative view about the best option?

Mr Govey—I do not think that I could say that we have, particularly.

Senator BRANDIS—Has a paper been prepared either by you or by Defence in relation to this?

Mr Govey—Various internal papers have been drafted.

Senator BRANDIS—All right. I would like those tabled please. You will take that on notice, of course, but I would like those papers.

Mr Govey—The primary author of the papers that I have in mind is actually the Department of Defence.

Senator BRANDIS—Are you aware of Justice Logan's paper on the matter, which was delivered in Brisbane at the end of last year?

Mr Govey—Not off the top of my head.

Senator BRANDIS—All right. In the event that the option to retain the Federal Magistrates Court and create a military division of it were to be, at the end of this process, the

preferred option, has consideration been given to whether those who would serve on that division should hold commissions in the various branches of the armed forces?

Mr Govey—Do you mean: would it be possible for them to be on the court and be serving military officers?

Senator BRANDIS—No, that is not what I meant. Let me give you the context. There is a view—I am not necessarily adopting this as my own view—that military justice delivered through a chapter III court should nevertheless be presided over by judicial officers who hold commissions, in other words, commissions in the reserve forces—like Justice Tracey, for example. He holds a commission and there are others who do as well. Has the question of whether it is desirable that those who staff whatever court replaces the Australian Military Court and meets the chapter III requirements and should be limited to those holding commissions? Has consideration being given to that question?

Mr Govey—I do not think we are considering that they should be limited in that way, but in theoretical terms it is an option that will be looked at.

Senator BRANDIS—No, my question is much more simple than that. Has consideration been given to that question?

Mr Govey—Perhaps I should take that on matters as well. It is one of a series of issues that are linked. As you can imagine, there are also some issues to do with the constitutionality of various options because chapter III imposes some constraints on what can be done.

Senator BRANDIS—Indeed. Minister, are you able to provide the committee with any more information than the officers feel at liberty to do as to how far the consideration of this question, that is, the implementation of the Semple report and the related issue of the creation of a new military justice structure, has progressed within government?

Senator Wong—I doubt it, very much.

Senator BRANDIS—So we are still where we were with the attorney's letter of 16 May to the Chief Justice of the Family Court. Other than a number of informal meetings, the matter does not appear to have progressed since then.

Mr Govey—A number of formal meetings have taken place as well between Defence and ourselves. Quite a lot of work has been done on options.

Senator BRANDIS—But no decisions have yet been made.

Mr Govey—That is what I have indicated. Nothing has been announced.

Senator BRANDIS—It is a one thing to say that nothing has been announced; it is another thing to say that no decisions have been made. But the answer to both of those questions is 'yes'—nothing has been announced and no decisions have been made. Is that right?

Senator Wong—Mr Govey cannot make announcements that would otherwise be the province of ministers, clearly. He has given you as much evidence on this topic as he can.

Senator BRANDIS—In an earlier answer Mr Govey did tell me that no decisions have yet been made. So that will do me. Thank you.

Senator BARNETT—I have two questions. In an answer to question on notice No. 23 the Family Court advised that the maximum time taken for a case to finalise during 2008-09 was 66.2 months, or 5½ years. Was that a surprise or a concern? Or are there legitimate reasons for that lengthy period? That answer also says that the time for filing to finalisation of final orders applications in the Family Court was 18.8 months. I am particularly interested in this case that took 5½ years. Do you have any details on that?

Mr Foster—Obviously that would be of concern, Senator, but I do not have the details of that particular case with me and I would be speculating if I tried to provide an answer. There have been some discussions about that particular matter but I just cannot recall them accurately, except to say that there are some fairly special reasons around that particular matter and, if you are agreeable, I will take on notice.

Senator BARNETT—All right. I am sure that there would have to be some special reasons in light of the time period, but it is a concern. I am happy if you take it on notice, Mr Foster, thank you. Question No. 24, that the average waiting time for the conclusion of a trial to the handing down of a judgement was approximately 3.4 months: are you satisfied with that period of time for the handing down of a judgement?

Mr Foster—The standard that the court sets for delivery of reserve judgements is that all judgements will be delivered within three months of the end of the trial, basically. Are we meeting that standard in all cases, the answer is, no, we are not. In fact as at today, in first instance matters there are 23 judgements outstanding that are greater than three months and less than six months, and there are 20 judgements outstanding that are greater than six months. The court has a process to monitor those. The Deputy Chief Justice gets a report every month about all outstanding judgements and would obviously speak to a particular judge in relation to the matters that are greater than six months and, if necessary, would make arrangements to take that judge out of court to enable him or her to prepare those judgements. So they are constantly monitored. There may be various reasons why some of those are outside the standard.

Senator BARNETT—Just on that point, has that been happening in terms of taking the judge out of court and saying, ‘You have to finish this judgement; it is taking too long’?

Mr Foster—Yes, that has happened. As and when required, that does happen.

Senator BARNETT—How often has that happened in, say, the last 12 months?

Mr Foster—I would need to take that on notice.

Senator BARNETT—If you could—

Mr Foster—Certainly.

Senator BRANDIS—Roughly.

Mr Foster—It is a very small number, Senator.

Senator BRANDIS—It is not hundreds, or dozens—

Mr Foster—No, no, it would be a very small number. It would be less than a handful, and not even that many.

Senator BRANDIS—When you answer that question, could you also tell us the names of the judges.

Mr Foster—I will take that on notice as well.

Senator BARNETT—You have been commended in the Senate inquiry, which was handed down in December, on Australia's judicial system and the role of judges in terms of your complaint mechanisms. Thank you very much for the work that you have done there. Has the court given any consideration to that report and responded to it?

Mr Foster—The report has gone to court's law reform committee. The report is to be discussed at the Chief Justice's Policy Advisory Committee, which is meeting in Melbourne this coming Friday. Following those discussions in that meeting, it will be discussed at the monthly judges' telephone conference, which is the following Friday, 19 February. Then a way forward and a response will be formed by the Law Reform Committee of the Court.

Senator BARNETT—Is there anything you could alert the committee to in terms of the way you are going or what you are looking at in particular, or are you looking at it in toto?

Mr Foster—I have not discussed the report with the law reform committee. I am not a member of it and I am not quite sure what their deliberations are. I will certainly have a better idea after the policy advisory meeting on Friday.

Senator BARNETT—My final question regards the answer to question No. 50 and Professor Chisholm's consultancy on the Family Court's violence review, which cost \$126,315.13c—and you have set out the breakdown of those costs. It sounds as if substantial funds have been expended for that report. Can the court to respond in terms of that review to say that you got value for money, and can you provide us with a copy of the review for the committee?

Mr Foster—That review was a review instituted by the Attorney-General not by the court. All I would say is that the court welcomes any practical recommendations in relation to family violence and other matters as well that assist the litigants of the court. The Family Court of Australia and the Federal Magistrates Court have a Family Violence Committee of judges and federal magistrates and appropriate officers and both courts are examining not only the Professor Chisholm report but also the Institute of Family Studies report and the Family Law Section reports into violence and other matters, and they are working through those substantial reports, as we speak, basically.

Senator BARNETT—Have you seen that report?

Mr Foster—Yes, I have seen them all.

Senator BARNETT—This particular report?

Mr Foster—The Professor Chisholm report—yes?

Senator BARNETT—When was it completed?

Mr Wilkins—I might be able to help. It was actually released last week, on 29 January.

Senator BARNETT—So that is on the public record now? Okay. Thank you very much. We will have a look at that. Thank you very much Mr Foster.

CHAIR—Senator Feeney has a question for you before you head off.

Senator FEENEY—Has there been a reduction in Family Court filings in recent years?

Mr Foster—The question on filings is quite an interesting one to ask. I can give you some data over the last couple of years. I know that some of the recent reports the senator was just referring to talked about applications for final orders in family law courts—that is both the Federal Magistrates Court and the Family Court—having reduced by some 20 per cent since 2000. In fact, that figure has now changed and there has been a trend backwards to increased filings.

If I can go back to 1998-99, just before the Federal Magistrates Court commenced business, in the Family Court there were 21,939 applications for final orders. Then we move to 2006-07. There were 7,800 applications in the Family Court of Australia and 15,816 in the Federal Magistrates Court, which was a percentage drop of seven per cent in total filings. In 2007-08, the Family Court's final order applications fell even further to 4,457, and the FMC, the Federal Magistrates Court was 14,899 for a total of 17,265, which is about a 21 per cent reduction from the figure I provided in 1998-99. In 2008-09, the Family Court figure dropped again to 3,834 and the Federal Magistrates Court increased slightly to 15,549 for a total of 17,933, which is a reduction of 18 per cent from that 2000 figure. Interestingly, in the year to date, 2009-10—and we have projected a full year figure so this is a projection for 30 June 2010—the Family Court will be 3,828 and the Federal Magistrates Court, 17,062 for a total of 19,652, which is a 10 per cent drop from the figures in 2000. There seemed to be a downward trend during the middle of 2007-08, and now it looks as if it might be returning back to the figures that existed a decade ago. We are now projecting a 10 per cent drop in filing fees across both courts compared to 2000.

Senator FEENEY—To what factors do you attribute that trend?

Mr Foster—I would say that, primarily, it has been the impact of the family relationship centres and the requirement to have pre-filing counselling, which both courts would very, very strongly support. I think that has had a significant impact on the reduction in applications for final orders. The work that is in the court, though, is the work that has always been there. It is the hard end of the cases in family law for both courts. I think some of the less complex, less intractable disputes are being resolved in the Family Relationship Centres, which must be a good thing.

Senator FEENEY—So you are not signalling to us that family breakdown is on the wane?

Mr Foster—No, not based on those figures.

Senator FEENEY—Not based on those figures. Senator Barnett touched upon family violence. What is involved in the court's family violence strategy?

Mr Foster—I might ask the principal registrar to respond to that question.

Senator FEENEY—I also want to talk to you about the court's best practice principles.

Ms Filipello—First, turning to your original question in relation to the family violence strategy: the Family Court has had in place since 2005 a family violence strategy. That was the work that culminated through a number of external stakeholders together with judges and staff of the Family court. The Chief Justice and the Chief Federal Magistrate have now

reconvened a committee of judges and federal magistrates, and I am actually on that committee myself together with other members of staff. We are now reviewing that strategy. That strategy has been published and I actually have a copy here with me today, so I am able to provide that to you.

Senator FEENEY—Excellent. Thank you.

Ms Filipello—Essentially, it was a five-pronged approach which touched on all areas of work undertaken by the court, including for example the safety of the premises—so that, when parties come to court, they feel safe—the development of a strategy so that our clients can advise us if there are issues of safety that they have so that the court can then put in place a safety plan. All of the Family Court and FMC staff have been trained in relation to the preparation of a safety plan, and that plan is then recorded on the file to assist the management of that file within the court.

Senator FEENEY—So when considering the court's family violence best practice principles—

Ms Filipello—In relation to that document, that is in fact probably the last of the areas that the strategy had targeted, and that was in relation to the matters that actually appear in court. The best practice principles were released after a lengthy consultation last year by the Chief Justice and they too are available on the Family Court's website—they are public documents—and the committee with the Chief Justice and the Chief Federal Magistrate is again going to be reconsidering that policy in light of the current reports that have been released.

Senator FEENEY—That is the same committee or the same working group?

Ms Filipello—The same working group, indeed.

Senator FEENEY—When those principles were developed, how were they taken up? How were they implemented?

Ms Filipello—So far as the Family Court judges were concerned, they were a matter of discussion at the judges meetings that they have had and the judges conferences so that they were adopted by the judges in that way. It is a matter for the individual judge to adopt the principles within his or her courtroom, of course.

Senator FEENEY—Thank you very much. Mr Foster, one final bite of the cherry in terms of the filings: have you got anything to tell us about what the future implications might be for the staffing and workload of the court given the trend lines?

Mr Foster—I am not sure that the impact of the filings would have a significant impact on the staff of the court because the staff of both courts, in relation to family consultants and registrars, are dealing with the most significant matters. These numbers in the big picture for recording and putting files up onto our Casetrack system I think would have a minimal impact on court staff time. I do not think it will impact at all on court sitting times and the work of judges, specifically federal magistrates, over the immediate future anyway.

Senator FEENEY—Thank you.

Senator BRANDIS—Can I just come back to the Semple report issue. There is one other question that perhaps I should put to you, Mr Foster. Are you still of the view that, even if the Semple report proposals do not proceed, the integration in structure of the Federal Magistrates Court and the Family Court of Australia is appropriate?

Mr Foster—My view is that it is. I think the integration of the administration has certainly eliminated a great deal of duplication in management and in management layers, which I think was, from my point of view, unnecessary. We will actually save something like \$7.8 million over four years by this integration of staff and we have managed to retain some of those funds to put back into services to clients. So I think overall it has been a positive thing. Certainly, on the issue in relation to back office or corporate: I think there is a compelling argument for that to happen. When the Federal Magistrates Court was established, in terms of client services, the registries were basically servicing two courts from day one. I think the savings largely have come out of the corporate area, which I think quite frankly is a pretty sensible business decision to make.

Senator BRANDIS—Would your answer be the same if the Federal Magistrates Court continued to exist and was divisionalised and there were to be a military division of that court?

Mr Foster—I do not think it would change my answer at all.

Senator BRANDIS—I can understand that someone who is properly concerned with efficiencies would say that. But doesn't it strike you, Mr Foster, that there is something odd about a court of general jurisdiction which may be divisionalised between particular discrete jurisdictions that have nothing to do with family law being integrated into the Family Court—in other words, a specialist court and a non-specialist but divisionalised court with a number of specialised divisions being integrated from an administrative point of view? Doesn't that strike you as odd?

Mr Foster—Is does a bit, I would have to say, but it is also sensible to mention that the registries for the general federal law are provided by the Federal Court, not by the Family Court of Australia and so all general federal law matters are filed in Federal Court registries. It is unusual in my experience, but is it workable? I think, yes, it is.

Senator BRANDIS—Would it be fair to say that your answer depends, up to a point at least, on the extent to which most of the work of the Federal Magistrates Court continues to be family law work?

Mr Foster—Yes.

Senator BRANDIS—So that if, with the passage of time, the Federal Magistrates Court were doing a greater proportion of other work, the considerations that moved you to answer my question in the way that you just have would tend to diminish somewhat?

Mr Foster—Unquestionably. At the moment, we have 59 Federal Magistrates, 45.15 doing family law, 13.05 doing general federal law and 0.8 of the Chief Federal Magistrate's time is on administration, which adds up to 59. So the vast majority of the work of the court is in family law.

Senator BRANDIS—I understand that.

Mr Foster—I do not disagree with your assertion that, if that changed in some way, the current administrative arrangements would probably need to be looked at.

CHAIR—Thank you, Mr Foster. We do not have any other questions for you this afternoon. Thank you very much for your attendance today.

Mr Foster—Thank you very much, Chair. We will now move to the Administrative Appeals Tribunal

[12.18 pm]

Administrative Appeals Tribunal

CHAIR—Welcome. Mr Humphreys, do you have an opening statement?

Mr Humphreys—No.

CHAIR—Senator Feeney has some questions for the AAT, but I am not aware that Senator Barnett has any questions for you.

Senator BARNETT—No questions.

Senator FEENEY—Mr Humphreys, you have been spared opposition scrutiny but not government scrutiny. Can you tell us a little bit about what the AAT's current case load is like?

Mr Humphreys—I am pleased you asked that question, Senator. What I would like to do—as I have done on other occasions—is hand up a document which covers the workload and performance information in relation to the tribunal. I think Senator Wong has a copy of it, which has been provided, and I will hand it up to you.

Senator FEENEY—Thank you.

Mr Humphreys—It is a fairly comprehensive document. It covers applications lodged and finalised and current. It then breaks them down into the various jurisdictions. It deals with finalisations by jurisdictions. It has current applications by jurisdictions, and it has finalised percentages with applications finalised with or without hearing, some time standards and some other information. It is the sort of information we provide in our annual report. We pull it out for the period that we are coming to. This document covers the six months up until 31 December, and then there are some projections for the year 2009-10.

You will see that we anticipate that our lodgements will be down slightly—about 332 or 5.3 per cent. We think that our finalisations will be up. I think this is a great success story: the number of current matters that we have on hand is probably going to drop further. You will note on page 2 where it has 'current matters' that as at 30 June 2008 we had 7,191 matters on hand, as at 30 June 2009 it was 6,179 and as at the end of the year it had dropped down to 5,549. So basically we have finalised significantly more matters than we have had come in over that period of time. We anticipate that that will continue through the year. Then we have set it out in graph format to give you an idea there.

Senator FEENEY—Given the spectacular way you answered my first question, let us see if you can do it again. I understand that there has been a reduction in taxation cases.

Mr Humphreys—Yes.

Senator FEENEY—Is that part of a general downward trend or is that a particular trend in taxation cases? Perhaps as part of this document you have handed up you could refer me to—

Mr Humphreys—If you go to page 5, you will see we have current applications by jurisdiction. If you look at the taxation division, you will see that they have again been trending down. Some years ago we had an influx of what I call tax scheme matters. These were mass marketed tax minimisation matters. They were from around Australia but were principally from Western Australia. We have employed a very targeted and systemised work plan to try to reduce those. In fact, over a period of time that is what we have been doing to reduce those. It has meant that, in terms of our time standards, we have been lagging on tax matters simply because we have had so many matters on hand.

Senator FEENEY—Just before you go on, did those schemes which you say had their epicentre in Western Australia create work that was hitherto not experienced by the AAT?

Mr Humphreys—Yes. We had about 5,000 matters come in. These were the lump-sum matters that the Commissioner of Taxation deemed were tax minimisation schemes and then there were objections lodged to the tribunal in respect of those. One scheme might involve 200 or 300 matters and, again, there might be 200 taxpayers but over three years. Each one of those was treated as another matter. We have been working on getting those matters down. We have a rump of about 800 to 1,000 matters—

Ms Cassidy—Six hundred or so.

Mr Humphreys—She has special responsibility. There is a rump of about 600 scheme matters that we have outstanding in Western Australia and they are going to require an application of resources to finalise them. We are continuing to do that.

Ms Cassidy—They should be finalised by the end of this financial year.

Senator FEENEY—What can you then tell me about the general settlement rate in AAT matters?

Mr Humphreys—In the tax matters or generally?

Senator FEENEY—Generally.

Mr Humphreys—If you go over the page and look at table 5, you will see that the percentage of matters that are finalised with and without a hearing. Again this is a very good news story. We have seen the percentage of matters that have been finalised without a full hearing in fact increase. It has gone from 78 per cent in 2007-08 to 81 per cent in 2008-09, and in the six months until 31 December it was 83 per cent.

Senator FEENEY—Being the eternal cynic that I am, while that trend line looks good, what would 2006-07 look like? Is this a trend line that is longer than three years? From 78 to 83 per cent is obviously a good news story, as you characterise it, but I want to make sure it is a constant story.

Mr Humphreys—It went down and now it is going back up. That is my recollection—and I would need to take it on notice to give you the precise figure for 2006-07 or perhaps I will get a phone call from my manager of policy and research, who is probably listening in at the moment.

Ms Cassidy—I am able to let you know, though, that it has never been as high as 83 per cent before—not in the last 10 years.

Senator FEENEY—That is good; thank you.

CHAIR—Mr Humphreys, I thank you and your team from the AAT.

Proceedings suspended from 12.25 pm to 1.31 pm

Australian Security Intelligence Organisation

CHAIR—I reconvene this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee's consideration of the additional estimates for 2009-10. I welcome representatives from ASIO, the Australian Security Intelligence Organisation. Mr Irvine, good afternoon. Do you have an opening statement that you wanted to provide to us?

Mr Irvine—No, Senator, I do not.

CHAIR—All right. My apologies, Minister Arbib; good afternoon and welcome to our estimates process. It is nice to have you join us. We are going to go to questions from Senator Ludlam to begin with.

Senator LUDLAM—Thanks, Chair. Welcome back, Mr Irvine.

Mr Irvine—Thank you.

Senator LUDLAM—I should just tender my apologies on behalf of the committee for last time. We kept you waiting until quite late and then we ran out of time and sent you home, so I am glad we have got you, with the will of the committee, at a reasonable hour this time.

I just want to kick off with an issue I did not raise during the last session which is about some of the enhanced powers enjoyed by ASIO under the antiterrorism legislation which still exist. I have been informed by a number of people that members of various ethnic, religious or activist communities are approached by ASIO operatives at various times for what some call 'friendly chats'. I have received a number of complaints and accounts of such things. What is generally communicated to some of the people who are visited for these 'friendly chats' is that ASIO officers could get a questioning warrant if they so chose, but that it would be much easier for the person if they just had a quick conversation without one, which people, I guess you could understand, can find quite intimidating. I am just wondering: how are ASIO officers required to identify themselves in such situations; and is there a policy, formally or informally, for approaching people in this manner?

Mr Irvine—In the course of investigative inquiries, ASIO officers do approach members of the public to obtain information. Where we approach members of the public overtly and directly, ASIO officers would identify themselves and would seek the support of the people they are talking to in providing information. They make it clear that they are not obliged to provide such information; they are encouraged to do so. Indeed, there are times when, if people say, 'Well, I don't want to talk to you,' we do not pursue the matter.

Senator LUDLAM—Okay. Can you tell us exactly how ASIO officers are required to identify themselves in such cases. What is the minimum amount of information they are required to tender?

Mr Irvine—ASIO officers will not necessarily identify themselves by their full name but they will, if asked to do so, usually give a first name and an indication that they are indeed from ASIO.

Senator LUDLAM—But they are not necessarily required to provide a badge or a rank, just their first name and the agency they are with.

Mr Irvine—Yes.

Senator LUDLAM—Okay. Have you been made aware of concerns within the various kinds of communities that I just named about people turning up to have these so-called friendly chats?

Mr Irvine—Yes, from time to time when ASIO does turn up to talk to people the people concerned are concerned. It is our practice to try to assuage those concerns and to encourage people to provide the sort of information that will assist us in our inquiries.

Senator LUDLAM—I guess this is policy that the first line of inquiries in the community generally are not to seek questioning warrants but to undertake these lines of questioning essentially outside any formal process?

Mr Irvine—Yes.

Senator LUDLAM—I will now return to an issue that you undertook to seek some information for us on last time we spoke—in May of last year. It was around the quantum of resources that the agency is taking up tracking peaceful demonstrators. You expressed some surprise at the time that climate change demonstrators, for example, were being approached for these kinds of friendly conversations. Again, I am not intending to trespass on specific operational activities here. I am looking for guidance from you on policy. Can you provide that information for us now, please?

Mr Irvine—In many ways it is difficult for me to address directly your concerns about ASIO interest in protest activity. For ASIO to be effective in protecting Australia and Australian interests against threats, we obviously have to be very circumspect about what we say publicly. I would not want to get the organisation into a running commentary on situations where ASIO may or may not have been involved. That said, you did raise with me last May an example of where, perhaps it was one of your constituents, was reportedly approached by ASIO following a protest, I think, at Rockingham power station.

Senator LUDLAM—That is right, Rockingham power station.

Mr Irvine—I did express surprise at the time that ASIO would have approached your constituent in such circumstances, and I went back and checked and I would like to place it on the record that I do not in fact believe it was ASIO who approached that person. I do not know who did, but it was not ASIO.

More broadly, I would respond to your broader question with three points. ASIO does not devote any resources to constraining legitimate protest. We are specifically prevented from doing so by our act, and we do not do it. Our sole interest—and this is the second point—in protest activity is where that activity may be associated with or have the potential for political violence and, as such, it would come under the ASIO head of security relating to the issue of politically motivated violence. At present, the protest movement—if that is what you want to

call it—or the demonstrations that take part in Australia are overwhelmingly peaceful. ASIO would devote only minimal resources to concerns about politically motivated violence related to protest activity. If there were an upswing in the potential for violent protest then ASIO would devote more resources accordingly. But I think the important thing to say is that ASIO's first and foremost priority at the moment is preventing terrorist attacks in Australia and against Australians. The vast majority of our resources are focused on this fact.

Senator LUDLAM—That is what I would have expected. I will go to that in a moment, but just to conclude where we are now: I agree that in Australia these events are overwhelmingly peaceful. But they are in many cases now converging around assets that I presume you would consider important for national security—things like electricity grids and power stations. Given the overwhelming preponderance of peaceful demonstrations but nonetheless converging on that kind of infrastructure, does your agency keep a watching brief, aside from questions of violence, simply because of the nature of the areas where these demonstrations are now targeting?

Mr Irvine—Not specifically, but if we had information that there was potential violence around an element of critical infrastructure, we would almost certainly be alerting the local authorities.

Senator LUDLAM—Thank you. So, as far as your act is concerned, and presumably the training that you are giving your personnel, if there is no credible threat or risk of violence in any given demonstration, you have absolutely no brief to be investigating those activities?

Mr Irvine—None whatsoever.

Senator LUDLAM—Does it concern you then that, first of all, you are intimating that somebody is posing as an ASIO officer—which I find rather disturbing but I have no reason to disbelieve my constituent—that these off-the-record 'friendly chats', of which this is one instance, do not have any paperwork associated with them, no warrants are being called for, no record is being kept, and the committee is now being asked to take your word that, on clarification with your agency, no such conversation happened?

Mr Irvine—Certainly in that particular instance that you quoted. When we do talk to people we keep our own records of such meetings.

Senator LUDLAM—There is kind of file note for every interaction up to a point?

Mr Irvine—Almost every interaction. Certainly if we were going out to interview a person to ask a person to assist us in an investigation, there would definitely be a record of that.

Senator LUDLAM—Just to come to the question that you touched on very briefly, that most of your brief does relate to terrorism and counterterrorism activities, in your annual report you have said that counterterrorism assessments fell for the third year running and there were less than half the number that there were in 2006-07. Can you tell us broadly what is captured by the scope of counterterrorism assessment? Is the country becoming safer or is there something else at work that is skewing the statistics?

Mr Irvine—I think that figure referred to the number of instances in respect of visa applications and perhaps things related to use of explosives in Australia, sales of ammonium nitrate and so on. Those numbers actually did fall last year.

Senator LUDLAM—And that is just part of the natural cycle of the way these things are conducted?

Mr Irvine—I think so.

Senator LUDLAM—There were some criticisms raised in the press after your last annual report, due to repeated instances of simply reprinting material from your previous annual report. I do not know whether you would be aware of some of the commentary that surrounded that. The section on espionage, for example, was a straight cut-and-paste from the 2007-08 report. Do the people who draft these reports for you simply start with the last annual report and then update bits and pieces?

Mr Irvine—They may well have done so on that occasion, but what is produced in the annual report each year is relevant to that year. In that sense it represents a continuum.

Senator LUDLAM—It is certainly an admirable example of recycling, but are you a bit concerned that the reports are essentially being cut from the same template, using the same words, year on year?

Mr Irvine—Again I would say that the report itself I believe to be an accurate representation of what occurred during the year. We can change the words, if you wish, but if the situation that is being described is the same I am not too worried.

Senator LUDLAM—I do not want to dwell on it, but it is just a peculiar example. Annual reports are one of the few accountability mechanisms or public reporting avenues that we have, so it is somewhat peculiar year after year to see the same words trotted out. It looks somewhat glib, if I could put it that way.

I want to come to the detention powers. ASIO's power to detain without charge under an ASIO warrant for up to 168 hours has been described by some of Australia's top legal experts as unnecessary and unjustifiable. I am sure you are aware of the various kinds of commentary that surround that. Is it the case that that power has not been invoked in the seven years of its existence, to your knowledge?

Mr Irvine—That is correct.

Senator LUDLAM—Those same detention provisions were considered by the UN Committee against Torture, which said that, to the extent that these provisions infringe upon people's rights to take proceedings to court to determine the lawfulness of their detention, they are a breach of article 2 of the convention against torture. Are you familiar with the brief in which those comments are contained?

Mr Irvine—Could you say that again?

Senator LUDLAM—The provisions were considered by the United Nations Committee against Torture. On notice, I can provide you with the citation for that reference.

Mr Irvine—Would you still mind clarifying that question?

Senator LUDLAM—The UN Committee against Torture has considered the detention provisions that we are discussing. Their comment was, to the extent that the provisions infringe people's rights to take proceedings to court to determine the lawfulness of their detention, they are in breach of article 2 of the convention against torture. So we are talking

about arbitrary detention that actually prevents them from having their detention tested in court.

Mr Irvine—All I can say is that those detention provisions provide very considerable safeguards for the conduct of questioning. They are videoed. There is someone independent who monitors and is present during that questioning. The questioning would be suspended if that independent monitor raised any concern about impropriety or illegality in connection with the exercise of that warrant. The person would have access to a lawyer in order to receive legal advice and could make a complaint about the process at any time to the Federal Police, the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman. There is a level of protection of rights in there that would lead me to question whether we are in fact talking about torture here.

Mr Wilkins—It is essentially a matter of policy about the legislation that is on the books. We are well aware of the comments that you refer to. But those sentiments are not necessarily shared by the government and the government's legal advisers along those lines. Some of these provisions, as you know, date back a number of years. Similar questions were raised this morning by the Human Rights Commission in relation to some of the extant legislation along these lines. It is probably fair to say that the government believes that its legislation is in accordance with its human rights obligations. But at the moment there are various discussion papers out there looking at other aspects of the legislation, as you know.

Senator LUDLAM—I was just coming to that. There is meant to be a counterterrorism white paper underway, although that is long delayed and we do not have any update as to where that is up to, unless you like to provide us with one. There is a review of national security legislation underway. The Attorney's discussion paper excluded the ASIO Act, so we did not see any propositions from the government at all for amendments to the ASIO Act. Can you tell us whether those specific provisions on ASIO's detention powers are under review or whether the government is satisfied that they should remain in place?

Mr Wilkins—There are no plans to review those particular provisions.

Senator LUDLAM—I believe the officer who just came to the table to help with that answer spoke to this committee's hearings into the bill that we introduced into parliament last year.

Mr G McDonald—Yes, I did.

Senator LUDLAM—Mr McDonald, at the time—I can remember right at the end of the hearing—you undertook to take the material that the committee had received about amendments to the ASIO Act and that you would feed that into your processes review. Can I take it from the comments by Mr Wilkins just now that the government has chosen not to proceed with anything of the sort?

Mr G McDonald—The government is still finalising its decisions on what it will proceed with and what it will not proceed with. What Mr Wilkins was referring to was whether there was to be a specific review of those provisions. There is certainly no plan for a specific review of those provisions. Of course, everything that came in from the consultation process, plus the outcomes of the process that you referred to, has been put before the government.

Senator LUDLAM—I put this to anyone at the table who feels appropriate to answer this question. Given the condemnation by various parties, including the UN Committee Against Torture, and the fact that the detention provisions have never been invoked, do you contend that ASIO continues to require this power to undertake these kinds of detentions?

Mr Wilkins—That is a different question. You have asked two questions, actually—one was in relation to whether or not the current laws comply with our international obligations, and I have already referred to that. As to whether or not it is necessary for ASIO to have those powers, obviously government policy is that at the moment it is necessary and it is part of the statute. Obviously, the previous government took the same view. As far as government policy is concerned, I cannot traverse, obviously, what their future intentions may be, but that is the current position.

Senator LUDLAM—I come back to where I began, with the surveillance of visiting people or friendly conversations of people who are clearly not engaged in activities that threaten national security. I take by extension your comments about the friendly chats to mean that you do not actively surveil people who you do not believe are a threat, in terms of violence, in their activities, whether that is environmental campaigning, peace activities or climate change. I understood your comments to mean visits by people, I extend those comments to mean active or passive surveillance of people.

Mr Irvine—ASIO conducts surveillance activities with cause. We have processes internally where we have to have a reason to create an, if you like, internal authority to investigate. We would not be just looking at people willy-nilly. We would have a process of consideration that goes through—and it is a graduated process, depending on the stage you are at—what you would do with respect to surveillance or questioning people. When I say we do seek to elicit information from people, it is not necessary related to the activities of that individual, himself or herself, but it is to assist us in inquiries that we might have on any range of issues about which that person may have some knowledge.

Senator LUDLAM—My final question is: for operational reasons rather than the questions of policy we were debating before, do you believe that your personnel require the power for the kind of summary detention that is currently enabled under your act?

Mr Irvine—You are asking me to express a belief that the government policy is that that power is there. While we have not had occasion to use it, clearly government policy is that it is there for when there is an occasion when we indeed may need to use it and quickly.

Senator LUDLAM—I certainly understand the policy; also that it may be under review as part of a broader review of counterterrorism legislation. But from your point of view, as the person responsible for your personnel, does it risk or does it materially harm your people's ability to do their job if that power is removed?

Mr Irvine—I agree we have not needed to use that power. If there were an occasion when we did need to use it, you would certainly take into account the fact that it would be assisting the ability of our personnel to achieve the results of an investigation that they need to achieve. As to the safety of the personnel, I am not sure that—

Senator LUDLAM—It was not a safety question so much as an operational question.

Mr Irvine—If we need to use it we would.

Senator LUDLAM—Finally, to anyone at the table: is there a counterterrorism white paper due for publication any time soon?

Mr Jordana—That is a question I would suggest you might want to direct to the Department of the Prime Minister and Cabinet. They are the department responsible for the management of that exercise.

Senator LUDLAM—Okay. Presumably you are in various capacities feeding into the deliberations around that paper.

Mr Jordana—That is correct.

Senator LUDLAM—But you are not in a position to tell us a publication date or anything about its progress?

Mr Jordana—No.

Senator LUDLAM—Isn't that a bit odd? This is your core business.

Mr Wilkins—It is actually Prime Minister and Cabinet's core business to determine that sort of thing.

Senator LUDLAM—I will leave it there, thanks.

Senator HUMPHRIES—I want to ask ASIO about its role with respect to the *Oceanic Viking* and the incident that occurred late last year. Can you tell me at what point ASIO was asked to provide advice or services to the government in respect of the people aboard the *Oceanic Viking*?

Mr Irvine—Sorry, Senator, asked what?

Senator HUMPHRIES—Asked for advice or to provide any other processing services to the government with respect to those people who were passengers on the *Oceanic Viking*.

Mr Irvine—ASIO has a responsibility to assess whether the granting of a visa to enter or remain in Australia is consistent with Australia's security interests. In the case of the *Oceanic Viking*, we were asked to make security assessments in relation to most—I am not sure if it was all—of the people involved. We did that. I cannot remember, and I do not have here, the exact dates when the referral was made. I can give you an idea of the dates when our assessments were made, which was the middle of December.

Senator HUMPHRIES—Could you take on notice the question of when you were first asked to provide advice?

Mr Irvine—Yes, I will.

Senator HUMPHRIES—Thank you. You mentioned that you provided advice on all or most of the passengers. Why would you not be providing advice on all of the passengers?

Mr Irvine—These issues are referred to us by the Department of Immigration and Citizenship, and we then respond, so they would have asked us. I think possibly because some were children, and so on.

Senator HUMPHRIES—Can you tell me at what point ASIO actually knew the identity of the people on board the *Oceanic Viking*? Specifically, was that before they disembarked in the middle of November?

Mr Irvine—I would have to take that on advice. I do not know exactly when.

Senator HUMPHRIES—Okay, if you would be able to do so. I realise this is a difficult question to answer but can you provide the committee with a general idea of the reasons that ASIO gave advice to the government that four of those people who were passengers on the *Oceanic Viking* represented a security concern to Australia?

Mr Irvine—Each case is assessed individually. Where my officers or my organisation make an assessment that the issuing of a visa would not be consistent with our security interests, then we will issue an adverse security assessment. What we do not do is go in to canvass publicly the reasons behind our view that there should be an adverse security assessment—I think for obvious reasons.

Senator HUMPHRIES—I understand that answer. Can I ask if ASIO officers at any stage travelled to Indonesia to provide advice with respect to the passengers on the boat, or did they at any stage board the *Oceanic Viking*?

Mr Irvine—ASIO officers were in Indonesia; they did not board the *Oceanic Viking*.

Senator HUMPHRIES—Okay. Can you tell me whether any security assessments or at least partial security assessments were provided to the government with respect to any of the passengers, prior to their disembarkation?

Mr Irvine—At Christmas Island?

Senator HUMPHRIES—No, the disembarkation from the *Oceanic Viking* in Indonesian waters?

Mr Irvine—No partial assessments were made.

Senator HUMPHRIES—Were any full assessments made prior to their disembarkation?

Mr Irvine—I am not sure what the date of disembarkation was. I do know the dates when we issued the assessments.

Senator HUMPHRIES—What was the date of the first of those assessments?

Mr Irvine—There were three, in fact. The first assessment issued was on 11 December.

Senator HUMPHRIES—So that was the first advice that ASIO had provided to the government on the security status, or potential security implications?

Mr Irvine—Yes—of three people on 11 December.

Senator HUMPHRIES—Okay.

Mr Irvine—There was a further one on 18 December.

Senator HUMPHRIES—And all the assessments on all those passengers about which ASIO was asked to give advice have now been provided?

Mr Irvine—I believe so, yes. There may be some who were not in fact brought back to Australia, for whom it was not necessary for ASIO to issue an assessment.

Senator HUMPHRIES—You mentioned that ASIO officers were present in Indonesia. Without asking whether ASIO has a permanent presence in Indonesia, I assume that ASIO was involved in monitoring issues occurring in Indonesia that may have a security implication for Australia. Does that include collecting intelligence about the activities and movements of people smugglers in Indonesia?

Mr Irvine—No, it does not. ASIO's activities must be directed towards those items which are listed under section 4 of the act, which are called the heads of security. Border protection and people smuggling is not one of those, so we do not collect intelligence at home or overseas in operations specifically directed against people smuggling.

From time to time, and as a result of our other inquiries on matters under our heads of security, we come across information that may be relevant to people smuggling, and under the act we are able to provide that to the relevant authorities. The answer to your question is no in this case.

Senator HUMPHRIES—Can you tell us whether any advice was sought or was provided to the government prior to the completion of the arrangement that was entered into with those people on the *Oceanic Viking* that led to their disembarkation—that was about the middle of November. Was any advice sought or provided to the government by ASIO with respect to the status of the asylum seekers on board that boat?

Mr Irvine—I am not sure about those dates. The short answer is ASIO, as it must, conducted its security assessments independently. We sought information and advice from other people, but in no way was there any influence or expectation of ASIO that our assessments would be one way or the other. When those assessments were presented on 11 and 23 December, that was the first formal knowledge that the government would have had of that. They may have had inklings that we were worried about some people; in fact I am sure they did.

Senator HUMPHRIES—I am sure you will be aware of speculation in the media that the four who were identified ultimately as having a security implication or security risk were members of a proscribed organisation, or were associated with that organisation, in Sri Lanka. You would collect information, if it came into your hands, about the presence in Indonesia of members of organisations such as the LTTE, I assume.

Mr Irvine—Yes.

Senator HUMPHRIES—You had no cause for concern with respect to these particular passengers on this boat prior to disembarkation with respect to the kind of intelligence you generally had about movements of people through Indonesia who might at one stage have belonged to the LTTE?

Mr Irvine—I would prefer not to speculate on the particular circumstances of the individuals. ASIO takes into account a range of factors, and they differ in all sorts of circumstances, and all I can say is that based on the unclassified and classified information that we had, my officers reached the judgement that at least four—and in fact there is a fifth one who is on Christmas Island already—were people about whom we would have security concerns.

Senator BACK—You referred to a fifth person already on Christmas Island. I am referring to the four people about whom your organisation subsequently presented adverse security assessments. Can you confirm that one of those people was the wife of the person who had already had an adverse security assessment prior to that group joining the *Oceanic Viking*?

Mr Irvine—Strictly speaking, the answer to the question is no, the four people on the *Oceanic Viking* had their assessments issued prior to the one that was issued on Christmas Island—that was on 23 December.

Senator BACK—Perhaps we are speaking about a sixth person. Can you confirm that the husband of one of the four people on the *Oceanic Viking* who subsequently had adverse security assessments conferred on them previously had an adverse security assessment worked and presented on his behalf?

Mr Irvine—I think the answer to that is no; I think the order is the other way around. But I will check.

Senator BACK—I would be interested in that. The information available to me is that he already had that adverse assessment prior to the 78 people being on board the *Oceanic Viking*.

Mr Irvine—Whereas my information is the exact opposite.

Senator BACK—Perhaps you could take that on notice and advise.

Mr Irvine—Yes.

Senator BARNETT—Does ASIO have a presence on Christmas Island?

Mr Irvine—We do not have a permanent presence on Christmas Island. We move people in and out as required.

Senator BARNETT—Can you advise specifically how many detainees have been interviewed by ASIO in the last 12 months? I am happy for you to take that on notice.

Mr Irvine—I will have to take that one on notice.

Senator BARNETT—Who does the initial security assessment to determine if an ASIO interview is required?

Mr Irvine—The department of immigration refers people to ASIO for assessment. Working according to its criteria, it refers people to us where it thinks there may be a security issue.

Senator BARNETT—How many detainees have been referred to ASIO for security checks by DIAC?

Mr Irvine—In the period from 1 July last year to 31 December approximately 988—

Senator BARNETT—988!

Mr Irvine—people were referred to us for security assessments being irregular maritime arrivals.

Senator BARNETT—How many of those were given either a negative or positive assessment?

Mr Irvine—Not all have necessarily been given an assessment yet because that process can take some time, but in that time we have issued 11 adverse security assessments.

Senator BARNETT—So in that six-month period there were 11 adverse assessments?

Mr Irvine—Yes.

Senator BARNETT—All right. And you are still undertaking assessments of some of those?

Mr Irvine—Yes, it is an ongoing process.

Senator BARNETT—How would that compare to the 12 months prior to that?

Mr Irvine—I do not have those figures.

Senator BARNETT—Can you take that on notice?

Mr Irvine—Sorry, I do have those figures. In the previous financial year we looked at 207—this is only irregular maritime arrivals; we do many, many other security checks as you would appreciate—and the number of adverse visa security assessments was two.

Senator BARNETT—Two? So in the previous financial year, to 30 June 2009, you had 207 and there were two adverse assessments. And in the six months from July last year to the end of last year, you have had 988 referrals and you have had 11 adverse assessments?

Mr Irvine—Sorry, again we are talking about irregular maritime arrivals. We have had literally tens of thousands of potential referrals.

Senator BARNETT—Yes, but the 988 you referred to are irregular maritime arrivals. Can we assume that they are primarily into Christmas Island? Is that where we are talking about?

Mr Irvine—Primarily, yes.

Senator BARNETT—But those figures are correct? In that comparison we are comparing apples with apples? You have seen an exponential increase.

Mr Irvine—I do need to make sure that we are comparing apples with apples. Let me repeat: in terms of the six months to the end of December last year, we initiated 988 assessments and there were 11 adverse assessments issued. In the previous financial year, 2008-09, 207 assessments were conducted. Where I am concerned about comparing apples and apples here is I am just not sure, of that 2,007, whether the two adverse assessments that were issued in that time related to those maritime arrivals. I will need to check that. In fact, they did not. So of those 207 irregular maritime arrivals, there were no adverse assessments in that group.

Senator BARNETT—Sorry, I am just getting a little confused between 2,007 and 207.

Mr Irvine—Sorry, my mistake. It is 207, not 2,007.

Senator BARNETT—Right. So we had 207 irregular maritime arrivals in that financial year?

Mr Irvine—No, 207 people were referred to us—

Senator BARNETT—Were assessed. Excuse me—were assessed.

Mr Irvine—Yes.

Senator BARNETT—And in the six months to the end of last year, 2009, 998 were assessed?

Mr Irvine—Yes, or they are in the process of assessment.

Senator BARNETT—What do those numbers tell you, Mr Irvine, in terms of the fears that you may or may not have had about increased irregular maritime arrivals? What do those numbers tell you?

Mr Irvine—It tells me that there were 998 people assessed, and ASIO assessed that 11 were potential security risks.

Senator BARNETT—Of those that were assessed, how many arrived undocumented—have you got those figures?

Mr Irvine—I do not have that data at all. I will have to take that on notice.

Senator BARNETT—If you could. Do you have a brief from DIAC? Do they give you a brief when they make these referrals to ASIO?

Mr Irvine—They give us information, yes.

Senator BARNETT—What sort of information do they give you?

Senator Arbib—I think we are straying into operational matters now, Senator Barnett.

Senator BRANDIS—Why is that, Senator Arbib? He is asking about a procedure.

Senator Arbib—Because we are talking about the process ASIO undertake. Obviously these are operational matters. A great deal of these procedures are in confidence.

Mr Wilkins—The nature and sources of information, I think, Senator, are a big problem, and that is where the—

Senator BRANDIS—Indeed, Mr Wilkins. But I do not think Senator Barnett was asking about the nature and sources of information but about the procedures or protocols adopted—

Mr Wilkins—He was just beginning to ask, I think. Maybe I—

Senator Arbib—I see you as heading towards operational matters.

Senator BARNETT—I do not want to go, in any way, shape or form, into the operational matters of ASIO or indeed DIAC. What I am interested in knowing are the protocols and procedures, and if you can advise the type of intelligence information that is passed on to you—for example, the place of departure, the routes taken. What sort of information are we talking about in terms of this brief from DIAC to you, without going into operational matters? There must be some procedural document that you have.

Mr Irvine—I think that is a question that you could ask DIAC. We get information provided to us by DIAC. I do not want to go into the detail of that information, because it really does affect the way we conduct our business.

Senator BARNETT—Sure. We will ask DIAC about that, Mr Irvine. In terms of those assessments, do you send officers to Christmas Island to make them? Is that how they are undertaken?

Mr Irvine—We have people working here in Canberra and, where necessary, we send people to Christmas Island to further those investigations.

Senator BARNETT—Yes, but for each of those adverse assessments, for example, would you have sent somebody to Christmas Island to make an assessment?

Mr Irvine—Not necessarily. Our assessment process will usually involve an assessment of all of the information that we have, classified and unclassified, and, if necessary, it may also involve an interview with the person.

Senator BARNETT—All right. What is the average length of time to make a security assessment?

Mr Irvine—In respect of irregular maritime arrivals, the mark we set ourselves to try to achieve it is within about 90 days. I am not sure at the moment where our average figure lies. It is less than 90 days, but there are some cases where it is much longer than that.

Senator BARNETT—Sure. That is fine. That is all I have on that matter. I am happy to go to another matter.

CHAIR—Keep going with ASIO.

Senator BARNETT—Mr Irvine, I want to draw your attention to an answer from the Australian Human Rights Commission to a question I put, No. 7 at the last estimates, where they referred to Australia's antiterrorism laws. I asked the commission to:

Provide details on the aspects of Australia's anti-terrorism laws that the Commission believes do not adequately meet Australia's international obligations.

We touched on it this morning and they have given me several pages of laws that are current in Australia today and they have outlined where they are inadequate. One of those laws is the Australian Security Intelligence Organisation Act 1979. Are you aware of the commission's views—that they believe that that is in breach of our international obligations.

Mr Irvine—No, I am not.

Senator BRANDIS—I would not be too troubled about it.

Senator BARNETT—They are an independent entity but are funded by the taxpayer. They say that you have 'special powers relating to terrorism offences' that create three kinds of warrants—questioning warrants, detention warrants and children's warrants. They say that there is a breach or that it does not meet the obligations under the International Covenant on Civil and Political Rights. Likewise, they say that it does not meet the obligations under the Conventions on the Rights of the Child. They refer specifically to:

Provisions amount to arbitrary detention as they are not the least restrictive means to achieve the aim.

That is with respect to detention. They made other observations there which are on the public record—and we discussed it at some length this morning—in terms of the inadequacy of that particular act in terms of meeting our international obligations. What would you say in response to the commission's assertions?

Mr Irvine—I would defer to my colleague from the Attorney-General's Department.

Senator BARNETT—That sounds very clever of you, Mr Irvine.

Mr Wilkins—Not at all, Senator. It is a policy issue. Mr Irvine of course administers the law and does not make the law. In terms of policy, obviously the government's view is that the laws on the books conform with its international obligations. There are questions and debates around the margins of that, obviously. The Human Rights Commission, as we learned this morning, has put forward that view in the context of a discussion paper. The government will take all views into account in coming to a concluded view on its policy position.

Senator BARNETT—It has obviously surprised Mr Irvine today that the act under which you operate is in breach of these international conventions. Does that surprise you?

Mr Irvine—I am not sure that it is in breach. My job, as the Secretary of the Attorney-General's Department said, is to administer the law as it stands, and that is what I will try to do. I am aware of considerable public debate about those issues, and that debate has been going on for a considerable time.

Senator BARNETT—Are you aware of the case of five Sydney terrorists who were arrested in November 2005 and have since been found guilty of terrorism offences? Was ASIO involved in any way, shape or form in that matter?

Mr Irvine—Yes, I am aware, Senator.

Senator BARNETT—And ASIO was involved in the prosecution of those terrorists?

Mr Irvine—ASIO conducted intelligence investigations and worked closely with the various police authorities and assisted. But, because these things are still going through legal processes, I would be very careful about commenting any further.

Senator BARNETT—But would it be fair to say that you have substantial or significant resources and personnel into that matter to date? Obviously, as you say, we have to be careful in terms of exactly what is said, but you have had an ongoing involvement since they were arrested—and presumably before they were arrested—in November 2005.

Mr Irvine—I think you can say that ASIO had a substantial involvement in that case as a security intelligence organisation. It was a fact that ASIO officers did give evidence during those proceedings.

Senator BARNETT—Are you also aware that I have tabled today an answer to a question on notice which says that Legal Aid New South Wales has advised the Attorney-General's Department that as at 30 September 2009 it had incurred a cost of \$10.117 million in the provision of legal assistance for all of the nine accused persons involved in the matter?

Mr Irvine—I was informed of that figure this morning.

Senator BARNETT—Were you surprised at the extent of that figure or the amount or does that not surprise you?

Mr Irvine—I have very little knowledge of those sorts of legal costs. I was not in a position to be surprised or otherwise.

Senator BARNETT—All right, but, on one hand, you have the taxpayer funding, obviously, ASIO and law enforcement agencies to secure a prosecution and a successful one which has occurred to date and then, on the other hand, you have the taxpayer funding to the

extent of over \$10 million to 30 June last year for legal aid, which I understand has been met from the Expensive Commonwealth Criminal Cases Fund.

Mr Irvine—As head of the Security and Intelligence Organisation I really do not have any brief on or indeed knowledge of legal aid matters.

Senator BARNETT—That is fine. Let us move on to a couple of other areas. In terms of the telephone book for this year, how are we looking? Will you be in it?

Mr Irvine—I hope not.

Senator BARNETT—Okay. I thought I had better check because I did ask question on notice No. 94 and the answer was it is up to each individual in each case. I thought I would check with you if that was to occur. That was assumedly some sort of oversight from last year.

Mr Irvine—It was really awkward in the sense that I come from an organisation where I did not need to have that level of protection as it were. My name was already in the book.

Senator BARNETT—All right. Finally, if we could move to your building and your establishment. I have asked questions on notice and I know that Senator Ludlam likewise has asked questions on notice and received answers regarding the cost over the next three years I think 589-odd million. Part of your answer to me in question 95 a) says that you actually provided only 10 days notice for members of the public to comment on the plans for the building. That seems like very short notice for the comment period on a project of this importance and significance. Is that accurate?

Mr Irvine—I have the reference somewhere. The Department of the Environment, Water, Heritage and the Arts under the Environment Protection and Biodiversity Conservation Act 1999 provides a public comment period of 10 business days, I am advised, with no extensions.

Senator BARNETT—I think that the public in general will find that a comment period of 10 business days for a development of that significance and that size is far too small. Surely, you would have many more days or weeks in fact to provide public comment on a development of that significance.

Mr Irvine—I think that question is better directed to the government as a whole in respect of the application of the act and the provisions of the act. Secondly, perhaps the department of finance, which is, if you like, the owner and manager of this project, would be the appropriate people from the bureaucratic side to respond to that question.

Senator BARNETT—All right. The building is obviously going to be significantly larger than the current one. I have asked on notice as to why that is but the answer does not fully explain it other than to say that it is a special-purpose, high-security building designed to ASIO's specific needs. Are you planning on doubling the size of your operations? There must be further and better particulars as to why you are increasing the size of the building?

Mr Irvine—The new building has been necessary because of the expansion of ASIO over the last four or five years. With the nature of our work, the building we are currently in is simply too small to handle the number of people we have to house in Canberra. It is simply a question of a building being suited to the size of the organisation.

Senator BARNETT—All right. I am advised that at the western end of the building it will be eight metres over the 25-metre height limit. I wonder if that is accurate.

Mr Irvine—My understanding is that the National Capital Authority did not give permission for the building to exceed the height limit, so that will not happen.

Senator BARNETT—Does that mean that design change will occur?

Mr Irvine—Some sort of design change has occurred to ensure that it meets that level.

Senator BARNETT—All right; thanks for that. In terms of the design change, I am just looking at the answer to me. Part (f) says:

The building is currently being designed and the base building is 85% complete.

Does that sound right?

Mr Irvine—Is it the base of the building?

Senator BARNETT—It says ‘and the base building is 85 per cent complete’. I am just reading from your answer.

Mr Irvine—I would need to take advice on that. I am just not sure what that figure refers to.

Senator BARNETT—Well, give us an update. How far complete is the building?

Mr Irvine—I am advised that the building is on schedule. I can tell you from my own observations that the excavation is being done. Form work is being put in for retaining walls and foundations. So it is still, frankly, at a very early stage of construction.

Senator BARNETT—Okay. The reason I raise that is that it appears to conflict with an answer to Senator Ludlam, which is question 96(e). It says

There is no proposal to alter the design.

That was the answer to Senator Ludlam, so it appears to conflict.

Mr Fricker—The building is on schedule. The remaining elements of the design yet to be completed really do not affect the form and shape—the silhouette—of the building; they are matters such as the facade and internal design elements, such as the placement, dimensions, workshops and areas within the building. In terms of the remainder of the design, they are the things which are still being finalised.

Senator BARNETT—Okay; I have no further questions.

Senator HUMPHRIES—I will follow up some of the questions I asked earlier about the *Oceanic Viking*. Can I just be perfectly clear: ASIO conducted no work with respect to the assessing of any of the passengers on the *Oceanic Viking* prior to their disembarkation—is that the advice you are giving to the committee?

Mr Irvine—We need to know what you mean by disembarkation, because in fact they were on the *Oceanic Viking* for a very considerable time in Indonesian waters and there were people going backwards and forwards between the boat and the mainland.

Senator HUMPHRIES—As part of negotiations, I assume.

Mr Irvine—Yes.

Senator HUMPHRIES—I am referring to a period of a number of days over which the passengers were permanently disembarked from the ship. I think that in the middle of November, over a few days, they permanently disembarked from the ship, never to return. That is what I am referring to as disembarkation. Prior to that point, had ASIO begun any of their assessments of the passengers?

Mr Fricker—ASIO's work in the production of security assessments commences when we have the referral from the immigration department, once the passengers have made their claims for refugee status. That did not happen until after disembarkation from the vessel.

Senator HUMPHRIES—Okay. Can you tell me whether there were passengers on board the boat who had already come to your attention in some other way prior to their disembarkation?

Mr Fricker—No, I cannot tell you that.

Senator HUMPHRIES—Mr Irvine, you said before that the period from the commissioning of work by the department on the security assessment of these individuals to the provision of the first assessment was about a month—mid-November to mid-December. I think you said that the first assessment was 11 December and the second was 18 December.

Mr Irvine—I would need to check our records, which I do not have with me, as to the time when the referral to us was made. I can advise you of the dates when the adverse assessments were issued.

Senator HUMPHRIES—We know they were disembarked in the middle of November and you say your first assessments were in the middle of December. So the longest period for that first assessment would have been about four weeks. What is the average assessment time for ASIO's assessments of irregular arrivals?

Mr Irvine—In a previous question, I was unable to answer that. I will need to find that out.

Senator HUMPHRIES—If you could take that on notice that would be helpful. Returning to one of your earlier answers, you said 207 assessments were conducted in 2008-09 by ASIO at the request of the department.

Mr Irvine—For irregular maritime arrivals—

Senator HUMPHRIES—Yes.

Mr Irvine—and many thousands of others for other purposes.

Senator HUMPHRIES—Yes, I appreciate that. I understand that there were over 1,039 irregular maritime arrivals in 2008-09. You may not have that figure at your disposal, but that is my advice. I am curious why such a small number of assessments, fewer than one in five arrivals, were assessed by ASIO. Can you provide any reason for that figure being so small, assuming that my figure is correct?

Mr Irvine—No, I cannot. We operate on the basis of what is referred to us by DIAC.

Senator HUMPHRIES—I will ask DIAC that question.

Mr Fricker—If I could just amplify that answer slightly. There are a number of criteria made ASIO which determine those applications which merit reference to ASIO for the

security assessment process that we are talking about. The numbers that are referred to ASIO reflect the application of a criteria for that particular applicant that would merit further assessment by ASIO.

Senator HUMPHRIES—Can you tell us what those criteria are?

Mr Fricker—No, I cannot. That is confidential.

Senator BARNETT—Mr Irvine, you indicated that there were 11 adverse assessments and two in the previous financial year. Can you tell us what happened as a result of those adverse assessments?

Mr Irvine—Visas were refused for those people. I do not know what happened to them subsequently.

Senator BARNETT—What would normally happen? Would they be deported?

Mr Irvine—That is an immigration matter.

Senator BARNETT—Is that the normal process when you refuse a visa application? Is that your understanding of the result of an assessment?

Senator Wong—The question was answered that that was a matter for Immigration.

Senator BARNETT—I am asking Mr Irvine, as the head of ASIO, for his understanding of the consequence of an adverse assessment. Mr Irvine, you said that it is refusal of the visa application

Mr Irvine—No. We issue an adverse assessment, which is considered by the Department of Immigration and Citizenship and they take whatever decisions are necessary in the circumstances.

Senator BARNETT—Right, I have that. Do you advise the law enforcement agencies accordingly if there is an adverse assessment? I assume you do not just tell DIAC.

Mr Irvine—No, I do not think we do automatically advise the law enforcement agencies.

Senator BARNETT—These will be questions that we can ask DIAC as to what they do under those circumstances.

Senator TROOD—In relation to Mr Brennan in Somalia—and I realise this is not a domestic matter—I was wondering whether ASIO had any role in debriefing him once he returned from Somalia.

Mr Irvine—My understanding is that Mr Brennan's release and return to Australia is essentially a consular matter. I will not comment on our operational activities in that respect.

Senator TROOD—It is indeed part of a consular matter, but can you tell the committee whether you have debriefed him in light of his lengthy period of detainment?

Mr Irvine—No. I would prefer not to answer that.

Senator TROOD—So you are preferring not to answer it, but cannot you give me a yes or a no on the matter? You can. If the defence here is that goes to operational matters then of course it is a legitimate—

Mr Irvine—That is what I am saying. That it does go to operational matters.

Senator TROOD—I see.

Senator BARNETT—I think Senator Humphries has touched on this so excuse me if I have slightly crossed wires, but for clarification: you said that in terms of the risk assessment you normally take an average of 90 days.

Mr Irvine—We have set ourselves the goal of getting assessments through in 90 days.

Senator BARNETT—What is the average?

Mr Irvine—Some in fact are done much more quickly; others do take longer.

Senator BARNETT—So that is the goal. Would you say that 90 per cent or 100 per cent are done within 90 days? Do you have a percentage?

Mr Irvine—If you are talking about irregular maritime arrivals, I do not have those figures.

Senator BARNETT—You can take that on notice.

Mr Irvine—We will take that on notice.

Senator BARNETT—What is the average time?

Mr Irvine—That is the question I will take on notice as well.

Senator BARNETT—With regard to those on the *Oceanic Viking*, which I understand were some four weeks in terms of obtaining an assessment, why were they done so swiftly? Could it be that there were special resources put in to make that happen? Is it correct that it was some four weeks? Did you apply adequate resources to get the job done within the time required?

Mr Irvine—Most of the assessments clearly would have been done in a period of four weeks. One allocates the resources according to priorities.

Senator BARNETT—Were you specifically prioritised to undertake that work by the government at that time?

Mr Irvine—It was very important that we do our security assessments in order to enable decisions to be made, yes.

Senator BARNETT—We can assume from that answer—and correct me if I am wrong—that there was communication with the government. Can you advise which department passed that communication to you?

Mr Irvine—It was made clear to us by the department of immigration that there needed to be certain priorities. We did our best to meet them.

Senator BARNETT—Right. And they gave you time lines and asked for swift assessment?

Mr Irvine—I do not think they gave us time lines or anything like that, no.

Senator BARNETT—They just asked you to prioritise the assessment of those particular irregular maritime arrivals on the *Oceanic Viking*?

Mr Irvine—Yes, I think they did.

Senator BARNETT—Thank you.

Mr Fricker—Just to avoid doubt about some of the statistics that we provided earlier in response to Senator Barnett's questions there is a detail that might not have come forward. With respect to the adverse assessments I told you that we did 207 adverse assessments in 2008-09 for irregular maritime arrivals and in that same period we did two adverse visa security assessments. The two adverse assessments were not for irregular maritime arrivals. It was the total for that year. In fact, there were no adverse assessments for irregular maritime arrivals. Similarly, in the six months to December 2009 we advised the committee that we did 988 assessments and 11 adverse assessments. As I think we have already said in our answers five of those adverse assessments were from those irregular maritime arrivals. The remainder of that 11 were made up from the rest of the visa security assessments referred to ASIO. I hope that helps clarify the information.

Senator BARNETT—It does, but it is still slightly confusing. When you take it on notice, can you set out quite clearly what those figures, not just irregular maritime arrivals but all arrivals. We would like to get a big picture so that we can see exactly where they are coming from and from whence the assessments are done.

CHAIR—Mr Irvine, thank you very much again your attendance this afternoon. I now call officers from the Australian Federal Police.

[2.46 pm]

Australian Federal Police

CHAIR—Commissioner Negus, welcome to the public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. I personally congratulate you and welcome you as commissioner. I know that you have been in the job for some time but I was not present as chair at estimates last October and so I did not get a chance to formally welcome you to our estimates process and to this committee.

Mr Negus—Thank you, Madam Chair.

CHAIR—Do you have an opening statement that you wish to make before we go to questions this afternoon?

Mr Negus—No, I do not.

Senator BRANDIS—Can I take you back to some evidence you gave at the last estimates, on 19 October, when I was asking you about a document entitled *Strategic intelligence forecast—transnational criminal trends and threats to Australia*. I am reading from your evidence here where you said:

Mr Negus: Those documents are periodically produced but that is over an extensive period of time every two years.

Senator BRANDIS: Are the documents produced in relation to particular topics or particular countries, or are they omnibus documents that deal with all relevant topics and all countries within the descriptor 'transnational criminal trends and threats to Australia'?

Mr Negus: The latter is correct.

Senator BRANDIS: So about every two years the AFP generates the document *Strategic intelligence forecast—transnational criminal trends and threats to Australia*?

Mr Negus: That is correct.

Focusing on that document, has there been a new edition of that document prepared in the time since October estimates last year or was the document of which we were speaking last October still the current document?

Mr Negus—I am not aware of a document being released. I certainly have not seen it since that time but, again, I would have to double-check that.

Senator BRANDIS—When you say released, though, this document—someone is shaking their head over there.

Mr Negus—The head of my intelligence area is telling me that a new document has not been released since that last date.

Senator BRANDIS—So the document we discussed in October is the current document. When would you expect the next edition of that document to be prepared? Would it be in this calendar year or in the next calendar year?

Mr Negus—As I said last time, they are prepared approximately every two years. Again, not having the document in front of me, it would be approximately two years from the last edition.

Senator BRANDIS—So we might expect it in the early part of next year. As I recall, the evidence was that that document was prepared in the early part of last year.

Mr Negus—That is right.

Senator BRANDIS—There was also some evidence from—and I hope I get the pronunciation right—Mr Quaadvlieg.

Mr Negus—Yes, he is here today.

Senator BRANDIS—He told us about a body called the People Smuggling Strike Team. That was his evidence and he described it as:

... a task force that comprises officers from the Australian Federal Police, from the Department of Immigration and Citizenship and from the Australian Customs and Border Protection Service. It consists of six separate teams: three operational investigative teams, two intelligence teams and one financial investigation team. They are spread geographically across Australia.

Then I went on for a few pages to ask some questions about the activities of the People Smuggling Strike Team. Does that entity still exist in the form in which it was described in Mr Quaadvlieg's evidence last October?

Mr Negus—Yes it does.

Senator BRANDIS—I want to direct some questions to you, and I think other senators do as well, arising from some comments that were attributed to you following the Beale review. I am particularly referring to a report by Mr Maley in last week's *Australian* under the heading, 'AFP will reorganise in push to fight crime'. In the third paragraph of that news story, this is what appears:

In a note to AFP staff, Mr Negus said the AFP's old model - which separated drug, fraud and people-smuggling investigations - had served it well in responding to government priorities. "However, it is clear that organised crime increasingly cuts across what we have traditionally called border operations and economic and special operations," he said.

He goes on to say:

In his note, Mr Negus refers to a "strong view that drugs, fraud, money-laundering and other elements of organised crime need to be looked at holistically rather than in separate AFP streams of activity".

Was there such a note?

Mr Negus—Yes, there was.

Senator BRANDIS—Are you able to table that or do operational reasons prevent you from doing so?

Mr Negus—I could certainly table that. It was an all-staff email.

Senator BRANDIS—Okay. If you would be good enough to table it, that would be very helpful. Let us establish the status of it. It is not an instruction or the record of a decision to reorganise the operation of the AFP, is it?

Mr Negus—It is an advice to staff that there was certainly a wide publication of the new model. There were also some video recordings that I did, which were circulated to staff on our IT hub, and also a range of other communication methods where I have travelled around the country and spoken to staff about what is expected of them under the new model.

Senator BRANDIS—All right. Mr Negus, it might actually be a more efficient use of the committee's time if I were able to proceed with these questions with access to this note. Is a copy of it available in the room?

Mr Negus—Sorry, can you just repeat the last question.

Senator BRANDIS—Is a copy of the note available here?

Mr Negus—We were just discussing that. I am not sure whether it is here, as far as a copy of the note goes, but I could certainly have it provided very shortly.

Senator BRANDIS—Can you have it retrieved and sent to the committee between now and the afternoon tea break please. I will return to this line of questioning after we have had the opportunity to read the note. Let me, in the meanwhile, move onto something else.

Mr Negus—For your information, it does not contain much more than what you have already articulated from that media story. There are some broad comments in there about this, but that is the essence of the document.

Senator BRANDIS—That is fine. I feel a little more comfortable now you have told us that it is not inappropriate to put on the public record—asking you questions directly from the original document rather than from a media story, with all due respect to Mr Maley, whose transcription of the note, I am sure, is accurate. Let me turn to another topic—the question of staff numbers. Do you have both your latest annual report and the portfolio budget statement for the AFP to hand? While those documents are being assembled, I ask you, Minister: is it still the policy of the Rudd government to increase the AFP's operational staff by 500 in the

five years from the time of the election of the government in 2007, culminating in 2012? Or is that a promise that has been vacated as well?

Senator Wong—I will take advice from the minister's office but I understand that we did make a commitment to employ 500 officers in the AFP as part of the pre-election commitment.

Senator BRANDIS—Five hundred additional officers.

Senator Wong—I believe that was the wording. The 2008-09 budget provided some funding commencing in 2008-09 as part of the government's plan to do so.

Senator BRANDIS—That promise remains extant?

Senator Wong—That is my understanding.

Senator BRANDIS—Thank you. I take you to page 162 of the Attorney-General's portfolio budget statement, budget related paper No. 1.2. Do you have that?

Mr Wood—Yes we do.

Senator BRANDIS—I refer to table 2.1, 'Budgeted expenses and resources for outcome 1.' Just so I do not confuse myself and others, am I right in understanding that there are two outcomes, and outcome 2 deals exclusively with policing of the Australian Capital Territory and all the other policing functions of the AFP are dealt with in various subcategories under outcome 1.

Mr Negus—That is correct.

Senator BRANDIS—If we segregate out the ACT policing function, all non-ACT activities are dealt with in outcome 1, and table 2.1 on page 162 reveals that in 2008-09 the average staffing level was 5,357 and in 2009-10 the estimated average staffing level will be 5,361. Is that right?

Mr Negus—That is correct.

Senator BRANDIS—Can you disaggregate those two figures by reference to administration staff or other non-operational categories, please?

Mr Negus—Yes, we have the data here.

Senator BRANDIS—If it is in the PBS or your annual report perhaps you could just take me to the relevant entry.

Mr Negus—I am just advised by Mr Wood that it is not disaggregated purely by outcome 1. The total numbers for the AFP there are the numbers we have, which would include the ACT Community Policing.

Senator BRANDIS—In outcome 1?

Mr Negus—No. The numbers we have available here today would include ACT Community Policing numbers in total.

Senator BRANDIS—I see. I was not able to find disaggregated numbers in either the annual report or the PBS, but you are able to give them to us, are you?

Mr Negus—We could certainly work them out.

Senator BRANDIS—Can you tell me, starting for the 2008-09 year, how many operational officers, assessed I assume on full-time equivalent positions, did the AFP have?

Mr Wood—As at 30 June—at the end of 2008-09 financial year—the number of sworn police officers was 2,842. In addition to that, there would have been sworn Protective Service officers. I do not have with me that particular number for that point in time—I do have it for the current point in time.

Senator BRANDIS—You'll get that number of sworn Protective Service officers—

Mr Wood—I will on notice, yes.

Senator BRANDIS—Is it your custom, or would it be appropriate also to include in the category of operational staff, technical staff, for example, analysts who may not be sworn officers?

Mr Wood—Senator, we do not. Whenever you have heard a figure quoted by me or from other representatives of the AFP around sworn police officers or sworn Protective Service officers, we have not included staff such as intelligence analysts, forensic scientists et cetera.

Senator BRANDIS—Are those figures able to be derived from the aggregates?

Mr Wood—We can obtain that figure, yes, Senator.

Senator BRANDIS—Just to be more specific, I would like to know—and I know that it is a distinction which sometimes is difficult to draw, but I think that there is a reasonably well understood distinction between what might be called administrative staff, for example, the person who is in charge of making up the pays or the executive assistant to senior personnel on the one hand, and those who have a technical skill that might on one view might be regarded as being part of the AFP's operational capability, like analysts and other people who profess a professional expertise. Am I making the distinction clear enough in your mind, Mr Wood?

Mr Wood—Yes, Senator. Internally we do have a jargon around corporate enabling services as well as operational support services, and we certainly therefore can generate the information—

Senator BRANDIS—I guess I am looking for operational support services.

Mr Wood—Understood, Senator.

Senator BRANDIS—Going back to sworn police, on 30 June 2009 it was 2,842, and you are going to get me the figure for Protective Service offices. What was it on 30 June 2008, please, for those two categories.

Mr Wood—As at 30 June 2008, I can provide the sworn police officer figure—2,855—and I will take on notice and obtain the figure for sworn Protective Service officers.

Senator BRANDIS—Would I be pushing my luck to ask you to go back to 30 June 2007?

Mr Wood—I have got November 2007. As at 28 November 2007 the figure for sworn police officers was 2,696. Again, I can take on notice the figure at that point in time for sworn Protective Service officers.

Senator BRANDIS—What is the most recent figure you have for sworn police? Has there been a figure made up to today or to a date in the very recent past?

Mr Wood—The most recent figure I have got is the commencement of the final pay period for calendar year 2009—10 December 2009. At that point the figure for sworn police officers was 2,877.

Senator BRANDIS—Do you have the Protective Service officers—

Mr Wood—I will obtain that figure, Senator, for that date.

Senator BRANDIS—So to summarise, it has gone from 28 November, which is to all intents and purposes—

Mr Wood—It aligns with the pay period at around about the time of the election.

Senator BRANDIS—On the first pay period after the 2007 federal election, there were 2,696 sworn officers. By 30 June the following year, 2008, that had increased to 2,855. By 30 June last year, it had fallen by 13 to 2,842. On the last pay period for the 2009 calendar year it was 2,877.

Mr Wood—That is correct. I think something that I put on the record through a previous Senate estimates was that, as at 30 June 2009, there were a number of recruits in college who were finalising their training to become sworn police officers, so they are in addition to the 2,842 as at that date.

Senator BRANDIS—But we are still comparing apples with apples, are we not, across these four—

Mr Wood—There are not necessarily always recruits in the college. So there would be points in time with those figures when there were no recruits in the college.

Senator BRANDIS—But there may be sometimes and there may not be at other times but you are still applying the same definition.

Mr Wood—That is correct.

Senator BRANDIS—Do you have a figure or a projected figure for sworn police as at 30 June this year?

Mr Wood—Yes. The current recruitment planning is for a figure by 30 June 2010 of 3,082 sworn police officers.

Senator BRANDIS—So by 30 June 2010 you are planning to have that many sworn police officers, which will be an increase of more than 200 in the first six months of this year?

Mr Wood—That is correct.

Senator BRANDIS—Is that already the subject of a budget allocation, or are you awaiting the 2010-11 budget to see whether or not that target will be achievable?

Mr Negus—This is going to be done within the existing budget provided to the AFP. Since taking over as commissioner, one of the key strategic principles that I have looked at with my team is to reinvigorate the operational components of the organisation. This is about finding savings in supply costs and other elements of the organisation and reinvesting those back into

sworn police. The first strategic principle that we have committed to is to reinvigorate that operational performance, and this is a direct result of that.

Senator BRANDIS—I remember in previous estimates that there was some discussion of whether or not officers on secondment to the AFP from state police service and the Northern Territory Police were in or out of these figures and, conversely, whether AFP officers on secondment to state and Northern Territory Police services were in or out of these figures. Can you put on the record for the committee how those secondees in and out are treated, please?

Mr Wood—The AFP members who are current in what we call Operation Pleach in the Northern Territory are included in the figures. In terms of the police officers who are joining the organisation from other states and territory forces—particularly, say, in the aviation environment—there are two categories of employees there. In some cases the employees take leave without pay from their service and come onto the AFP's books for a period of time and they are included. There are members from those state and territory police services who do not come formally onto our books. They are not included. One of my colleagues might have the exact figure, but my recollection is that there are 340 or so additional state and territory police on top of the numbers that I have been giving you.

Senator BRANDIS—Mr Negus, you said that you had made a decision since you became the commissioner to increase the efficiencies so as to enable more money to be allocated to sworn police. I think you heard you mention efficiencies from contractors.

Mr Negus—We did not mention contractors. I would have said supply costs. That is travel, vehicles—

Senator BRANDIS—Oh, supply costs? Sorry, I misunderstood you. Please go on. What other efficiencies will there be?

Mr Negus—Essentially, we asked all of our functional national managers to look for savings within their business units. That has been quite successful and has realised around \$20 million in savings. That will be reinvested back into operational staff.

Senator BRANDIS—But you have been subject to an efficiency dividend for some years. Are these additional efficiencies beyond the efficiency dividend?

Mr Negus—These are hard operational decisions about where we will spend our money.

Senator BRANDIS—Presumably, Mr Negus, in previous years under your predecessor, the AFP sought in earnest to meet the efficiency dividend and identified whatever efficiencies it could?

Mr Negus—Yes, we did.

Senator BRANDIS—So when you say that these are additional efficiencies, could that be interpreted in other language as meaning cutbacks of staff in other areas of the operation.

Mr Negus—Of course,, there are priorities within the organisation and sometimes these are reinvested in different ways. What we are saying is that we have minimised travel and other expenses and reinvested those into staffing.

Senator BRANDIS—But you have cut back staff positions too haven't you? I am not talking about operational officers now, I am talking about aggregate staff positions.

Mr Negus—That is right. We have prioritised the operational components of the organisation as our No. 1 priority and we have looked to rationalise corporate and other staff to put more people back on the frontline.

Senator BRANDIS—That sounds very good. Going back to table 2.1 of the PBS the average staffing level for outcome 1 in 2008-09 was 5,357. The estimated staffing level in 2009-10, which I assume projects to 30 June 2010, is 5,361 an increase over some 5½ thousand personnel of four people so effectively a nil increase. If as you told us before between 30 June 2009 and 30 June 2010 the plan is to increase the number of operational officers by some 240 but, as the PBS reveals, not to increase the number of staff effectively at all then does that not mean that there are going to be staff cutbacks of about 240 over that period?

Mr Wood—The figure in the PBS that you quoted was updated in the additional estimates for the portfolio that were tabled in November 2009. Whilst I right at my fingertips do not have the specific split between outcome 1 and outcome 2, the total for the AFP from the PBS tabled on budget night in May 2009 had an FTE of 6,265. In the additional estimates that has been increased to 6,358. I am referring specifically from the additional estimates PBS. I can actually give you the outcome 1 figures specifically on page 87 of the additional estimates statements. For outcome 1 the revised estimate for 2009-10 is 5,406 compared to 5,361 in the original PBS.

Senator BRANDIS—So there is an increase of 45?

Mr Wood—Correct. The other thing is that the FTE figures—

Senator BRANDIS—Sorry, before you go on, thank you for that correction but it remains the case that to find these 240-odd projected increased operational numbers that is not an expansion in absolute numbers of the staff establishment of the AFP. It is a substantial reduction of the non-operational staff including I dare say technical staff.

Senator Wong—Can I just be clear so I am sure I can understand the tenor of your questioning, Senator Brandis. The evidence on the table is an increase in sworn officers of I think 181 from November 2007 until projected to June 2010. The evidence of Mr Wood from the additional estimates PBS is of an overall increase to staffing numbers within outcome 1. They are the facts.

Senator BRANDIS—I am just trying to establish the facts.

Senator Wong—Do you disagree with those facts?

Senator BRANDIS—I am not responding to questions; I am asking them.

Senator Wong—I would like to be clear as to whether or not those facts are being disputed in the question you are now asking.

Senator BRANDIS—I am merely asking questions to try to establish staffing levels among different categories and movements between them year on year by comparison with relevant date.

Senator Wong—An increase in sworn officers and an increase in the total numbers in outcome 1 is the evidence.

Senator BRANDIS—An increase in sworn officers if the projection of 240 is met; an increase in the aggregate number of employees of 40.

Senator Wong—Correct.

Senator BRANDIS—Therefore, a reduction—and this may or may not be material—of 200 in the staff establishment that does not constitute operational officers. I would like to know which positions have been used or sacrificed to increase the number of operational officers. I make no criticism. I just want to know where these positions are coming from.

Mr Negus—Senator, ‘sacrificed’ is quite an inflammatory way of looking at this. This has been done in a very measured and sustainable way.

Senator BRANDIS—I am sure that you would say that, Mr Negus, and you may well be right, but the fact is that to meet these operational officer targets there has not been an equivalent increase in the aggregate staff establishment of the AFP. There has been a slight increase—as far as we can establish, 40—and I would like to know which staff positions have been, if I may use a neutral word, ‘given up’?

Senator Wong—Madam Chair, the witness is entitled to raise an issue with Senator Brandis using a word with which he does not agree. And I am pleased that Senator Brandis might use a more neutral term.

Senator BRANDIS—That is what I want to establish. Mr Negus, you may need to take this on notice or you may be able to tell us: which positions, other than operational positions, have been replaced by these operational positions? Are they merely administrative positions? Are they positions of other professionals in the AFP—for example, analysts? Where do they come from and can you disaggregate by function the positions that have been replaced?

Mr Negus—Senator, to give you the specifics of the question you are asking, I think we would have to take that on notice. However—

Senator BRANDIS—I suspect that is true.

Mr Negus—I think we can actually explain to you that certainly these are positions that we have identified within the AFP as being sustainable to give up, if you like, or to transfer that FTE into the operational components. As I said before, much of this is about rationalising spending across the organisation and transferring that supplier cost—travel, vehicles, stationery, those sorts of things. The savings generated from that exercise—

Senator BRANDIS—Mr Negus, you made that point. I heard you.

Senator Wong—Senator Brandis, let the witness finish.

Senator BRANDIS—I thought he was.

Mr Negus—The savings generated from across the organisation are then reinvested not at the direction of the government but by the AFP into higher priority areas. Of the seven strategic principles that I talked about before on which the organisation is now run, the second one is: one AFP, one corporate. As we developed as an organisation over the last decade, there have been substantial areas of growth in places like the international deployment group, the aviation security area. Each of those areas has had substantial growth and, as I said, required substantial corporate resources to enhance that growth.

Senator BRANDIS—Mr Negus, I do not mean to cut you off but my inquiry is a much narrower and modest inquiry than that.

Mr Negus—I am getting to that part of it. I was going to say that of those seven strategic principles, one AFP, one corporate is about looking at the future of the business and asking, ‘Do we need the sorts of corporate resources we’ve needed over the last decade?’ And the answer to that is no. we can rationalise some of them. Those savings are then transferred back into the operational components. Once those business areas have become mature and our management group has looked at what expenditure is required in those areas, we can rationalise that and put it back into the operational components.

Senator BRANDIS—Mr Negus, I am sure you can rationalise a lot of things and I am also sure that none of these decisions were made without a reason. If I asked you about the reason, no doubt you would tell me but the focus of my inquiry is much narrower than that. I actually want to know what the numbers are.

Mr Negus—And I am happy to take that on notice.

Senator BRANDIS—That is why I asked you—and I imagine that you do need to take it on notice—to identify which non-operational staff positions that have been given up or transferred to operational officers. Can you disaggregate those by function, please? Tell us what they are by number and disaggregate them by function.

Mr Negus—We will look to do that and provide it to you.

Senator BRANDIS—Thank you. I do gather from the words you used at the start of your answer to my question before last that there are some functions being performed within the AFP which were previously performed by staff who were not operational officers and which are now being performed by operational officers. Is that right?

Mr Negus—That is not correct.

Senator BRANDIS—There are none?

Mr Negus—In an organisation of 6½ thousand people, we are moving staff every day. To give you a categorical answer would not be proper. But I can tell you that we are not—

Senator BRANDIS—You did; you said there are none. You said that there are no operational officers.

Mr Negus—No, I did not. What I said was that we are not consciously transferring operational police into support roles; in fact, just the opposite. We are looking to actually make way to put more operational police on the front-line.

Senator BRANDIS—I will let others have a go, but I want to come back to your note following the Beale report.

Mr Negus—I have that now.

Senator BRANDIS—Thank you. If you could hand that to the secretariat, who can copy of it.

Senator Wong—If I can just look at it first. Thank you.

Senator BRANDIS—I have another small unrelated topic. It relates to numbers, so it might be efficient to deal with it now. How many AFP officers are currently stationed in the Northern Territory as part of the Northern Territory intervention?

Mr Negus—It was up to 66. That number has varied from mid-50s to the mid-60s over varying weeks. We will get you the exact number.

Senator BRANDIS—I would like to know what is your best estimate of the number today. I understand that that might vary in a relatively short space of time. Can you tell me as well what the numbers were at the equivalent time last year and, finally, whether transitional arrangements are in place to replace AFP officers involved in the Northern Territory intervention with officers from the Northern Territory police force or from state police forces? Could the numerical side of that question be looked at during the afternoon tea adjournment.

Senator BARNETT—Commissioner Negus, are you aware of the Australian Human Rights Commission's views that parts of the Crimes Act 1914 and the Criminal Code Act 1995 are in breach of our international obligations?

Mr Negus—I only heard that this morning, as the conversations unfolded between you and other members who appeared.

Senator BARNETT—Do you think you need to take further action to assure yourself that the acts are in keeping with our international obligations?

Mr Negus—It is probably more up to the Attorney-General's Department. Not having a great exposure to it, I certainly intend to have a look at that.

Senator BARNETT—If I could go to the impending visit of President Obama. I had the honour of being here for the visits by President Bush and President Hu, and was aware of the considerable security arrangements that were needed to ensure safety and security for those visits. Has the AFP received any direction regarding the merit of increased resources to ensure that the necessary security arrangements can be put in place?

Mr Negus—We have started having discussions with other parts of government about that. We will have responsibility in the ACT, as the community policing responsibility falls on the AFP, and we will certainly work with our state and territory colleagues. But it is at a very early stage, although things are moving rather rapidly.

Senator BARNETT—At this stage, have you sought further resources to ensure that you get the job done appropriately?

Mr Negus—Not at this stage, but that may well be something we will have to talk to government about.

Senator BARNETT—Based on the previous visits by President Bush and President Hu, and other notable distinguished visitors, is it the normal for the AFP to require additional resources?

Mr Negus—These things are usually catered for within existing resources. Again, we would have to assess that on a needs basis.

Senator BARNETT—So at this stage you do not anticipate requesting additional resources to ensure security and safety in the nation's capital or elsewhere during his visit in Australia.

Mr Negus—In large visits such as this, the AFP is in a good position to actually supplement whatever needs to be done from within our national environment. We can move officers from the national outcome 1 environment to support our colleagues in outcome 2 in the ACT. That has certainly happened in the past on a needs basis.

Senator BARNETT—Will there be additional security arrangements in light of the fact that President Obama's wife and children will be here as well?

Mr Wilkins—In a security assessment for a visit like that the AFP is a critical component, but the actual security assessment is made including the intelligence from ASIO and a number of different sources. People from the Attorney-General's Department also do assessments of that. We would obviously be talking to the AFP, other police forces and other security people involved around Australia. It is a bit difficult to ask the commissioner what resources he needs or might need, since he is simply one part of a much larger exercise.

Senator BARNETT—Have you established a working group to ensure adequate security during the visit?

Mr Jordana—There are arrangements that are fixtures in the bureaucratic set-up for discussing visits of this kind and I am confident that they would have been engaged at this point. The officer who in our department is closest to that is not here at the moment but will be here later in proceedings, so I cannot give you detail. I know there has been some activity and I am aware there has been some activity on that front, but I cannot give you any detail at this stage.

Senator BARNETT—We are looking at a very substantial arrangement: Air Force One, a 747 jet, a second 747 jet, several other jets carrying road transport and support vehicles, jets 24-hours nonstop revolving around the capital, two five-tonne bulletproof Cadillac DeVilles, motorcades of a 30 vehicles, an entourage close to 500 people, a small contingent of sniffer dogs and so on. Is that the normal course of events for a visit like this?

Mr Jordana—Yes. Previous visits by dignitaries such as the President of the United States that I have been involved with have involved the types of arrangements that you have been referring to. Regarding the list that you have given me, I cannot tell you black and white that, yes, that is the list that is germane this time. But it is of that kind of order.

Senator BARNETT—In terms of protocols and procedure, who is the chair of this working group within the government? Is it Prime Minister and Cabinet?

Mr Wilkins—I am sure for a visit like this it would engage the National Security Adviser and Prime Minister and Cabinet but obviously many other agencies in government as well.

Senator BARNETT—I am just wondering who spearheads it. Under whose direction is it?

Mr Wilkins—'Spearhead' is not a term I understand. It would probably be Prime Minister and Cabinet.

Senator BARNETT—Perhaps you could take it on notice. I am interested in the protocols and procedures.

Mr Wilkins—There are different aspects of this. You appreciate there are, first of all, protocol issues, security issues, on-ground operational issues, defence issues and transport issues. I would say Prime Minister and Cabinet would have to pull this together. That would be logical.

Senator BARNETT—Perhaps you would be happy to take on notice to advise the committee of the protocols and procedures with respect to a visit like this and exactly how it works, without going into the detail of operational matters, so that we have an understanding of those concerns.

Mr Wilkins—We might be able to come back to that later. As Mr Jordana said, the officer concerned is not here at the moment. We can find out for you.

Mr Jordana—We have an answer now. I have just conferred with officers, and there is a body called the National Security Working Group, which the Attorney-General's Department chairs.

Senator BARNETT—In addition to that, could you take on notice any other protocols or procedures that apply within government—presumably under PM&C as well, and I am sure Defence would be involved with the FA-18s revolving around the capital non-stop?

Mr Jordana—That is correct, it would be.

Senator BARNETT—Just give us a bit of a feel for an outline and structure for how these things operate, without going into operational matters.

CHAIR—It is 3.30 pm so we will break for afternoon tea now. We will be back in 15 minutes and will need to continue questioning the AFP.

Proceedings suspended from 3.30 pm to 3.46 pm

CHAIR—We are going to resume our questioning of the Australian Federal Police. Senator Hutchins, I will go to you.

Senator HUTCHINS—Thank you, Chair. Commissioner, I have a handful of questions to ask you in relation to a pretty public incident that occurred last year. I acknowledge the limitations in what you may be able to tell us, but it is in relation to a very high-profile investigation commenced by the AFP. I wonder if you could tell us, within those limitations, what has happened to the fairly high-profile investigation commenced under your predecessor, Mick Keelty, into Godwin Grech?

Mr Negus—As you quite rightly point out, Senator, this is a matter yet to be finalised, so I am somewhat constrained as to what I can say. As you would be aware, on 22 June 2009 the AFP executed a search warrant in Canberra in relation to this matter. On 29 July 2009 the AFP submitted a brief of evidence to the Commonwealth Director of Public Prosecutions. The Commonwealth Director of Public Prosecutions then came back to the AFP and requested that we do further inquiries with regard to this matter. The results of those inquiries were provided to the CDPP on 18 December 2009. On 15 January—only a few weeks ago—the Commonwealth Director of Public Prosecutions again wrote to the AFP requesting additional

inquiries to be undertaken, and those inquiries are now underway. We do not anticipate they will take too long. They will be submitted back to the DPP, which will allow them to make some judgments about where to from there.

Senator HUTCHINS—Again within the limitations. You have had, it sounds like, three sets of inquiries since this issue was raised. Would that be the right way to look at it?

Mr Negus—There have been two sets of inquiries and two further requests from the Commonwealth Director of Public Prosecutions for more inquiries to be undertaken, yes.

Senator HUTCHINS—So there have been up to four inquiries into this issue.

Mr Negus—No, perhaps I could explain. There has been one inquiry—one set of investigators working on this. They have provided material to the DPP for them to consider, and they have come back with further questions after reviewing that material, and we have then conducted further inquiries within the one investigation. It is a matter of further information being sought by the Commonwealth Director of Public Prosecutions prior to their making a judgment on what action needed to be taken from there.

Senator HUTCHINS—I just want to get it correct, Commissioner. On 15 January the CDPP asked you to make additional inquiries, which it is continuing to undertake. Is that correct?

Mr Negus—They are underway as we speak, yes.

Senator HUTCHINS—And you do not anticipate that they will take all that much longer.

Mr Negus—I do not have a set time frame on that, but perhaps Deputy Commissioner Quaedvlieg might be able to give you some more details.

Mr Quaedvlieg—Those inquiries are of a technical computer nature. We do not anticipate they will take too long—a matter of some weeks.

Senator HUTCHINS—I have trouble turning on my mobile phone, so what does ‘technical computer nature’ mean? Is that something you are able to share with us or is that operational?

Mr Quaedvlieg—It is operational, but in a general sense it relates to analysis of computer records and email transactions.

Senator HUTCHINS—It is of course up to the DPP. I imagine you have observed these issues before, but maybe not on this level. Can you advise the committee what sorts of charges do follow for a senior public servant leaking confidential cabinet documents?

Mr Negus—It would be a matter that the DPP would have to consider. I really do not have that sort of material in front of me as we speak. Speaking broadly and more hypothetically, if allegations are proven of disclosure then section 70 of the Crimes Act 1914 might apply, and that is the disclosure of information by Commonwealth officers, and section 142.2, which is abuse of public office, under the Commonwealth Criminal Code Act 1995 are what would be looked at to see whether there was sufficient evidence to go ahead with.

Senator HUTCHINS—As a layman, what are the minimum and maximum penalties when convicted of either of those crimes?

Mr Negus—I think the section 70 from memory—I do not have it in front of me—is a maximum of two years. I would have to double-check that. The other one I am not sure about. We would have to take that on notice.

Senator HUTCHINS—You may not be in a position to answer this, but is somebody who receives confidential cabinet documents as guilty as the one passing them to them? Or is that again up to the Director of Public Prosecutions?

Mr Negus—Broadly, the person who receives the material would not be subject of the commission of an offence. There is a separate section in the Crimes Act which talks about national security related information in which that would be the case—the person receiving the material would commit an offence. However, the offence in this particular case would be the disclosure of information, not the receipt of it.

Senator HUTCHINS—Thank you. I do not think I have any more questions on that.

Senator XENOPHON—Commissioner Negus, thank you for your answers in October last year to questions I put on notice relating to the case of Allan Kessing, the person charged and convicted of leaking a report to the *Australian* about airport security. As a result of that the Wheeler review was subsequently commissioned by the then Howard government and there were a number of recommendations acted on from that. I notice in your answer the AFP stated that between May 2005 and June 2009 the AFP is advised that \$258,675 was spent investigating Mr Kessing, who has maintained his innocence in relation to that leak. Could you advise what this money was spent on in general terms? Was it on surveillance? What sorts of things was it spent on? It seems an extraordinary amount of money for investigating one person who was a public servant at the time.

Mr Negus—The bulk of that money would be for salaries of the investigators who would undertake that inquiry and the preparation of a brief of evidence. I am not sure of the specific details of what was contained in that investigation; however, I imagine it would be predominantly staff hours and salaries.

Senator XENOPHON—Including phone taps and surveillance?

Mr Negus—I am not sure whether that was conducted within that inquiry. I would have to have a look at it.

Senator XENOPHON—If I were to put to you that the evidence before the court indicated there was phone surveillance and phone tapping of Mr Kessing—

Mr Negus—If that is what was presented to the court then yes, that would be included in that process.

Senator XENOPHON—Obviously every investigation is different, but in this case no-one actually spoke to Mr Kessing before he was charged. Is it usual protocol where there are allegations involving a public servant in relation to the leaking of information to get the person in—you could caution them; I suppose that would be the standard thing? Why in this case was Mr Kessing not asked any questions before the prosecution was launched against him?

Mr Negus—I would have to take that on notice and speak to the investigators involved. It certainly would be usual that the person subject to the allegations would be spoken to and

given an opportunity to do so, whether under criminal caution or not, but I would have to speak to the investigators in this case. Whether that was a tactical decision that was made or what, I just do not know.

Senator XENOPHON—My understanding from what Mr Kessing has told me is that he would have been quite happy to speak to the police at that time. I need to confirm that, but that was my general understanding. Finally in relation to this, in September last year Mr Kessing publicly disclosed in a series of articles to the *Australian* newspaper and also by speaking to the media here that he provided a copy of the report to the member for Grayndler, Anthony Albanese, when he was in opposition—or to his office, if I can narrowly confine that. Is the AFP investigating Mr Kessing in relation to the release, which he has admitted, to the member for Grayndler of the report that was the subject of the prosecution?

Mr Negus—No, we are not.

Senator XENOPHON—Finally, in terms of the Wheeler recommendations, are you satisfied that those matters have been implemented in the context of airport security and also in terms of maritime security as well?

Mr Negus—There have been substantial reforms coming out of the Wheeler review. Certainly, they have been taken again to the next level by the recent Beale review into aviation security and I am satisfied that is all working the right direction.

Senator XENOPHON—Finally in relation to this, would it be fair to say that the Wheeler review was triggered as a consequence of the public release of the report prepared by Mr Kessing to the media a couple of years ago?

Mr Negus—I do not think I am in a position to answer that. I really do not know.

Senator XENOPHON—You do not see a causal link between the Wheeler review and the report that was leaked to the *Australian* newspaper several years ago?

Mr Negus—The decision to call for the Wheeler review was a decision of government and I really do not know what the parameters or otherwise were for them to actually come to that conclusion.

Senator XENOPHON—Very well. Thank you.

Senator LUDLAM—I have got some questions that relate to child sexual abuse investigations online, but I can leave them for later. Would you need to call specific officers to the table for those questions?

Mr Negus—I think we should be able to handle the majority of those, and those we cannot, we can certainly take on notice.

Senator LUDLAM—Great. They are actually quite brief and they relate to research. I asked ACMA, who we had upstairs in another committee earlier, about research and they suggested it might be something that you would know—the proportion of child sexual abuse material that is available on the public internet on live URLs that anybody can come across if either know they are there or inadvertently, as opposed to material that is contained on the dark net, whether it be file sharing, various peer-to-peer channels and so on. Is that something you are aware of?

Mr Negus—That is some detail that I would not have access to. I am not sure whether one of my deputy commissioners would have that material either.

Senator LUDLAM—I know it is a fairly specific question. Would you be able to undertake to find out for us whether—and it may be that is essentially unknowable—

Mr Negus—I suspect that is correct. I think it would be very speculative at best to estimate the proportion of material either way.

Senator LUDLAM—I am just interested to know whether anybody has had a go at investigating that.

Mr Negus—We can certainly look at that.

Senator LUDLAM—If you are able, perhaps we could have the proportion of your officers' time that is spent tracking down material that is available through public channels as opposed to those that are shared peer-to-peer and so on?

Mr Negus—I know a significant amount of the work we do is investigating people for downloading publicly available material of child sexual abuse and those sorts of things. Certainly, it is a significant component of what we do.

Senator LUDLAM—If there is anything that you are able to provide to us, I would appreciate that. The other one is a bit more specific. It is the turnover for public URLs for those same categories of materials—that is, the residence time for individual websites or URLs that are tracked on the blacklist, or the portion of it that you would be interested in, for the purposes of those investigations. What is the average residence time of a live URL of that sort of material? How long is it there for?

Mr Negus—Again, I think we would have to take that on notice and see if we can get some specialist advice.

Senator LUDLAM—I would appreciate that. I am not sure whether you were in the room before when we had the ASIO Director-General of Security at the table, but I asked about the practice of officers undertaking friendly chats or informal, off-the-record conversations with suspects or persons of interest. Can you tell us how and whether AFP officers are required to identify themselves on those occasions?

Mr Negus—Yes, they are required, under the AFP act, to state their name and badge number on request.

Senator LUDLAM—Are there any particular words or formulations of words that an officer is required to express before starting one of those sorts of interactions?

Mr Negus—Not a specific set of words, but they are required to show identification if requested and also to tell the person their name and their badge number.

Senator LUDLAM—Within reason, what are the requirements for documenting those sorts of interactions with people?

Mr Negus—At a minimum they would be required to put an entry in their official police diary. That may also be transposed into an incident log on our official computer system.

Senator LUDLAM—Just to clarify your comments before about requiring the badge number, is that required on request of the person that is being spoken to or is that an automatic offer that the officer would make?

Mr Negus—Any AFP officer would declare themselves as to who they are if they were speaking to someone. Certainly on request they are required to provide that.

Senator LUDLAM—I draw your attention to your annual report. On page 183 there are 17 complaints related to information misuse, access or inadvertent disclosure. Without exposing operational details, what is that table telling us?

Mr Negus—I will have to take that on notice. Broadly that category would be category 2, which are relatively minor complaints—they are all taken seriously, but those are relatively minor—where people had disclosed information which was subject to some sort of caveat within the organisation.

Mr Wood—I should emphasise that the words included in the description are ‘inadvertent disclosure’. They are lower level but nonetheless serious disclosures.

Senator LUDLAM—Okay. You have said you want to take that on notice to provide a little bit more information to us. Is this about telephone intercepts that have been made public? What would you qualify as a minor disclosure? What are your categories for minor and major complaints?

Mr Negus—They have been categorised by our professional standards area. Without looking at the specifics of each of those cases, it is not likely to be telephone intercept material, because that would be seen as a significant breach of not only our internal guidelines but also the law and so would be treated as a much more serious offence.

Senator LUDLAM—If you could just provide us on notice with as much material as you are able as to what that table and particularly that category are telling us, I would appreciate that.

Mr Negus—We will do that.

Senator LUDLAM—In the review of the AFP complaints management, the ombudsman in 2008 made three recommendations on improving the AFP complaint management practices and procedures. Another two recommendations were subsequently made after the 2008-09 review. Can you tell us whether those recommendations have been implemented since then?

Mr Wood—They are being implemented. In some cases the recommendations include systems changes to the mechanisms of recording information within the case management system that professional standards use. As I recall, most of those amendments to that system have been uploaded, but I suspect some are still in development. All of the recommendations about the way that we educate people who are involved in the complaints review mechanism and the way that we publicise and promote the complaints system have been fully implemented.

We conduct workshops with the ombudsman’s office to compare our progress with their expectations to make sure we will remain aligned with what is expected. That is a very productive environment. If they are not implemented they are certainly underway. My

recollection is that in the case of some of the IT enhancements that have been recommended most are in place but there are still a couple to be implemented.

Senator LUDLAM—Thank you for that. It sounds like you are relying on memory for some of it. Could you provide us with an update after the hearing of which are still afoot and which you are completely confident have been implemented or anything else you would like to clarify?

Mr Wood—Yes, Senator.

Senator LUDLAM—I put a couple of questions on notice in October which have not been answered yet. That is an unusually long time for material like that to be unanswered. I want to ask a couple of questions about Colombia. Has the AFP taken part in any other intelligence gathering tasks or operations on trade unionists or opposition activists in Colombia and South America, apart from investigating Liliano Obando, human rights organiser for the agricultural workers union? Are you familiar with that case and the questions that are outstanding?

Mr Negus—I have a copy of question on notice No. 89, which I understand is a copy of what was returned to you. So those questions have been answered.

Senator LUDLAM—Can you give me the date of return of those?

Mr Negus—I do not have it on the copy, but I do have a copy of the questions on notice and the answers.

Senator LUDLAM—We have not received those. Would you be able to table those for the committee now?

Mr Negus—Certainly.

Senator LUDLAM—Thank you.

Mr Negus—I am told it was within the last 10 days.

Senator LUDLAM—It might be in the system. You might be able to read some of the information I want straight off the answers.

Mr Negus—We will give you this copy.

Senator LUDLAM—Can you scan what you have there and tell me whether you have taken part in any other tasks apart from those relating to Liliano Obando?

Mr Negus—The answer to question A is no. We have not taken part in any other intelligence gathering tasks or operations on trade unionists or opposition activists in Colombia. Question B: has the AFP worked with or assisted Colombian police officers or authorities implicated in false-positives or other human rights abuses? The answer to that is no. Question C: has the AFP received or acted upon information of Colombian police or DAS trafficking narcotics to Australia? The answer to that is no. Question D: has the AFP worked with Lilia Babativa of the DAS in Colombia? The answer to that is that in October 2003, the AFP Bogota office forwarded migration inquiry requests to Lilia Babativa in her capacity as sub-director of migratory affairs, Department of Administrative Security. In March 2004, the AFP presented a law enforcement and cooperation program funded computer and ancillaries to DAS migratory affairs. The items were presented to Lilia Babativa in her capacity as a sub-director of migratory affairs. Question E: what has been the AFP's involvement with specific

DAS and Colombian police officers who have been convicted of drug trafficking? The answer to that is no involvement.

Senator LUDLAM—Thank you very much for that. You have tabled those so I presume they will be circulated.

Mr Negus—I apologise for those taking some time to return to you.

Senator LUDLAM—Is there a specific reason that they were outstanding for such a long period?

Mr Negus—I will follow that up. I have just been made aware of this as we speak.

Senator LUDLAM—Thank you. The Prime Minister announced an increased Australian police presence in Afghanistan when he was last in Washington DC. He did not specify a number in his public comments at the time. It was reported that the National Security Committee of Cabinet would be working through those requirements with you. Can you tell us the status of those discussions?

Mr Negus—We are still working through those with the National Security Committee. There has been no decision as yet as to the numbers.

Senator LUDLAM—Has any of that additional deployment been made already?

Mr Negus—No. We still have 22 officers in Afghanistan. How that will look into the future is still being decided.

Senator LUDLAM—No additional ones since that announcement was made?

Mr Negus—No.

Senator LUDLAM—Do you have any idea as to the number that might end up in deployment or is it still hypothetical?

Mr Negus—It is still being considered.

Senator LUDLAM—During the 2007 election, the ALP in opposition announced a five-point plan for the AFP which included expanding the recruitment of Aboriginal Australians. Can you give us an update as to how many Aboriginal people have been recruited since the Rudd government took office?

Mr Wood—I do not have that number with me, but we can certainly provide that number. The sort of activity has included targeted advertising of vacancies in the organisation so that we make sure that potential applicants from Indigenous communities have access to the fact that positions are vacant. Also, we are working in universities and other tertiary environments so that we can work with Indigenous student networks to ensure AFP career options in the organisation, both sworn and unsworn are visible. There is a range of activities occurring to increase access to recruitment processes for the AFP. I will get the specific numbers for recruitment since the particular point in time.

Senator LUDLAM—Perhaps for the last two financial years.

Mr Wood—Okay, I will take that on notice.

Senator LUDLAM—Thank you; I would appreciate that. To wrap up: in some questions on notice, last year you provided us with some information about the AFP's work in Burma;

in particular, the training and engagement with Burmese police, which I understand is principally counter-narcotics work. That is not mentioned in your annual report, although there are two mentions of Burma as the source of drugs coming into Australia. Has there been any expansion or maintenance of that program? Can you give us a briefing on what the deployment is.

Mr Negus—It remains the same. We have one officer located in Rangoon, and his work is predominantly on counter-narcotics work. There has not been anything specifically of note to mention, I do not think, in the last 12 months that has changed since we last spoke to you.

Senator LUDLAM—Is that person attached to our embassy there?

Mr Negus—Yes.

Senator LUDLAM—Okay, so no change. Has there been any reconsideration of that policy or are you content that that stays there? How is that policy evaluated over time?

Mr Negus—We continually look at what operational outcomes are derived from wherever the placements are around the world. We also talk more broadly with the Department of Foreign Affairs about what the current stance is regarding any country where we might have somebody placed and what value they would add to any particular mission. At the moment, the assessment is that that person is an important cog in the South-East Asian drug trafficking monitoring network, and we assume that he will stay there for the time being.

Senator LUDLAM—Thank you for that. Your annual report notes that you engaged 12 advertising market research and media companies for a total cost of \$619,000. I think the amount is just under \$300,000 that was spent with McCann Worldgroup. Can you tell us a bit about what that allocation was for?

Mr Negus—I will ask Mr Wood to answer that. Some of this goes across to the time before I became commissioner, so they may have more details.

Mr Wood—While I look for that specific contract I might also add, in relation to the question about Indigenous staff numbers, that we also have specific Indigenous office traineeship schemes and Indigenous graduate schemes within the organisation targeted at increasing recruitment in those areas.

Senator LUDLAM—Are they new or have they been around for—

Mr Wood—They are new—in the last 18 months or so, possibly two years but not more than that. I am just looking for the specific contract you have mentioned.

Senator LUDLAM—What was the name of the contractor, again?

Mr Wood—It was McCann Worldgroup, I think. I do not have additional information on that particular contract.

Senator LUDLAM—Is that something you could provide us with on notice?

Mr Wood—I would definitely take it on notice. I am not sure which part of the organisation engaged them, so I would have to find that out.

Senator LUDLAM—Thank you—just whether that contract is ongoing. My final question—again, from your annual report—is about you employing a number of Christian

chaplains and a Muslim cleric. Can you tell us how many full-time pastoral posts are engaged by the AFP and what their responsibilities are?

Mr Wood—There are four chaplains in the organisation at the moment. They are not all full-time, so the actual full-time equivalent would be fewer than four. The chaplains form part of our wellbeing services that function within the organisation. Given the environments that our staff work in, in some cases obviously experiencing and observing significant traumatic events, we offer a range of support services to staff, including psychologists, straight medical clinical support and spiritual support through the chaplains. So they are a service that is available to staff. Individual staff decide, in most cases, whether they wish to in any way have an involvement with the chaplains. There are times, of course, when the organisation does actually conduct specific services such as a memorial service and we use the chaplains there as well. They are part of a range of wellbeing services that we offer our staff, given the nature of the business both onshore and offshore.

Senator LUDLAM—Thank you very much.

Senator HUTCHINS—Commissioner, my question is about the new structure. Can you please outline what changes have been made within the AFP since the announcement of the Commonwealth Organised Crime Strategic Framework last year, including new roles and any structural changes. How will this assist the AFP's efforts to combat serious and organised crime?

Mr Negus—Certainly. After taking over as commissioner, I sat down with the senior executive group and looked at how we could address the future threats of organised crime in this country and also noted the announcement of the Commonwealth Organised Crime Strategic Framework by the Attorney-General last year. A consensus amongst that senior leadership group was that we needed to look more holistically at the way in which we investigated organised crime. Again, what the organisation had done functionally was to separate out things like drugs, people smuggling and child sexual crimes as opposed to things like fraud, money laundering and other activities. They were investigated in separate parts of the organisation. We wanted to look at this in the context of organised crime being investigated in totality so that, whether it was drugs or money laundering, it could be looked at by one team rather than its activities being separated across a broad range of teams in the organisation. Following the Beale review—which recommended the introduction of a third deputy commissioner, which we have accepted and implemented—we looked broadly at the structure and how that could better reflect what we do.

Certainly the functional model has served us well in recent years as we have grown and taken on new responsibilities, but we saw fit to change the border portfolio and also the economic and special operations portfolios into 'serious and organised crime' and 'crime operations' respectively. We have merged the two together and now look at them in a whole of AFP sense rather than specifically by crime type. This is only in the early stages. We are only two weeks into implementation. In relation to serious and organised crime, we are looking at long-term targeting events where we might work in multiagency, multi jurisdictional task forces and at working with other agencies such as the Australian Crime Commission, our state and territory colleagues and Customs so that we can bring those people into the AFP or work with them in their own locations to attack serious and organised crime.

The crime operations portfolio is far more about what we do on an every day basis. It is about the shorter term serious matters but not the significant length of time matters that some of the investigations might take in that other portfolio.

Senator HUTCHINS—Essentially, to meet the new sorts of challenges, your response is to have a more holistic approach, as you said, within the organisation so that people are not saying, ‘That’s your stream and this is their stream, and we all hope that everybody communicates.’

Mr Negus—That is right. Within the context of organised crime, it is quite clear that those who would import drugs into this country are also involved in money laundering and a range of other offences. Previously, that would be broken across two particular streams of activity in the AFP. What we are saying is that we are now bringing those streams together. We are getting people with specialist skills—intelligence and other people—into the same room to address those crimes.

Senator HUTCHINS—That would involve significant international cooperation as well.

Mr Negus—That is right. Our international network is contained within the serious and organised crime portfolio. Our network of people are located in 28 countries around the world and are responsible to a specific manager within that portfolio.

Senator HUTCHINS—Which country has most of our seconded AFP officers?

Mr Negus—At the moment it would probably be Indonesia—but it varies. Thailand is a key place for narcotics. However, we have a range of people across the world.

Senator HUTCHINS—What kind of assistance is offered in these programs and what other government agencies participate in them?

Mr Negus—In the program?

Senator HUTCHINS—Yes

Mr Negus—We are investigating on a daily basis a range of criminal activities where we bring in people from other agencies to work with us. That is both onshore and offshore. We work very closely with our international partners. As I mentioned, at any time, we have in excess of 20 people in Indonesia assisting in capacity building, counter-terrorism investigations and people-smuggling investigations and also looking at broader transnational crimes such as narcotics and child sex offences.

Senator HUTCHINS—Can you provide some practical examples of AFP successes in training and cooperation with our regional partner police forces? This is important to us, because this is where the drugs are coming from. They are particularly coming out of East Asia and also Colombia.

Mr Negus—The counter-terrorism front probably provides the most demonstrable examples. I might get Deputy Commissioner National Security, Peter Drennan, to talk to you about some of the activities we have had in the Philippines and Indonesia, where we have provided some capacity-building activity.

Mr Drennan—There is a range of activities that take place across South- East Asia. Starting in Indonesia, there is a regional cooperation team. We work very closely with the

Indonesian national police in targeting terrorism—providing them with support in a range of different areas from law enforcement intelligence analysis through to technical assistance and supporting their investigations through training of their members. We do a significant amount of training through the Jakarta Centre for Law Enforcement, which is also in Indonesia but not in Jakarta as the name suggests. Since the establishment of that there has been over 5,500 people from not only Indonesia but throughout South-East Asia trained in a variety of different aspects of law enforcement, which include investigations, intelligence, forensics and all the way through to sharia law. In Indonesia we have also established a DNA laboratory which we provide ongoing support to. It is run by the Indonesian national police, and that has a very strong disaster victim identification capacity. We have a similar unit in the Philippines in relation to the regional cooperation team. We work very closely with the Philippine national police, and we have also established a bomb data centre there, which supports the Indonesian national police's post blast examination.

We have established a training and development team in Thailand, which again assists the Thai police in the training and development of their capacity in counter terrorism and in broader, more serious crime. We also conduct training exercises throughout the region, and that provides real-time development and testing of the capabilities of various law enforcement agencies. Recently, we have conducted those in both Cambodia and Bangladesh. We run management of serious crime courses here in Australia, to which we have international participants from South-East Asia. We also run those through the Jakarta centre for law enforcement. We also run the management of serious crime programs in Singapore and China. You can see that we run a variety of programs that are designed to develop the capability and capacity of the law enforcement agencies but also to work closely with them in some aspects to provide ongoing development for their expertise and knowledge in doing serious investigations, particularly focused on counter terrorism but also on narcotics and people smuggling.

Mr Negus—You may have seen that about a week ago there was a significant burn of safrole oil in Cambodia, which the AFP played a major part in. That was enough oil—almost up to 20 tonnes, I think—to make many millions of ecstasy tablets, which may well have found their way onto the streets of Australia. I will ask the deputy commissioner to give you a few details.

Mr Quaedvlieg—We do have a heavy emphasis on capability building across the region in terms of counter narcotics. The most recent example is the one the commissioner just referred to. We have taken a lead in the region in terms of destruction of precursor chemicals that are seized by other countries. It is an enormously difficult, complex and indeed dangerous task to destroy precursors. We were called upon to provide our expertise from an established precursor team that we have established here in Australia. We attended Cambodia last week, where we commenced the destruction of 15 tonnes of safrole oil, which is a precursor to amphetamine type substances. In addition to the counter narcotics type work that we do in terms of capability building, we are also doing significant work around the region on child sex tourism offences and child abuse offences in source and transit countries. We provide a very strong forensic and technical training capacity building framework for regional countries.

More recently we have provided a large degree of people-smuggling expertise training throughout the region.

Senator HUTCHINS—Just one final question, Commissioner. Late last year, both the *Daily Telegraph* and the *Herald Sun*, both reputable papers, reported that the Federal Police had a confidential report that cocaine now represents 25 per cent of drug seizures. I do not know whether it says this in the report, but they said that, between 2003 and 2007, cocaine accounted for five per cent of illicit drug seizures, increased to 10 per cent in 2007-08 and now represents 25 per cent of drug seizures; and that drug use was moving away from opiates towards cocaine. Are you able to comment on that report and express your views about what is happening on the street?

Mr Negus—I do not have specific details about seizure rates or those sorts of things at my disposal right now, but I think it is fair to say that we are seeing increasing usage of cocaine, as opposed to opiates like heroin, across the community. Again, that is something that is of concern to both state and territory as well as Commonwealth law enforcement agencies, as well as Customs and Border Protection command. So it is something we are focusing on. Going back to Senator Ludlam's questions before, this is why it is really important that we have people on the ground in places like Columbia, in South America, and other strong source countries for this type of drug, and we work very closely with our partners both in the region and across the world to look at this growing problem. As I said, I do not have specifics but I can certainly provide you with some seizure details, if required, about what we have seen and what the states and territories have seen. We are in the process of trying to develop a better drug-profiling process at the moment, where street seizures are actually looked at in the context of what countries might be their source, again adding to that intelligence picture of what is happening and how many drugs are coming from particular areas.

Senator HUTCHINS—One article also said Australia was being used to launder significant amounts of money to fund criminal enterprises in Europe and elsewhere. If you could comment on that, it would be welcome.

Mr Negus—I can say I have had many discussions with John Lawler, the CEO of the Australian Crime Commission, on money laundering and our approach to that, and I think what you will see in the future is a more targeted, more focused attack on money laundering as part of the attack on organised crime. We are working very closely and collaboratively on that exact issue.

Senator HUTCHINS—Thank you.

Mr Quaedvlieg—Chair, just to reinforce the commissioner's point, contrary to media reports we are not facing a flood of cocaine in Australia. There is some evidence of some increased usage, but it is relative to the increases in the use of amphetamine and stimulant type drugs more generally. But, certainly, we can take that question on notice and provide you with some exact details, if you wish.

CHAIR—Thank you. Senator Brandis.

Senator BRANDIS—No, let Senator Trood go first.

Senator TROOD—I just had a question following up Senator Hutchins's questions, if I may.

CHAIR—Yes, go on.

Senator TROOD—It was a question, Mr Drennan, about the cooperation in South-East Asia to which you were alluding, which is a program that has been in place, as I understand it, for quite some time, hasn't it—some years?

Mr Drennan—The Jakarta Centre for Law Enforcement was established in 2004. The actual cooperation on a CT front has certainly been in place since the Bali bombings—

Senator TROOD—Yes.

Mr Drennan—and the broader cooperation with South-East Asia on narcotics and organised crime has been going on for many, many years.

Senator TROOD—Yes. Do you have figures for the funding that is committed to that program with you?

Mr Drennan—No, I do not. It would be quite a complex compilation of figures, because there are a whole range of programs. We could certainly break that down and try and provide that to you in a—

Senator TROOD—I would appreciate you doing that. Could you give me the figures for the AFP's contribution to the counterterrorism program in South-East Asia as at 30 June 2008 and at 2009, and the current estimates for that program, please.

Mr Drennan—Certainly, Senator.

Senator TROOD—Thank you.

CHAIR—Senator Brandis.

Senator BRANDIS—Thanks, Chair. Can we come back to this document, Commissioner Negus, that you tabled—this is your email of 25 January to AFP staff re. revised AFP structure. First of all, the document you have given to the committee does not seem to be complete. There are references to attachments in two places in the document, and it does not appear to be signed—not that an email necessarily would be. Can we have the balance of the document, please? I do not need it now, by the way, but can you take that on notice.

Mr Negus—Yes, I can.

Senator BRANDIS—These changes began on 1 February and, as I understand it, the current border and international portfolio and the economic and special operations portfolio will be replaced by two different portfolios called serious and organised crime and crime operations. Do I understand that correctly?

Mr Negus—That is correct.

Senator BRANDIS—It has been said by commentators that one of the consequences of this restructure will be to refocus the efforts of the AFP away from counterterrorism so there will not be the same level of concentration on counterterrorism as there has been hitherto. What do you say about that?

Mr Negus—I would say that those commentators are misinformed.

Senator BRANDIS—All right, then let us try to test this empirically. How many officers did you have before 1 February who were wholly or substantially assigned to counterterrorism?

Mr Negus—We would have those figures. Just give me one moment. I can tell you while Deputy Commissioner Drennan is looking for those that there has been no material change, either before or after this announcement, to the number of people we have working in the counterterrorism area.

Senator BRANDIS—When you change the portfolios or the organisational profile of a large existing operation it is a fair inference, isn't it, that that reflects at least in part a change of its emphasis or focus? What is the change do you anticipate in the emphasis or focus of the AFP as a result of these changes?

Mr Negus—This is really a philosophical or cultural change for the AFP in the investigations area. What we are saying is that we should look at organised crime—quite apart from terrorism, which is a specialist and separate portfolio, and quite apart from the international deployment group, again which is a separate portfolio—in the investigations area holistically. What we are saying is that we need to address these issues in taskforces jointly with our partners. We need to look at the states and territories and the Australian Crime Commission and what they are doing, deconflict in some of those areas about who is investigating what, and bring people in with specialist skills, such as forensic accountants and others, as needs be, but look at criminal syndicates holistically rather than looking at them as drug traffickers, fraudsters or money launderers. It is a cultural and philosophical change in the way they do their business.

Senator BRANDIS—Will there still be a specific separate portfolio for counterterrorism?

Mr Negus—Yes, there will.

Senator BRANDIS—Will the size of that portfolio be the same as it was?

Mr Negus—Yes, it will.

Senator BRANDIS—And the resources going to it be no less than they were?

Mr Negus—That is right, at current levels. Again, the Beale review does give me and my management team the option to look at changing those as we see fit on different priorities as we move forward, but at the moment they will remain the same.

Senator BRANDIS—When you say 'at the moment' presumably there will be a phase-in or a transition period between the way the AFP has operated antecedently and when these what you call cultural and philosophical changes are fully in effect. I want to be reassured that in the long term, once this transition period has been completed, there will be no less emphasis on counterterrorism.

Mr Negus—I can assure you that counterterrorism remains an important, if not the most important, thing we do for the Australian community. Resources can be taken from any other portfolio and are taken from other portfolios when there is a requirement to investigate a counterterrorism offence. I look back to Operation Neath, which were the arrests in Melbourne late last year. There were a significant number of resources taken from other

portfolios to support that counterterrorism operation. It is one of the strengths of the AFP that we can move flexibly into and out of investigations as required.

Senator BRANDIS—That sounds fine to me, and I am sure it would be a good thing for an organisation such as yours to have that operational flexibility, including the diversion of resources from one portfolio to another, but what I would like to focus on really is whether the quantum of resources devoted permanently as a standing allocation to counterterrorism will, once this transition period has happened, be not less than it was under the pre-existing arrangements.

Mr Negus—I can assure you they remained unchanged. The joint counterterrorism teams we have in all the capital cities with the states and territories remain unchanged and the resources we allocate more broadly to the intelligence function around counterterrorism remain unchanged.

Senator BRANDIS—All right. Perhaps Deputy Commissioner Drennan might have those figures. I wanted to know what the current staff establishment devoted wholly or substantially to counter terrorism is.

Mr Drennan—It is dealt with in two aspects. There are joint counterterrorism teams, which operate in each state and territory. In those joint counterterrorism teams across the country there are 101 AFP officers. So there are 101 AFP officers plus there are then the state and territories members in those teams. There is also the headquarters component of the counterterrorism function and there are 44 people in that headquarters component.

Senator TROOD—Are those numbers relatively stable?

Mr Drennan—They are. In my previous role as the assistant commissioner for counterterrorism for two years those numbers remained stable and the numbers into next year will be the same. Where the numbers do change is where there is operational activity and we surge with numbers into there. By way of example, as the Commissioner outlined, in Operation Neath there were 150 AFP investigators working on that investigation and at the resolution time that number surged to 400. That is the manner in which we deal with an increase. There is certainly not a period of time when there is a decrease.

Senator BRANDIS—Forgive me if I am using a non-technical expression, but I understand you to be saying that at the moment there are 145 AFP officers who are part of the standing allocation to counterterrorism—101 in joint counterterrorism teams and 44 at headquarters—and those numbers can be augmented as operational requirements demand from elsewhere in the AFP.

Mr Drennan—That is correct.

Senator BRANDIS—What I am seeking from you, Commissioner Negus, is the assurance that beyond the transition period in which this new philosophy is phased in, the number of AFP personnel devoted to what I have called the standing counterterrorism capability will not fall below the figures that Assistant Commissioner Drennan has just quoted to us.

Mr Negus—I can assure you that our senior management group has talked about this issue. There is no moving away from the commitment to investigating counterterrorism. It is something that is vitally important to the Australian community. It is very difficult for me to

sit here and give you an assurance that in 12 months time there might not be two less people or two more people. It all depends on the operational tempo at the particular time. I do not want people sitting in my counterterrorism teams twiddling their thumbs whilst there are drug traffickers and others where these people could be usefully plying their skills. There is no intention to reduce our commitment to investigation of counterterrorism. It is the highest priority of the work that we do and, should more people be required there, there will be, but those people will be used efficiently over the next 12 to 18 months and certainly during the term of my commissionership.

Senator BRANDIS—When you answer a question like the question I just put to you, which sought an assurance that actual numbers would not fall, and you answer it in the way in which you have by saying there is no moving away from the commitment to counterterrorism but quite deliberately refrain from giving me that assurance that the hard numbers will not fall, I cannot help but conclude that you are allowing for the fact that the hard numbers might fall. In other words, what Deputy Commissioner Drennan has described as a stable staff establishment of 145, which he was at pains to emphasise had not changed over the last couple of years, may in fact fall. There may well be good policy reasons or administrative reasons for that—that is another debate we can have. But I just want to see a clear view of where we are going. Do I understand you to be refraining from giving me the assurance that the number of officers devoted to the counterterrorism capability of the AFP will not decline below the existing 145?

Mr Negus—Senator, I think I have answered the question. What I said to you was that I do not intend reducing the commitment to see investigation of counterterrorism—

Senator BRANDIS—I am sure that you do not, and nobody would—

Mr Negus—and I am not going to sit here and actually give you an assurance whether those numbers will move. Operational tempos and operational requirements over the next 12 to 18 months may well change. We may well be in a period when we need more; we may be in a period when we need less. I suspect not. I suspect they will remain materially the same over the next couple of years, in fact, the next decade. But for me to sit here and give you an assurance is something that I am not prepared to do.

Senator BRANDIS—Thanks, Commissioner Negus. You are being very frank in your response and nobody for a moment would question the dedication of the AFP to prioritise counterterrorism. Let me make it as clear as can be. What I am interested in knowing is what resourcing decisions have been made to meet that priority particularly having regard to what you have described as the new culture and philosophy which began to be introduced into your organisation on 1 February. I think that you have made it perfectly clear where you stand in relation to that.

Senator TROOD—Can I just clarify the counterterrorism programs you are running in Southeast Asia. Are they programs which are administered from within this group of 145 people who are part of the task force on counterterrorism, or is there a separate group that administers those programs?

Mr Negus—No, they are administered from within that group.

Senator TROOD—So part of their responsibility is to administer overseas programs in counterterrorism—is that right?

Mr Negus—There is a slight matrix situation here where we have an international and overseas area that actually looks at supporting those people, but predominantly they answer back to the national manager of counterterrorism and their objectives and their outcomes are directed by that group, which would include the 45 people at head office.

Senator BRANDIS—No, there are 44—

Senator TROOD—So the issues of poverty determination and the activities involved in these programs are activities that are undertaken within this headquarters group—is that right?

Mr Negus—That is right.

Senator BRANDIS—You must concede, surely, Commissioner Negus, that there must be a necessary minimum permanent staffing allocation to counterterrorism. Whatever that figure is is no doubt debatable, but there has to be a minimum before you upscale in response to short-term operational requirements.

Mr Negus—Unfortunately, Senator, the amount of work coming through the door for the AFP requires that there is that many people. As I said, we are flexible enough—

Senator BRANDIS—So it is not entirely flexible. It is not as if in a very low-threat environment that is ever going to go down to zero, is it?

Mr Negus—As I said, in the next decade I do not presume that this will change dramatically, no.

Senator BRANDIS—So allowing for the fact that there must be a necessary minimum permanent counterterrorism staffing allocation, and that, as we have heard from your colleague, has been for the last couple of years, to use his word, ‘stable’ at 145, you are not in a position to give us an assurance that over the next year that permanent establishment will not fall below 145?

Mr Negus—I think that I have answered that question.

Senator BRANDIS—Okay, thanks. I turn to people smuggling. In what portfolio is people smuggling dealt with in the AFP?

Mr Negus—Prior to 1 February it was with the border and international portfolio. It is now in the serious and organised crime portfolio.

Senator BRANDIS—I am obviously a layman about these things, Mr Negus, but to me serious and organised crime has a much more extensive connotation than border and international. There are many things that even a layman would imagine would be within the meaning of serious and organised crime beyond border policing or securing our international boundaries. What do you say to the proposition that, again, by re-profiling your enforcement capabilities, the AFP is diminishing the emphasis on its border protection and border policing function?

Mr Negus—Again, I would say that people making that observation would be misinformed.

Senator BRANDIS—All right; I thought you would say that. How many officers at the moment are specifically tasked either wholly or substantially with the border protection function? By that I mean it in the broad sense of interdiction activities, cooperation with Indonesian police forces and so on.

Mr Negus—You said ‘border protection functions’. Do you mean people smuggling or the broader border protection environment?

Senator BRANDIS—Let us deal with both. Regarding the broader border protection function, how many officers at the moment are wholly or substantially tasked with that responsibility?

Mr Negus—We will have to take that on notice. I can give you some details around people smuggling.

Senator BRANDIS—Let us go through this methodically. Deputy Commissioner Drennan, are you able to assist with information on that broader task?

Mr Drennan—No, I do not have those numbers.

Senator BRANDIS—So you will take that on notice?

Mr Drennan—Yes.

Senator BRANDIS—Coming then to the narrower people-smuggling task, how many officers are wholly or substantially allocated to that task at the moment?

Mr Negus—Currently 91 officers are working on people smuggling.

Senator BRANDIS—Where are those 91 officers placed as between Australian placements and overseas placements?

Mr Negus—There are 78 employees located within Australia and the balance overseas.

Senator BRANDIS—Are those 13 overseas in Indonesia and Sri Lanka?

Mr Negus—They are based in Pakistan, Malaysia, Thailand, Sri Lanka and Indonesia.

Senator BRANDIS—You may as well give me the break-up of the 13.

Mr Negus—I do not have how many in each country. The bulk is in Indonesia.

Senator BARNETT—In an answer to a question on notice from me in the last estimates you said the number in Australia was 68 employees, including six employees operating on Christmas Island. Now you are saying it is 78.

Mr Negus—That is right.

Senator BARNETT—So we have had an increase of 10 since October last year.

Mr Negus—As you would have seen, the requirement has been one that has grown.

Senator BRANDIS—Deputy Commissioner Drennan, do you have the figures for 12 months ago—the equivalent figure for those officers tasked with the people-smuggling responsibility?

Mr Drennan—No, I do not.

Senator BRANDIS—Would it be roughly the same—to the best of your knowledge? About 91?

Senator Wong—Well, if he does not have the figure—

Senator BRANDIS—I can ask him to approximate. He may for prudent reasons decline to nominate a specific figure but he may nevertheless be aware that the figure was about the same as the figure that has just been quoted for the current year. Can you help us, Commissioner Negus.

Mr Negus—I can tell you that it would have been less.

Senator BRANDIS—Can you give the committee any assurance that, as the new cultural philosophy of the AFP is implemented, and post the transition phase that began on 1 February this year, the numbers wholly or substantially tasked with people smuggling will not fall below 91?

Mr Negus—No, I cannot—91 is a number that has grown in the last six months or so. I hope that number falls; I hope we are in a position where we do not have to expend as many people in those areas of investigation into people smuggling as is currently the case.

Senator BRANDIS—Why has it grown?

Mr Negus—It is really the size of the issue. We have investigations that we undertake. I can give you some figures for those on Christmas Island, which might illustrate this. We currently have 28 people on Christmas Island who are performing a range of functions. That does of course include the community policing function on Christmas Island, which should not actually include—

Senator BRANDIS—That should be a fairly static figure, shouldn't it?

Mr Negus—That is right.

Senator BARNETT—How many community policing officers are there?

Mr Negus—We have six sworn police, three special members from the local community, one intelligence analyst and one corporate support on Christmas Island. As the size of the community on Christmas Island has grown, we have also increased the numbers of police up there for the community policing function.

Senator BRANDIS—I am a little less interested in the community policing function than in the people-smuggling function. I imagine that most of the police who are deployed on Christmas Island are concerned with interviewing the suspected unlawful arrivals. Is that right?

Mr Negus—That is right.

Senator BRANDIS—So the more unlawful arrivals there are, the more police will be needed to talk to them, I suppose. Is that right? This is not a state secret. I am reading from the Customs and Border Protection (Service) report, which tells us that, between the 2007-08 year and the 2008-09 year, the number of unlawful arrivals rose from 25 to 985. It does tend to reflect the trend after the weakening of the policy by Mr Rudd's government. Extrapolating forward, given that the numbers of unlawful arrivals have been rising sharply now over a

period of time, do you expect that there will be a greater demand for AFP officers on Christmas Island?

Senator Wong—Senator, before the commissioner answers that, and it is up to him as to whether or not you are seeking an opinion, I would like to take issue with the ‘weakening’ assertion. That is your opinion; it is not the government’s.

Senator BRANDIS—It is.

Senator Wong—It is interesting where all the moderates in the Liberal Party have gone, Senator. It is not the government’s view.

Senator BRANDIS—I know it is not the government’s view.

Senator Wong—It is not the government’s view.

Senator BRANDIS—I know it is not something the government will concede, Senator Wong.

Senator Wong—If you are going to put it to a public officer in a question, you are going to get me taking issue with it.

Senator BRANDIS—Your objection is noted. I can show you the table in the Customs and Border Protection (Service) report if you like.

Senator Wong—To whom are you addressing the question?

Senator BRANDIS—To Commissioner Negus. Given the escalation of the numbers and the evident upward trend in these arrivals, has the AFP made provision for a likely further increase in the number of Christmas Island deployed officers in the year ahead?

Mr Negus—We have not made any provision for it. These people fly into and out of Christmas Island as required. They are not permanent fixtures there although they have been there quite regularly, off and on, over the last several months. I do not really want to go to what intelligence says about the future as I am not in a position to say that.

Senator BRANDIS—I am not asking you to.

Mr Negus—The trends are that we envisage this would continue for some time.

Senator BRANDIS—I understand what you mean by that. Lastly, have the number of officers deployed on the People Smuggling Strike Team, about which we heard last estimates, changed?

Mr Negus—They have gone up, as we said.

Senator BRANDIS—There were six different teams in the People Smuggling Strike Team: three operational investigative teams, two intelligence teams and one financial investigation team. Is there still the same number of teams or has the profile or structure of the operation changed?

Mr Negus—Senator, I will get Deputy Commissioner Quaedvlieg to answer that. He gave you that material last time.

Senator BRANDIS—I do not want to waste time. If it has not changed then last estimates answers stand. I am interested in two things: first of all whether the structure has changed so

there are different teams or differently tasked teams and, secondly, following from Commissioner Negus's answer, I am interested in knowing by how much the numbers have increased in each of those six teams.

Mr Quaedvlieg—The People Smuggling Strike Team has increased from 15 FTE to 43 FTE. I do not have an exact time frame over which that growth has occurred.

Senator BRANDIS—Pausing there, you are satisfied that the evidence you gave last October was reliable evidence—you had informed yourself of these figures then and what you told the Senate was correct.

Mr Quaedvlieg—Yes.

Senator BRANDIS—The figure you are now quoting—43—is the most recent information that is available to you today?

Mr Quaedvlieg—Let me articulate it a bit more clearly. The People Smuggling Strike Team is centred in Canberra, and that number is 43.

Senator BRANDIS—Okay. Are there some other figures you want to give me?

Mr Quaedvlieg—The commissioner mentioned 78 domestic staff in totality; 43 of those are in Canberra—which I have just described.

Senator BRANDIS—So of the 78 that the commissioner mentioned, 43 of those are in the People Smuggling Strike Team?

Mr Quaedvlieg—That is correct. There is also a number in Sydney, and in Melbourne.

Senator BRANDIS—How many in Sydney?

Mr Quaedvlieg—There are roughly eight in each city, and there are 17 on Christmas Island.

Senator BRANDIS—How have those numbers in Sydney and Melbourne and on Christmas Island changed since the October estimates?

Mr Quaedvlieg—The numbers in Sydney and Melbourne have not changed. The numbers on Christmas Island have increased. I do not have the time frame in terms of that growth but I can obtain that for you.

Senator BRANDIS—Why don't you just give me what you have before you; in other words, if you have the figures for any benchmark dates in the last two years, just run through them.

Mr Quaedvlieg—I do not have those benchmark dates. I will take that on notice.

Senator BRANDIS—What is the last date prior to the 17 figure you just quoted? What is the last date for which you have figures here?

Mr Quaedvlieg—Are you talking about Christmas Island?

Senator BRANDIS—Yes.

Mr Quaedvlieg—I do not have that.

Senator BRANDIS—You do not have any earlier figures for Christmas Island?

Mr Quaedvlieg—I will take that on notice.

Senator BRANDIS—Thank you.

Senator BARNETT—To follow on from Senator Brandis on these matters, I have an answer to question on notice No. 84. I draw to your attention part (e), which refers to the recent surge in people-smuggling activity in the region. You say that since September 2008 the AFP has charged 48 people with offences under the Migration Act, including 44 alleged crew members and four alleged Australian based organisers. These offences attract the maximum penalty of 20 years imprisonment. Can you give us an update as to whether convictions have been promulgated, and if not where things are at—either now or on notice.

Mr Quaedvlieg—Since the period of time you are speaking about, we have made a total of 93 arrests. Of those 93 arrests, 26 convictions have ensued. There are currently 67 people before the courts; 63 of those are crew members and four are organisers.

Senator BARNETT—You go on to say that under the People Smuggling Strike Team you have applied for three Interpol red notices for alleged people-smuggling organisers to be extradited to Australia for prosecution. What is the status of those three cases?

Mr Negus—It is a bit difficult to talk about extradition processes. Perhaps Attorney-General's will be able to offer more comment. We would not want to say anything that would prejudice that process.

Senator BARNETT—Please explain: what is an Interpol red notice?

Mr Negus—An Interpol red notice is sought when there is a person of interest not located within your jurisdiction, and that goes out to all Interpol countries. If that person is apprehended then they will notify us that they have that person either identified or in custody and we can then make proper extradition requests through the formal process.

Senator BARNETT—Is it fair to ask whether they have been extradited? Were you saying that is a difficult question to answer?

Mr Negus—No, they have not yet been extradited. That is a process we have to be very careful about talking about.

Senator BARNETT—But you have applied for those three?

Mr Negus—Yes.

Senator BARNETT—If the department could take that on notice and provide an answer to the best of your ability, subject to not getting into operational matters, that would be good. You also say that, in addition, Hadi Ahmadi, an alleged people-smuggler organiser, was extradited from Indonesia to Australia in May 2009, and this matter continues before the Australian courts. Where is that matter up to?

Mr Negus—It is still before the courts in Western Australia.

Senator BARNETT—And you say:

The AFP works cooperatively with local and overseas partners to target the organisers of people smuggling ventures. As of 19 October 2009, there have been 1,828 irregular maritime arrivals in Australia who arrived in 36 SIEV's intercepted in Australian waters.

What is the result of those interactions and interceptions?

Mr Negus—I can tell you—this is a statistic that is quite often unmentioned—in Indonesia since September 2008 there have been 97 separate disruptions by the Indonesian National Police, some with the assistance of the AFP but predominantly by the INP, involving 2,548 people. They have made 42 arrests in Indonesia. In Malaysia—

Senator BARNETT—And how many convictions?

Mr Negus—I have not got those details. It is one of the things we have been working with the Indonesian National Police on. They do not have specific legislation around people smuggling. Many of the people who are arrested are charged with harbouring type offences, which again only carry smaller sentences of six months or around that time, but we have had a commitment from the Indonesian National Police that they are working with government in Indonesia to look to criminalise people smuggling this year sometime. So that continues.

Senator BARNETT—Is there frustration that the law is not severe enough or strong enough in Indonesia to apprehend and to detain these people for a longer period and with more severe penalties?

Mr Negus—This is something we have been talking to the Indonesians about for some, as has the department. They are working towards that, but I cannot really comment on any other parts of that.

Senator BARNETT—No, but you are hoping and desiring that their laws will become stronger and more effective.

Mr Negus—We are certainly assisting them where we can and we encourage them to have as strong laws against people smuggling as they possibly can.

Senator BARNETT—If you can take on notice to give us further and better particulars regarding those 2,548 people you referred to.

Mr Negus—That is right. They have been disrupted from moving onto vessels to travel to Australia or other places and 42 arrests have taken place. In Malaysia, since 2 March 2009, there have been 20 disruptions by the Malaysian police involving 624 people and they have made 12 arrests.

Senator BARNETT—Just for my purposes, on the 12 arrests: are they actually the coordinators of the people smuggling? What sort of people are we talking about?

Mr Negus—These are people who are facilitating movement through Malaysia. That is right; these are people who are involved in it. But I would not want to leave you with that impression. These would be all range of people involved in that process, from organisers to people who are assisting in that process.

Senator BARNETT—Would it include people who are harbouring as well?

Mr Negus—It would—anyone involved in that process.

Senator BARNETT—All right.

Mr Negus—The last one is Sri Lanka. Since April 2009, there have been 13 disruptions involving 289 people with 40 arrests.

Senator BARNETT—So you can take on notice the convictions and the outcomes with regard to the—

Mr Negus—I do not have that material. Again, we could attempt to get it, but given that it is overseas jurisdictions, that might take some time.

Senator BARNETT—Of course, if you could that on notice. Thank you. That is all on that matter. I have got another one regarding the Balibo Five, but I know Senator Humphries has a question.

Senator HUMPHRIES—I do not think you have answered this question already. For irregular migration arrivals, is it standard practice for the AFP to interview such people, on Christmas Island or subsequently, with respect to their involvement or connection or interaction with people smugglers?

Mr Negus—Yes it is.

Senator HUMPHRIES—In every case or in most cases or every so often? With what frequency?

Mr Quaedvlieg—I can answer that question for you, Senator. On arrival of any contingent of irregular maritime arrivals, the AFP contingent on the island will have a number of informal conversations with the members of that contingent. We will conduct an assessment in terms of what is required to conduct a criminal investigation in relation to the people-smuggling matters and we will then formally interview only those that are related to progressing our criminal investigation.

Mr Negus—We take statements from these people and those statements quite often formulate the basis of a brief of evidence against those people we can prosecute.

Senator HUMPHRIES—So such interviews have, in the past, produced useful information for the AFP's activities to suppress people-smuggling?

Mr Negus—Yes, they have.

Senator HUMPHRIES—Okay. That is great. I just have one other question in relation to Christmas Island. We heard that not very long ago there was a riot on Christmas Island. Were any AFP staff on the island responsible for, or did they involve themselves in assisting in, the suppression of that riot?

Mr Negus—We did not assist in the suppression of the riot but we did investigate the elements of the riot, and last week or the week before we put out a press release saying that we had actually had preferred charges against 11 people involved in the riot.

Senator HUMPHRIES—Okay. Thank you.

CHAIR—Senator Back.

Senator BACK—With regard to people smugglers, Mr Negus, can you inform the committee how many currently are detained, either serving sentences or both serving sentences and on remand, in prisons in Western Australia, the Northern Territory and any other state or territory?

Mr Negus—I am sorry, Senator; we would have to take that on notice. We mentioned just recently the number of arrests, but, where those people are in the process of actually serving sentences or on remand, we would have to take that on notice.

Senator BACK—So you can provide the figures for those arrested, those on remand and those currently serving sentences?

Mr Negus—That is right.

Senator BACK—Thank you.

CHAIR—Senator Barnett.

Senator BARNETT—Thank you. Just going back, as I foreshadowed, to the Balibo Five, last estimates I put a question on notice, No. 83, regarding the 1975 killings of the five Australian journalists in Balibo. You answered that in October last year. I was wondering if you could provide a status report on the investigation. You said it was to be completed by the AFP and you said in your answer on notice:

The AFP now intends to interview witnesses resident in Australia before making overseas inquiries.

Could you update us on that. You also said:

The matter is being conducted as an operational investigative activity.

How long is the investigation expected to take?

Mr Negus—Senator, it is very difficult for me to give you an estimation of time. We certainly are continuing with the investigation. There was quite a deal of material to look at and assess coming out of the coronial inquest conducted in New South Wales by the Deputy State Coroner. We have spoken to a number of people. We have also kept the families up-to-date on what is actually happening throughout the investigation. But to go further than that at this stage would be very difficult and, I think, inappropriate, given it is an operational matter that is currently being investigated.

Senator BARNETT—Have you interviewed witnesses in Australia?

Senator Wong—He has just said, Senator, that it would be difficult to go further, given it is an operational matter, and then you proceeded to ask an operational question.

Senator BARNETT—Well, this is an answer that the AFP has provided in writing—I will read this, and then you can perhaps reflect on it, Commissioner:

The AFP now intends to interview witnesses resident in Australia before making overseas inquiries.

Has that occurred?

Mr Negus—Yes. Perhaps I could just answer it by saying all the Australian inquiries are complete and we are now continuing to evaluate the material that has been brought forward. There have been a number of reviews as well as the coronial inquest, and we are now assessing what other elements need to be undertaken to further the investigation.

Senator BARNETT—All right. Are you investigating whether war crimes were committed?

Mr Negus—Yes, we are. That is part of the referral that we received—yes.

Senator BARNETT—That is part of the investigation?

Mr Negus—Yes.

Senator BARNETT—But you cannot, for operational reasons, provide any indication of the expected duration of the inquiry?

Mr Negus—No. It is difficult at the best of times but particularly with this investigation, which will require a number of overseas inquiries to be undertaken. It is going to be very difficult to give you a time frame in which this will be completed.

Senator BARNETT—Thanks very much for that. Finally, to my question on notice No. 85, regarding Victorian water minister Tim Holding and that investigation, you said:

The Australian Federal Police (AFP) is conducting a twelve month trial and evaluation of the Aerial Surveillance Platform ...

You advised that that trial of the platform 'is funded by the Proceeds of Crime Confiscated Assets Trust Fund'. You also advised:

The current arrangements for leasing of aerial platforms by the AFP are Commercial in Confidence and reflect market rates.

Can you advise us of the status of that trial, and what is the response to the trial?

Mr Negus—The Confiscated Assets Trust Fund money ended in November. The AFP has seen such value in this aerial surveillance platform that we have reprioritised funding and are funding it now from within our normal surveillance resources and that is continuing. We intend to continue to use it across a broad range of different functions within the AFP and it is being funded from within our own resources.

Senator BARNETT—Let us drill down a little bit. How much is in the proceeds of crime Confiscated Assets Trust Fund?

Mr Negus—That is a question we would have to ask the minister.

Senator BARNETT—How much did you draw down for the purposes of the trial?

Mr Negus—From memory, it was about \$1 million for a year. I do not have the specific details. We could provide you that on notice.

Senator BARNETT—Thank you very much. If the minister could, on notice, respond as to what is in the trust fund, that would be appreciated. In regard to that matter, Commissioner, are you planning on expending another \$1 million for the purposes of continuing the aerial surveillance platform out of your own budget or out of that trust fund?

Mr Negus—It will be funded out of our own budget. Its value was seen to be such that it was an important component of our broader surveillance requirements. We have incorporated that in our broader surveillance spending.

Senator BARNETT—Do you have anything further to add, Mr Wood?

Mr Negus—He was saying to me that we are talking to some of our partner agencies about sharing some of the costs for that because we do allow it to be used by other agencies if appropriate.

Mr Wilkins—We are in a position to give you some answers about the trust fund if you would like those.

Ms Kelly—The amount allocated in the Confiscated Assets Trust Fund on 31 July 2008 was \$1,146,996. I do not have the balance of the trust fund as at that date but we can provide that to you at a later date.

Senator BARNETT—So was that after or before the \$1 million was withdrawn to support the AFP pilot program?

Ms Kelly—That is the amount that has been allocated to the AFP for the purposes of the project.

Senator BARNETT—How much is in the trust fund in addition to that?

Ms Kelly—As I said, I cannot tell you what was in the trust fund as at July 2008 when the amount was allocated but I can take it on notice.

Mr Wilkins—It goes up and down. It is a fund which is funded by, as it suggests, the proceeds of the confiscation of assets in various jurisdictions. It is hard to say what is in it at any particular time.

Senator BARNETT—This is a budget estimates committee meeting, Mr Wilkins, and that is exactly what we are here to do, to prosecute and make inquiries with regard to how much money you have got in certain accounts including proceeds of crime Confiscated Assets Trust Funds. That is why we are here.

Senator Wong—Senator, as I understand Mr Wilkins's evidence, the difficulty is it may change from time to time. Perhaps we could assist by providing the balance as at various dates over the last few months. Would that be of assistance?

Senator BARNETT—That would be of great assistance.

Senator Wong—I am not sure if we are able to do that now.

Senator BARNETT—Are you saying that is not currently available?

Ms Kelly—I was assuming, Senator Barnett, you would be interested in the balance of the trust fund as at the date when this project was funded, which was 31 July 2008. That was 18 months ago. I may not be able to find out what the balance was 18 months ago, right now.

Senator BARNETT—What is the balance now?

Ms Kelly—The balance now is in the region of \$20 million. Available for distribution is \$13.4 million at the current time.

Senator BARNETT—You said there is \$20 million available. What is the rest being used for?

Ms Kelly—The fund is used from time to time. Money comes into the fund and money goes out of the fund. It is a continuous process so it is not a set fund that is allocated. It goes in and out all the time. We can certainly provide you with a list of projects that have been funded out of the fund.

Senator BARNETT—Mr Wilkins, let us make it clear. This is of great interest. We would like to know exactly how much goes into this fund, exactly how much goes out of the fund, where it goes to and where it comes from.

Senator BRANDIS—Is the fund invested in some deposit account?

Mr Wilkins—It is a statutory fund, yes.

Senator BRANDIS—Well then there must be statements.

Mr Wilkins—There will be statements. I am sure it is published somewhere. I will find out exactly where.

Senator BARNETT—We will be coming to the department after dinner. Perhaps that would be a good time to provide those answers, if that is at all possible.

Mr Wilkins—Fine.

Senator HUTCHINS—And hopefully there is more in it after last week's legislation was passed.

Mr Wilkins—Absolutely.

Senator BARNETT—On notice, as you were investigating that particular trust fund, could you also investigate any other proceeds of crime types of funds that may be in existence that we could discuss after dinner. I am not sure whether there are any other trust funds—some people call them hollow logs—and we would like to know what others may exist, and you could explain them to us after dinner. If you are happy to take that on notice, that would be helpful.

CHAIR—Are there any more questions?

Mr Negus—We do have a couple of things that people asked earlier in the proceedings which we can come back to you on, just to finish up.

CHAIR—Yes, thanks.

Mr Wood—Senator Ludlam asked a question earlier about the purpose of the McCann Worldgroup media contract amounting to some \$294,000. That particular contract is a whole-of-government contract for media buys. The AFP's activity in relation to media buys in the period covered by the annual report related to the National Missing Persons Week and our significant advertising program around that.

The second question I will provide an answer to is that the commissioner was asked what the maximum penalties were around section 70 and section 142(2). The maximum penalty around section 70 of the Crimes Act is imprisonment for two years, and for 142(2) is imprisonment for five years. I think that Deputy Commissioner Drennan also had an answer to provide.

Mr Drennan—Yes, thank you. In relation to the question from Senator Brandis about the Northern Territory, the current numbers of AFP people deployed there are 59. For the financial year 2008-2009 the number was 66. We are currently in a one-for-one replacement drawdown arrangement with the Northern Territory Police with the numbers for the end of this financial year yet to be determined.

CHAIR—Minister, do you need to say anything?

Senator Wong—I was wondering whether we could have a two-minute break between witnesses.

CHAIR—We will now. Commissioner Negus and your team, thank you very much for assisting us with our estimates process this afternoon. We certainly appreciate your time and your attendance. We are going to go to the Customs and Border Protection Service after a five-minute break.

[5.23 pm]

CHAIR—Before I call the Australian Customs and Border Protection Service—and Mr Wilkins is not here but I am sure he will catch up with this when he gets back—there was a request this morning from the opposition for the content of the Classification Board's list. Senator Barnett asked for a copy of that list and then sought to have it tabled. We have not previously had such a least tabled at estimates, and the committee have therefore resolved to accept the list but we will not be publishing this list on our website. In fact, what we as a committee will do is simply add a note to the website that the list is available if people want it and it can be made available on request by contacting the committee secretariat. So that should resolve that matter for the purposes of today and, hopefully, for all future purposes. Thank you. That is for the *Hansard* and for people to note.

[5.24 pm]

Australian Customs and Border Protection Service

CHAIR—Mr Carmody, hello and welcome, and Mr Pezzullo, thank you very much your attendance. Do you have an opening statement before you begin?

Mr Carmody—No, Senator.

CHAIR—Okay. We are going to start with questions from Senator Hanson-Young.

Senator HANSON-YOUNG—Thank you, Chair. I have only got a few questions but I think they are important. They are in relation to the cargo ship that is holding 240-odd asylum seekers who boarded in Merak and, specifically, what happened before the Indonesian government intercepted that particular boat. Have we got everybody at the table that we need to answer those questions?

Mr Carmody—Yes.

Senator HANSON-YOUNG—Great. First of all, I wanted to know on the record when the Customs and Border Protection Service was first aware that the boat was heading towards Australian waters.

Mr Carmody—I do not have that detail here and I would have to take it on notice and on advice as to the timing of intelligence and whatever. But what information I can provide I will provide on notice.

Senator HANSON-YOUNG—Okay. I guess we know that the boat has now been held in Indonesian waters for 120-odd days or something like that. Is that your understanding?

Mr Carmody—This vessel was of course intercepted by Indonesian authorities and taken to Indonesia, so it has to be answered in that context, but my understanding is that that interception took place on 11 October 2009.

Senator HANSON-YOUNG—But you cannot tell me at this stage when the Australian authorities were first aware of the boat's existence?

Mr Carmody—I cannot give you that, but we were aware and there was some intelligence sharing with the Indonesian authorities.

Senator HANSON-YOUNG—Okay. How close was it to Australian waters?

Mr Carmody—The information I have is that it was off the west coast of Java, so it was significantly closer to Indonesian territory than Australian.

Senator HANSON-YOUNG—At what stage did the Customs and Border Protection Service inform the Prime Minister's office that this boat was heading towards Australian waters?

Mr Carmody—I do not know that we informed the Prime Minister's office at all directly. This would have been a matter of some discussion amongst the authorities involved, but I do not have any detail about informing the Prime Minister.

Senator HANSON-YOUNG—Is it part of the protocol when a boat is sighted or understood to be heading towards Australian waters that the Prime Minister's office is told at some stage?

Mr Carmody—It is certainly part of the protocol that all government agencies involved in this issue are informed of such events. How far it goes beyond that, I cannot help you with.

Senator HANSON-YOUNG—It has been very widely publicised that it was the Prime Minister who made the call in relation to having the boat intercepted by the Indonesian government prior to its arrival in Australian waters. Are you able to tell us when that decision happened?

Senator Wong—Senator, if your question is in relation to either the Prime Minister or the Prime Minister's department, it should be addressed to the Department of Prime Minister and Cabinet—in a different estimates committee—and/or the Minister representing the Prime Minister.

Senator HANSON-YOUNG—I understand that, Minister, but the people we have in front of us today are the people who are responsible for sighting boats and verifying whether boats are indeed—

Senator Wong—Your question, with respect, Senator, did not go to that issue. Your question went to another issue, and I am simply indicating to you that it is probably not something Mr Carmody can assist you with.

Senator HANSON-YOUNG—What I am hoping Mr Carmody can assist us with is: who did Customs and Border Protection inform that this boat was heading towards Australian waters?

Mr Carmody—Sorry, Senator, it is normal practice, as I have said, for agencies and at times the minister's office to be informed depending on the particular circumstances of the

vessel. I have no detail here about the specifics of the communication of this and I would not be party to or understand any discussions with the Prime Minister on this.

Senator HANSON-YOUNG—Is it normal practice to see boats or any other vessels heading towards Australian waters and to share intelligence with the Indonesian government to a point where they intercept the vessel before it reaches Australian waters?

Mr Carmody—To the extent that we have intelligence that would assist in a disruption of a people-smuggling venture or the location of one, Commissioner Negus spoke about the number of disruptions in Indonesia and Malaysia so it is self-evident that we do provide intelligence where we can on information relating to people-smuggling ventures for action by Indonesian, Malaysian or Sri Lankan authorities.

Senator HANSON-YOUNG—When a ship or a boat, an unauthorised vessel, is sighted and it has not reached Australian waters yet, what is the protocol? What happens from there?

Mr Carmody—There are a number of stages in this, Senator. If we have information about a potential organisation of a venture or potential passage of people that may be intending to attempt to make a voyage to Australia then where we can—and I am including in this AFP and other agencies, because we work across government on this—we share that information with the authorities in, for example, Indonesia. It may be the police force in Indonesia or the navy in Indonesia or other organisations. So it is reasonably standard practice where we have information that may assist in the disruption of a venture for us—the collective us—to make it available to authorities in those countries.

Senator HANSON-YOUNG—How long did we know that this boat was heading towards Australian waters before it was intercepted by the Indonesian government?

Mr Carmody—I have already indicated to you that I do not have that information here. When we can we will provide it.

Senator HANSON-YOUNG—Is that something that you are able to find out?

Mr Carmody—If we can, we will provide it on notice for you, Senator.

Senator HANSON-YOUNG—Do you think that it was a matter of days or hours—

Mr Carmody—I cannot speculate; I do not know.

Senator HANSON-YOUNG—What type of information would you have had about the boat before it was intercepted?

Mr Carmody—I do not want to go into things because, first of all, I do not have the detail here and, secondly, in answering your question on notice I will have put a lens across this as to revealing operational or intelligence information.

Senator HANSON-YOUNG—I appreciate that. Would it be normal to have information about the types of people on board the boat?

Mr Carmody—Again, I cannot go into specific intelligence. That varies widely and wildly amongst the sort of intelligence that we get.

Senator HANSON-YOUNG—So where did it not become Border Protection and Customs responsibility for this boat? Where was that point? You are not able to give me the day on

which you sighted this boat but surely you are able to tell me at what point you believed, or you were given direction, that it was not your responsibility anymore.

Mr Carmody—It is a bit hard to talk about responsibility. Ultimately Border Protection Command can only intercept vessels on the contiguous zone around Australia, which is about 20 nautical miles around Australian territory. So to that extent it was a long way away from being there. But we do operate with the Australian Federal Police, intelligence agencies and so on, as I mentioned before, to support disruption of ventures that are potentially seeking to come to Australia. In this case, on 11 October the Indonesian authorities intercepted the vessel and took it into Indonesia. It was their interception and their responsibility.

Senator HANSON-YOUNG—Yet we had known that it was heading towards Australian waters before then, and the reports are that it was the Prime Minister who in fact asked for the interception to occur. Was that on the advice of Customs and Border Protection?

Mr Carmody—I have already explained, Senator, that I do not have the information and cannot go into those sorts of operational issues, and I do not have any information about discussions with the Prime Minister.

Senator HANSON-YOUNG—Is that the type of advice that you would be asked to give?

Senator Wong—How is Mr Carmody supposed to answer that?

Senator HANSON-YOUNG—It is about protocol and process. What I am trying to ascertain is whether this was—

Senator Wong—You did not ask about protocol. The question was: is that the type of advice you would be asked to give? With respect, if your question of Mr Carmody is about protocols, you can see whether he can assist you with those, but that was not the question you asked.

Mr Carmody—Senator, I have already attempted to answer your question in the best way I can, and that is to explain that where we have intelligence that we can release to authorities—in Indonesia, for example, or elsewhere—then that is normal practice for us to release that sort of intelligence, the objective being to see whether the venture can be disrupted, whether they are on land and sometimes they are on water.

Senator HANSON-YOUNG—So, as far as you are aware, it was not advice given by Customs and Border Protection that allowed for this boat to be intercepted by the Indonesians?

Mr Carmody—I do not have particular detail of that. These are typically—

Senator HANSON-YOUNG—You guys are in charge of border protection.

Mr Carmody—That is right, and typically these issues, depending on the particular vessel and the particular incident, are handled across government agencies, sometimes with the involvement of the National Security Adviser, and decisions are taken in that context.

Senator HANSON-YOUNG—Who within the border protection and customs authority was responsible at the time for making these decisions in this particular case?

Mr Carmody—I am not sure about this incident but, as I have already indicated, we typically provide information where we believe it can be actioned and is releasable to

authorities—in Indonesia, in this example. That is quite a standard operating procedure and it would take nothing exceptional for that sort of information to be released to the Indonesian authorities.

Senator HANSON-YOUNG—So were you surprised, then, at reports that it was the Prime Minister who asked for this interception, if it is just normal course?

Mr Carmody—I do not know my emotions at the time, Senator.

Senator HANSON-YOUNG—From what you are saying, the sharing of intelligence, the partnership, if you will, the work that your agency does working with other authorities, including the Indonesians, seems to work quite well. So why would the Prime Minister need to get involved?

Senator Wong—Senator, you cannot put an assertion as fact in a question to a witness who has already said he cannot comment on it. You have a view. The witness has not commented on that. You have just put in a question to him an assertion that is your view as fact. That is really not fair to him.

Senator HANSON-YOUNG—Mr Carmody, do you believe that the partnerships of the Australian agencies, border protection and customs, and the authorities in Indonesia work well?

Mr Carmody—It is evident from some of the intelligence already given by Commissioner Negus. There have been a range of interceptions over the period for which he gave some figures. We work as best we can with the overseas agencies, particularly, I might say, through the Australian Federal Police and the INP.

Senator HANSON-YOUNG—So it is not normal for the Prime Minister's office to have to be directly involved?

Mr Carmody—As I have said, I cannot comment on involvement of the Prime Minister. I am not able to comment. If there are questions of any involvement, that would be a matter for the Prime Minister's department.

Senator HANSON-YOUNG—In terms of this particular case, have there been any other interceptions in the last 12 months where the interception by Indonesia was not able to be worked out between your department and the Indonesian authorities?

Mr Carmody—As I said, if your question goes the actions of the Prime Minister, I am not aware of the actions of the Prime Minister in a whole range of areas, including in this area. If there are any questions about the involvement of the Prime Minister, I think they are appropriately directed to the Department of the Prime Minister and Cabinet.

Senator HANSON-YOUNG—I appreciate that. I also appreciate the fact that you are responsible for border protection and customs. It is your job to sight the boats; it is your job to advise where they are going and how they will be intercepted. At what point was it necessary for the border protection agency to not be the body that makes the decision as to whether or not this boat is intercepted and instead a decision of the Prime Minister?

Mr Carmody—The question of ultimate interception, as I have said, finally by Border Protection Command can only occur within the contiguous zone of Australia. That is about 20

nautical miles from shore, so we are a long way from that territory in this area. When we are dealing with issues of possible disruptions overseas, this is a whole-of-government activity. At various times a range of government agencies are involved, and there is a Border Protection Task Force, for example, chaired by the National Security Adviser. So, depending on the circumstances, there will be a range of contributions to the decision as to how a particular case might ultimately be handled.

Senator HANSON-YOUNG—In that type of discussion, who would normally be involved?

Senator Wong—Which discussion, Senator?

Senator HANSON-YOUNG—In relation to deciding whether or not a vessel is appropriate to enter Australian waters.

Mr Carmody—The question here is about disruption activity. In that activity there are contributions from a whole range of agencies, depending on the particular case, including from the National Security Adviser through to Australian Federal Police, intelligence agencies and the Department of Foreign Affairs and Trade in particular circumstances. Certainly the Department of Immigration and Citizenship would be involved. This is a whole-of-government activity, as I said. The interception issue is really at the end of the chain if a vessel reaches the contiguous zone.

Senator HANSON-YOUNG—In that list you did not mention Prime Minister and Cabinet.

Mr Carmody—I cannot tell you what particular government agencies are involved or at what point they might or might not discuss it with their respective ministers.

Senator HANSON-YOUNG—Did you have information about the people aboard this boat? I have already asked you generally and you have said it is hard to tell because each case is different. In relation to this boat, before 11 October were you aware of who was on board this boat?

Mr Carmody—Not in detail, and I do not want to go into operational and intelligence matters.

Senator HANSON-YOUNG—Were you aware that there were children on board the boat?

Mr Carmody—I am not aware at this stage of being aware of that. I do need to point out that these go to intelligence and operational issues that I am not comfortable discussing, Senator.

Senator HANSON-YOUNG—Is that type of profile something that would normally be available before a call on whether the boat reaches Australian waters or is disrupted, as you put it?

Mr Carmody—I think that would be fairly rare. I say that on the basis that, when a vessel arrives, one of the first things that happens is there a call of the roll in which we get information about the possible nationality and the sort of people, including their ages, in

broad senses. Often that is the first time we have that level of detail—in fact more often than not, I would suggest, if not always.

Senator HANSON-YOUNG—On 11 October, when this boat was intercepted by the Indonesians, were there any Australian officials present?

Mr Carmody—On the water? Again, that goes to operational issues. But, as I said, this vessel was intercepted by Indonesian authorities and taken to Indonesia. It was essentially, from an operational point of view, an Indonesian operation.

Senator HANSON-YOUNG—Do you agree with the statement that it was intercepted by the Indonesians at the request of Australia? Is that a correct statement?

Mr Carmody—The only point I would make is that we provided intelligence that assisted in the interception.

Senator HANSON-YOUNG—So you do not agree with the description that it was at the request of Australia?

Senator Wong—Senator, I think he has answered the question.

Senator HANSON-YOUNG—No, I think it is quite different actually.

Mr Carmody—You are asking for my words, for the way that I would express it, and that is that we provided intelligence to Indonesian authorities. That intelligence is typically provided to assist in the disruption of people-smuggling ventures, and that is what occurred on this occasion.

Senator HANSON-YOUNG—On the understanding that they would disrupt the vessel?

Mr Carmody—We provide them with intelligence for the purpose of assisting the Indonesian authorities, in this case, to disrupt people-smuggling ventures. That is normal practice.

Senator HANSON-YOUNG—I think that is it. Thank you.

CHAIR—All right. Thank you, Senator Hanson-Young.

Senator HUMPHRIES—Chair, may I ask a question?

CHAIR—You can, but I was going to go to Senator Xenophon.

Senator HUMPHRIES—My question is on the same subject.

CHAIR—All right.

Senator HUMPHRIES—Just to clarify, Mr Carmody: did your agency advise Minister O'Connor—who is your minister, I understand—of the presence of that vessel in Indonesian waters prior to its being intercepted by the Indonesians?

Mr Carmody—I am not sure of the particulars, and I would have to take that on notice—and, if I can provide you with that answer, I will. Again, I do not want to go into it, but we produce a range of intelligence products that are available to agencies and, at times, ministers. But, as to the specifics, I will take it on notice as to whether I can provide them.

Senator HUMPHRIES—Thank you.

CHAIR—Senator Xenophon, we had arranged to go to you next.

Senator XENOPHON—Thank you, Chair. Mr Carmody, I think I have already given notice to you—and in fact I think the Senate gave notice to your department—that there would be questions on decisions made by the Trade Measures Branch of the Australian customs service in relation to toilet paper exported from the People’s Republic of China and the Republic of Indonesia—in particular, report No. 138 of 16 December 2008 and also the more recent report in December 2009, report No. 158, which was the subject of a decision made by the Attorney-General on 12 January this year. By way of background—so that we can be clear, Mr Carmody, and there is no misunderstanding about the parameters of this issue—as I understand it, part XVB of the Customs Act and the Customs Tariff (Anti-Dumping Act) 1975 provide for anti-dumping measures to be imposed where dumping has caused or threatens to cause ‘material injury to an Australian industry producing like goods’. Report No. 138 made certain findings that, as a result of imported toilet paper from Indonesia and China, there was material injury due to:

- loss of market share;
- price depression;
- price suppression ...

It also found that, in relation to Indonesia, the price was up to 45 per cent lower in terms of its own domestic market—as I understand it, a classic case of dumping goods on our market. Is that your understanding of report No. 138 of December 2008?

Mr Carmody—Senator, could I ask Mr Mann to assist with this, please.

Mr Mann—The original report did find that there was material injury. However, as you know, that decision was subject to a review.

Senator XENOPHON—Mr Mann, could we just pause there. That decision was subject to a review; was there a ministerial directive in terms of that review being carried out? How does the process work? As I understand it, when a decision such as this is made, it normally stays in force for a number of years in terms of dumping duties, unless there has been a material change.

Mr Mann—A number of interested parties sought a review by the Trade Measures Review Officer. He formed the view that it should be reinvestigated, and the decision was taken by the Attorney-General to ask for the reinvestigation.

Senator XENOPHON—So, absent a decision by the Attorney-General to order or request a redetermination, the dumping duties would generally be applied for five years; is that normally the case?

Mr Mann—Absent interested parties taking advantage of the review process and the review officer finding that there are reasons for a review, it does require a decision by the relevant minister for a reinvestigation to occur.

Senator XENOPHON—Sure. The Trade Measures Branch report to the minister, report No. 138 of December 2009, found:

- the industry producing like goods has suffered injury in the form of price undercutting in the retail sector ...

But the new findings also indicated:

- the dumping of toilet paper from China and Indonesia has not caused material injury experienced by the Australian industry; and
- material injury to the Australian industry by dumped imports from China and Indonesia is not foreseeable and imminent.

So can you explain, particularly to the 1,500 people whose jobs are at stake in Millicent, in the south-east of my home state—and, as I understand it, from some economic analysis by the industry of jobs in Victoria and, I think, in other states, that about 3,700 jobs could potentially be affected by this—on what basis is material injury determined; and does material injury include the concept of potential job losses?

Mr Mann—For there to be material injury there is an issue of causation between the dumped product from countries—in this case, China and Indonesia—and any injury. In this case, and this is what the review really took into account, the original investigation did not take account of the fact that there is a substantial domestic producer producing product at prices equivalent to the imported product that has a significant share of the market—

Senator XENOPHON—Is this ABC?

Mr Mann—That is correct.

Senator XENOPHON—Yes. But they did not make a submission in terms of the original review, did they?

Mr Mann—No, but, as you would know, the reinvestigation is limited to the material that was available to the original investigating team, and there was information provided to Customs as part of that original investigation about the price at which ABC was selling its product in the domestic market that was not taken into account in informing the original recommendations. On referral from the Attorney, based on the TMRO's recommendation, we reviewed that and found that there was reliable information that should be taken into account, and that certainly changed our overall assessment of the nature of the injury caused by a fairly small proportion of product coming from China and Indonesia.

Senator XENOPHON—But did Customs take into account that ABC Tissue Products actually import what I think they call parent rolls, or large rolls of paper, that they make the toilet paper from here in Australia, including imports from Indonesia, as I understand it?

Mr Mann—I do not believe they are the only domestic producer that imports inputs of that kind. But, in any case, the trade remedy provisions are not looking at the price of inputs; they are looking at, basically, the sale price of those products.

Senator XENOPHON—What I do not understand is this. Kimberly-Clark Australia told me that they believe there are three key reasons to reinvestigate, based on the minister's directive. For instance, firstly, they believe the Customs decision, on the reinvestigation, to use rolls rather than weight to determine injury is incorrect, that it fails to recognise that some rolls contain more sheets than others in the amount of materials, the paper, in the roll. In other words, there was not an appropriate benchmark in terms of the data that was used. Customs in the reinvestigation recognised this and suggested a standard unit of 10,000 sheets would be optimal, at page 34 of the report, but then concluded, at page 66, that 'the market is best

represented by ... rolls'. Isn't that a significant error and doesn't that distort all subsequent analysis on the issue of material injury?

Mr Mann—I would have to say that in the reinvestigation, which looked at the material that was provided to the original investigation team, the most significant change to their findings was the fact that it took into account both the price and market share of a significant domestic producer. I can get an officer to explain the point that you raised about to what degree that was taken into account, if you wish.

Senator XENOPHON—I think it is important. It is one of the issues that has been raised both by industry and by the unions—that it was not a fair comparison, in terms of that difference between page 34 and page 66 in relation to the weight versus rolls, in order to determine that decision.

Mr Mann—Before I ask Mr Johannes to comment on the specifics, if you could indulge me for a moment, Senator, I would just like to point out that there is scope to take into account other economic factors, such as employment, in an investigation. However, in this case neither the Australian industry, the applicants, nor any interested parties actually put any evidence of that kind into the original investigation. We have made findings, and the minister has made decisions on the reinvestigation. That is subject to, I think, another day, pending any appeal on errors of law. I just wanted to make the point that it is still open to Australian industry to bring fresh applications if they believe there is current or ongoing material injury, but clearly that would have a prospective basis. I just wanted to put that general point to you before asking Mr Johannes talked to some of the detail in the particular case.

Senator XENOPHON—But, in terms of any prospective basis, the industry and the unions say that it is axiomatic that if you are actually going to be dumping toilet paper in the Australian market, particular from Indonesia, at a margin of 33 to 45 per cent below the cost in the Indonesian domestic market, then surely that would have an impact on employment in Australia.

Mr Mann—I can only repeat that in this case, however, what was not taken into account was the fact that there was a significant Australian producer able to sell product at similar prices into this market that had a larger market share than those exporter countries, and that made a significant difference in the overall conclusions of the reinvestigation.

Senator XENOPHON—And that was ABC paper, but they were not part of the initial investigation or the subsequent one.

Mr Mann—No, but at the time they were an Australian producer of like-for-like goods.

Senator XENOPHON—Even though they were getting a significant amount of their products from overseas in the first place?

Mr Mann—And, as I say, they would not be the only producer that sourced at least part of their inputs from those sources.

Senator XENOPHON—Before your colleague answers, could you confirm whether the majority of the interested parties that made submissions in both reviews of this imported paper were subsidiaries of the one Indonesian paper company, Sinar Mas?

Mr Mann—We did not take submissions in terms of the reinvestigation because it was limited to the original information. I would have to take on notice what connections, if we know them, the original submissions had to the party that you just identified.

Senator XENOPHON—Sure, and in terms of connections with ABC as well. I am not sure what the ownership structure is, but can you take on notice whether there is any connection?

Mr Mann—I will take that on notice and, if we have an information of that kind that we are able to share, provide it to you.

Senator XENOPHON—Yes. Did you have anything you wanted to respond to in terms of that first matter—the weight versus rolls of toilet paper?

Mr Mann—Yes, I will ask Mr Johannes to answer that.

Senator XENOPHON—Sure.

Mr Johannes—I am National Manager, Trade Measures, which is responsible for the administration of Australia's anti-dumping system. In relation to the question as to why the analysis was, in the reinvestigation, undertaken on the basis of rolls rather than weight, I would point out that the product is sold retail by price per roll, not by weight.

Senator XENOPHON—I understand that. I think we all understand that! But—

Mr Johannes—So when we were doing the injury analysis we broke up the market into the away-from-home sector as well as the retail sector, and within the retail sector there was the economy, the mid-range and the premium product. The analysis was done at the retail cost level, and the impact of the imported product was examined in each of those sectors at that level. Now, that price is the price per roll, not a price per weight.

Senator XENOPHON—Correct me if I am wrong but, at page 34 of the reinvestigation findings, didn't Customs suggest that 'a standard unit of 10,000 sheets' would be optimal, but at page 66 it actually said:

... the market unit of volume is best represented by standard rolls.

Mr Johannes—That is correct. To determine the comparative prices of the product in the premium sector, irrespective of the manufacturing methodologies used, the price per roll was considered to be the best basis for comparison

Senator XENOPHON—But in terms of the 2008 findings—

Mr Johannes—The original investigation.

Senator XENOPHON—the original investigation—there was a different measure used, wasn't there, a different basis?

Mr Johannes—That is correct. The reinvestigation did not agree with that original analysis.

Senator XENOPHON—So it is not a like-for-like comparison, is it, between the two investigations—between the investigation and the reinvestigation?

Mr Johannes—A reinvestigation can reconsider all issues on the basis of the material that was before the original decision maker and any submissions which were made to the Trade Measures Review Officer.

Senator XENOPHON—But do you concede that it was not a like-for-like comparison between the two investigations?

Mr Mann—Senator, in undertaking the reinvestigation, we examined the findings of the Trade Measures Review Officer and looked again at what we had made of the original submissions and evidence that we had gathered. So, in the sense of like for like, it was like for like in that we reviewed exactly the same material that was available to the original investigation. We took on board criticisms of that decision that had been made, in particular in the TMRO's report to the minister.

Senator XENOPHON—So you could introduce changes to the base of the assessment but you could not introduce new evidence, given the constraints that you have in terms of determining this?

Mr Mann—That is correct.

Senator XENOPHON—You can understand why some in the industry and in the unions would be concerned about that.

Mr Mann—Yes, but this was a case where our original decisions, which are subject to review for good reason, went through that appropriate review process. Now, the design of the system is to ensure that matters come to some finality. There is a limit on bringing fresh information into the review stage of a reinvestigation. But there is nothing stopping an industry or interested parties bringing a fresh application on a prospective basis.

Senator BRANDIS—If Senator Xenophon does not mind me interrupting, could you just clarify: whose decision was it to initiate a reinvestigation?

Mr Johannes—The decision to direct Customs to reinvestigate was a decision by the Attorney-General.

Senator BRANDIS—And on what date was that decision made?

Mr Mann—The decision was published on 12 January 2010.

Senator BRANDIS—When the Attorney-General made that decision, the effect was to deprive the beneficiaries of the earlier decision, that is, the decision recorded in report No. 138 of the benefits and the protections of that decision, was not it?

Mr Carmody—Before I specifically answer, it is important to recognise in this chain of events that there was a review by the Trade Measures Review Office which led to a submission to the Attorney-General. In terms of fairness of the system, the Customs and Border Protection Service undertakes the initial investigation to review that. There is fairness in review for the Trade Measures Review Officer to review that. If there was no review we would probably be sitting here having another discussion—if there were no review capability. As Mr Mann has also pointed out, there is an ability following a further decision on review for the matter to be taken to the Federal Court of Australia where questions of the application of the law can be determined.

Senator BRANDIS—Thank you for that, but can I focus on my questions, please? The effect of the Attorney-General's decision to initiate a review was to deprive the beneficiaries of the decision recorded in report No. 138 of the benefits and protections of that decision, was not it?

Mr Johannes—The direction to re-investigate did not deprive the beneficiaries of the effect of that earlier decision.

Senator BRANDIS—It did in this case. They lost the benefit of decision 138. That is what happened.

Mr Carmody—Yes, but it led to a review, Senator, which is the appropriate step to be taken at that point.

Senator BRANDIS—If you are the beneficiary of the determination and then a politician intervenes—

Mr Carmody—I have already explained.

Senator Wong—The assertion 'a politician intervenes' is what we are taking issue with.

Senator BRANDIS—We have just heard that the Attorney-General made the decision to initiate the re-investigation.

Senator Wong—I think Mr Carmody indicated that there was a trade measures review. I do not know if Mr Campbell is able to assist us with explaining the statutory framework. You made an assertion, Senator.

Senator BRANDIS—Let me ask my own questions.

Senator Wong—You made an assertion, Senator. I think Mr Campbell could assist the committee in clarifying the process by which this occurred.

Senator BRANDIS—That is all very well, Minister, but we can read the statute for ourselves. Neither Senator Xenophon nor I are asking Mr Campbell any questions.

CHAIR—Minister Wong, you are suggesting that Mr Campbell can provide this advice?

Senator Wong—Mr Campbell might assist the committee in indicating how this process occurred in order for senators to have the facts before them when they are asking Mr Carmody questions.

Senator BRANDIS—Let me illicit the facts I am interested in myself.

CHAIR—Senator Brandis, you do not have my call.

Senator BRANDIS—Senator Xenophon and I want to pursue a particular line of inquiry here.

Senator Wong—Do you always talk across the chair, Senator?

CHAIR—Senator Brandis, you do not have my call. Mr Campbell, I am calling you to perhaps provide the information the minister has requested, thank you.

Senator BRANDIS—On a point of order, Madam Chair. You cannot as a neutral chair takeover and divert a line of inquiry that other senators of the committee are pursuing merely because the minister at the table asks you.

Senator Wong—No, takes issue with you asserting something incorrect, Senator Brandis.

CHAIR—Senator Brandis, there is no point of order. I am chairing this committee. The minister has suggested—

Senator BRANDIS—Yes but you are not chairing it in a neutral manner.

CHAIR—Senator Brandis, I am speaking.

Senator BRANDIS—You are not chairing it in a neutral manner.

Senator Wong—You are just being rude, Senator.

CHAIR—I am speaking and I do not want to be interrupted while I give you my view about your point of order, which is not a point of order. The minister has suggested that Mr Campbell be called to provide clarification to this committee. Mr Campbell, you have my call and I ask you to respond on behalf of the minister, please.

Mr Campbell—The Trade Measures Review Officer is a statutory appointment under the Customs Act and his or her function is to review investigations and recommendations made by Customs in the area of dumping and countervailing duties. The legislation in this area is based on obligations under the WTO conventions dealing with those matters.

What happened is that Customs makes a recommendation to the minister imposing a duty. Then a person has a right to seek a review of that by the Trade Measures Review Officer. The Trade Measures Review Officer reviews the matter and makes a recommendation to the Attorney-General as to whether the matter should be reinvestigated. The Trade Measures Review Officer in this case did make a recommendation and on 1 July a notice was published in the *Gazette* with the decision of the Attorney-General following the recommendation that was made by the Trade Measures Review Officer ordering a reinvestigation of it, and that led to the second report that we have just discussed. But it is a statutory duty for the Trade Measures Review Officer to report to the Attorney-General and make a recommendation to the Attorney-General on it.

CHAIR—Thank you for clarifying that for the committee's sake, Minister.

Senator Wong—Thank you, Chair. Given that evidence I would invite Senator Brandis to consider withdrawing the assertion he made, which is patently incorrect.

Senator BRANDIS—Not for a moment. In fact I want to pursue the question I was asking when I was interrupted by you, Minister. At the point at which the Attorney-General intervened in the process—

Senator Wong—Come on, you are doing it again!

Senator BRANDIS—what material did he have before him?

Senator Wong—I just made the point that that is a patently incorrect assertion given the evidence that has just been provided.

Senator BRANDIS—Given the answer that came from the other witness, in fact it is nothing more than a description of a step in a sequence of events. At the point at which the Attorney-General intervened in the process, what material did he have before him?

Mr Mann—There are two points of intervention. One is deciding whether or not to request or order a reinvestigation—

Senator BRANDIS—I think that is what we are talking about: the point at which the reinvestigation was ordered by Attorney-General. What material did he have before him?

Mr Johannes—He would have had a copy of a brief and a report from the Trade Measures Review Officer.

Senator BRANDIS—At that stage when the reinvestigation was ordered, what steps would the Attorney-General have been required to undertake to satisfy himself that the interests of parties adversely affected by his decision had been sufficiently taken into account?

Mr Mann—I am not sure—

Mr Wilkins—There are judicial review processes available to parties who think that the review officer has gone wrong on this. It is not really a matter for the Attorney-General.

Senator BRANDIS—That is the very point. I think we all understand, or most of us do, that this is a somewhat unusual procedure because it involves a ministerial direction. It is not the usual process by which decisions of this kind are reviewed, hence the attraction of Senator Xenophon's and my interest. What I want to know—and it may well be that there is an entirely innocent answer to this, notwithstanding the defensiveness of the minister—is: at the point at which the Attorney-General made a decision to require a reinvestigation what material would he have had before him by which he could have been satisfied that the interests of those adversely affected by that decision had been taken into account?

Mr Carmody—I am sure my colleagues will correct me if I am wrong, but I think that to an extent they have answered that. It is not a matter that additional evidence or information can be put forward. The nature of the review process is that it is a review of the information available at the time of the original decision-making and the Trade Measures Review Officer was there to also look at that information and, under the scheme, to review the decision of the Customs and Border Protection officer.

Senator BRANDIS—Indeed, Mr Carmody, but as you and I both know—

Senator Wong—Senator, I think that Mr Campbell was seeking the call.

Senator BRANDIS—I am not asking a question of Mr Campbell.

Senator Wong—But he is seeking to answer—

Senator BRANDIS—Mr Campbell is not a member of the committee—he is a witness.

Senator Wong—It is normal for witnesses, if they are officers at table who wish to add to an answer, to be given the courtesy of doing that, Senator. That is normal practice in these proceedings.

CHAIR—Mr Campbell, you have my call now if you need to assist Mr Carmody in that response.

Mr Campbell—Under the statute, a person is entitled to seek a review from the Trade Measures Review Officer. The Trade Measures Review Officer reviews the material before the original investigation. The Trade Measures Review Officer makes a report—which he did.

I believe—and I can confirm this—that he does a submission accompanying the report to the Attorney-General and makes a recommendation to the Attorney-General.

Senator BRANDIS—This is a review by the Trade Measures Review Officer—to use the vernacular expression—on the papers, the material.

Mr Campbell—On the material that was considered by Customs. The Attorney-General then receives the report and makes his decision. His decision is published in the government *Gazette* and that decision of the Attorney-General in this case was published on 1 July 2009.

Senator BRANDIS—You have told us that. At the point at which the decision contained in report No. 138 is published, a party or parties aggrieved by that decision approach the Trade Measures Review Officer and he conducts a review of the material and makes a report to the Attorney-General who, in consequence of that, announces a decision. Is that right?

Mr Campbell—Yes.

Senator BRANDIS—Now at what stage in that process are the interests of the party adversely affected by the vacation or the revisiting of the initial decision heard?

Mr Campbell—I believe that the Trade Measures Review Officer is required to consider the material that was before Customs in the first place.

Senator BRANDIS—So the party aggrieved by the initial decision moves before or applies to the Trade Measures Review Officer. He, in effect, reads the file, makes his mind up and makes a recommendation to the Attorney-General, who presumably reads the brief and makes up his mind. At no stage in this process—as you have described it—is the party adversely affected by the vacation of the original decision entitled to be heard to argue why the decision ought not to be vacated.

Mr Campbell—Senator, I am not certain what happened in this particular case.

Senator BRANDIS—Well, that is the way you describe it, Mr Campbell.

Mr Campbell—I will take it on notice but I have known that Mr Zanker, as Trade Measures Review Officer, has received representations from various parties in the course of conducting an investigation.

Senator BRANDIS—But I daresay, Mr Campbell, you are not in a position to tell us at what stage in this procedural sequence those representations were received, are you?

Mr Campbell—I am not at this present time but I can take it on notice.

Senator BRANDIS—Sure, by all means.

Mr Campbell—I will leave it at that.

Senator BRANDIS—Fine. I go back to Mr Mann. So the Attorney-General makes this decision to vacate the decision recorded in report No. 138 on the basis of Mr Zanker's document. From the time the person who wanted to challenge the decision applied to Mr Zanker to the time at which the Attorney-General—by ordering a re-assessment or whatever the technical word is—vacated the decision, thereby depriving those who were beneficiaries of it of the benefit of it, they had not been heard, had they, except if we regard Mr Zanker reviewing the material as being a hearing. Is that right?

Mr Mann—My understanding is that the material on which any decision would be made was solely the review by the TMRO of the original information provided—

Senator BRANDIS—So whoever the commercial party was who wanted to uphold—

CHAIR—Senator, let him finish.

Senator Wong—Senator Brandis has an unfortunate habit of talking over witnesses before they finish their answer and I would invite him to show a little courtesy to the witnesses at the table.

CHAIR—Senator Brandis, you said you thought that he had finished. Have you finished your answer or is there more to add to that?

Mr Mann—I can only add that I am not aware of whether there were representations other than the material provided. Certainly, the process that we have just outlined would be the basis on which those decisions would have been taken.

Senator BRANDIS—The commercial party—and I do not have Senator Xenophon's knowledge of the industry—whose interests were adversely affected by the vacation of this decision were not at any stage invited, were they, to argue or put before either Mr Zanker or the Attorney-General the case why the decision should not be vacated?

Mr Mann—No. But I think in this case at least one of the aggrieved parties had put information to the original investigation that was not taken into account, which was one of the findings in the review that was a flaw in the TMRO's view of the original decision. Basically, there was a report saying that the original decision was not robust and that it failed to take into account all of the information available to it. On that basis, without prejudging what the outcome might be, a reinvestigation was ordered to make sure that that was remedied and other points of the TMRO's review were taken into account in the reinvestigation.

Senator BRANDIS—I understand all of that, Mr Mann, but surely you cannot fail to see that, where you have parties with adverse commercial interests and there is one party that has an interest in upholding decision No. 138 and an adverse commercial party that has an interest in seeing it overturned—as in fact in the end happened here after the reinvestigation—both of those parties have rights. Yet, as the process has been described here tonight by Mr Campbell and by you, the process by which decision No. 138 was called into question was not a process that admitted of the person who was the beneficiary of that decision challenging a decision to review it, a decision to set it aside. Apart from natural justice considerations that any reasonably minded person could see, what alerts me to the peculiarity of this case is that it is unusual that the ultimate decision maker here is a minister. It is particularly of concern to me that the minister makes an ultimate decision prejudicial to the commercial interests of parties without satisfying himself that the party whose interest is adversely affected by his decision has been given a right to be heard.

Senator Wong—Senator, I think Mr Campbell has some information about third parties. I would make the point that my understanding—and I could stand to be corrected—is that this legislation has been in place for in excess of a decade.

Mr Campbell—Thank you. In Mr Zanker's report he referred to receiving eight applications for review—

Senator Wong—Chair, I wonder if we should pause and await Senator Brandis being able to hear this evidence. It might be of assistance to ensure subsequent questions are in fact accurate.

CHAIR—I think we will proceed. I am sure Senator Brandis will hear this no matter what he is doing. Hopefully he will. Mr Campbell?

Mr Campbell—He refers to receiving eight applications for a review, all of which he accepted, and a notice advising that he intended to conduct a review was published in the *Australian Financial Review* on 20 March 2009. Section 269ZZJ of the act provides:

Interested parties in relation to a reviewable decision may, within 30 days after the publication of the notice ... make submissions to the Review Officer in accordance with that notice.

Senator XENOPHON—Chair, if I may?

CHAIR—Senator Brandis, have you finished your questions?

Senator BRANDIS—No, but I am going to yield to Senator Xenophon. I might want to pursue some other lines of inquiry a little later.

CHAIR—Okay. Senator Xenophon, we will go back to you then.

Senator XENOPHON—Mr Mann, if we could just recap for a minute. As I understand it, industry has advised me that it could not make any submissions once the reinvestigation of the findings into the report to the minister No. 138 commenced. That is the case, isn't it?

Mr Mann—That is a design of the review process.

Senator XENOPHON—Sure. That is just to make that clear. They could not make any submissions. I think that has been an area of frustration for both—

Mr Mann—If they did make submissions, they would not have been made available to the reviewing officer.

Senator XENOPHON—In other words, any submissions could not be considered as part of that. On 12 January this year, the findings of the review were released. It revoked the dumping duties on the grounds that, although the dumping had occurred, it was felt that the Australian industry had not suffered 'material injury'. I think that is a key phrase. But the review did not consider any other relevant impacts in relation to the state of the industry or employment. Is that the case?

Mr Mann—No. The information that pertained to other economic factors that should be taken into account, if there were any in the original investigation, would have been reviewed to see whether the correct conclusions had been drawn from the material that was originally provided.

Senator XENOPHON—Sure. But there is a concern that it was simply too narrow. But you did make mention that there were some conclusions drawn in terms of ABC paper products—and I say that so that we are not confused with the broadcaster.

Mr Mann—From material that was available to the original review officer but was not taken into account in the original recommendations.

Senator XENOPHON—Are you saying it was or was not taken into account?

Mr Mann—The material was not taken into account in forming the recommendations that led to the application of dumping measures. And, on reinvestigation, it was taken into account, which led to a different conclusion on injury.

Senator XENOPHON—So, whilst industry could not make submissions for the reinvestigation, the review could take into account new material in relation to ABC paper?

Mr Mann—No. It could only take into account material that was available to the original investigation.

Senator XENOPHON—But, in relation to that original investigation, you are saying that was not sufficiently taken into account?

Mr Mann—It was available and not adequately taken into account.

Senator XENOPHON—So the question of whether it was adequately taken into account to some extent is a value judgment in terms of the process?

Mr Mann—Whether there was reliable evidence that should have been taken into account in the original investigation, a view was taken that it had not been sufficiently substantiated. On review, the source of that information appeared to be robust and was taken into account.

Senator XENOPHON—Sure. In terms of robustness, weren't the findings that the ABC paper company experienced growth during the relevant period and wasn't that taken into account in determination 158. I think your colleague is nodding. Is that a yes?

Mr Mann—I think that producer had been in that position for a number of years. It was not a short period of time; it was a sustained presence in the market.

Senator XENOPHON—Sure. But was it taken into account that ABC paper also imported toilet paper—'parent reels', as they are called—from Indonesia and China?

Mr Johannes—As has been previously mentioned, we are looking at the competitive position of the Australian industry. Various Australian industry members do import some of their inputs into the process. We are not comparing the price of the inputs; we are comparing the price of the product.

Senator XENOPHON—But does it take into account the proportion to which ABC paper imports parent rolls compared to, say, Kimberly-Clark and SCA?

Mr Johannes—The assessment required by the legislation is a consideration of whether imported goods at dumped prices have caused material injury to the Australian industry. Domestically manufactured goods, whether they are made from wholly Australian owned inputs or partially imported inputs, are still Australian manufactured goods for the purposes of the analysis.

Senator XENOPHON—ABC paper I think in July 2008 stated to Customs that it was experiencing injury in the form of price depression and that it was being pressured to lower its prices to match those of imported products. Isn't that relevant in the context of considering the issue of material injury?

Mr Mann—I think we are talking about like-for-like goods. We are talking about the finished toilet paper rolls regardless of the source of their inputs. In that context, I think they are talking about imported finished product.

Senator XENOPHON—But ABC paper were talking about the impact on that company in terms of imported goods.

Mr Johannes—The reinvestigation found limited forms of injury compared to the original investigation.

Senator XENOPHON—Can we just go to that because at page 9 of report 158 it said:

- the injury experienced by the Australian industry was caused more by other factors than by the dumping of the goods exported from China and Indonesia.

Could you elaborate on that?

Mr Johannes—That is a fairly general summary of the fact that the injury suffered by Australian industry, predominantly the applicants, was caused more by the domestic competition than it was by imported product. If you will look at the final lines of the report, it also concludes that any injury attributable to the imported product was ‘not material’.

Senator XENOPHON—But, because of the process that you are constrained by, you couldn’t consider representations from industry in terms of this?

Mr Johannes—In relation to the reinvestigation, Customs is confined to the material that was before the original decision maker and any submissions which are made to the Trade Measures Review Officer.

Senator XENOPHON—You can understand why some people might find that quite narrow. I am not criticising you for the constraints but I am just saying you can understand why some in industry and employee groups would find that quite constraining.

Mr Johannes—The design of the system is quite deliberate. There is a clearly defined investigation phase. There is clearly a phase where Customs and Border Protection is required to publish a statement of essential facts which allows for a period where all interested parties can make submissions in relation to the issues which are identified in that statement of essential facts. Then there is a report-writing phase, a decision-making phase, a potential for review. Then, depending on the outcome of the review, there is a potential for a reinvestigation. The investigation phase is clearly defined and all material which is subsequently considered by any decision maker in the process is confined to the material which is obtained during that investigation phase.

Senator XENOPHON—What weight is given to the question of potential job losses?

Mr Johannes—In relation to the question of materiality of injury, under other economic factors employment would be a relevant consideration if there was evidence brought before the original investigation relevant to that issue.

Senator XENOPHON—So you are saying that that information, that evidence, wasn’t brought before the original investigation?

Mr Johannes—Neither in the original application, nor in any submissions by interested parties post the original application was the issue of employment raised as a separate factor.

Senator XENOPHON—Was it implicit in any submissions that employment would be a factor if there was an economic downturn in the industry as a result of dumped products?

Mr Johannes—The question is whether it is implicit. I think it is implicit in any application which is asserting—and predominantly all applications will assert—price, volume and profit injury factors as the primary factors put forward. In any application there is what I suppose you would call a natural inference that where there is established to be significant price, profit and volume injury, there would be flow-on potential impacts to the other economic factors such as employment.

Senator XENOPHON—Wasn't there enough evidence before the first investigation that that natural inference could be drawn on the basis of the material provided to the first investigation?

Mr Johannes—You return to the original investigation. As has been pointed out, there was a concern raised before the Trade Measures Review Officer which was sufficient to ground a recommendation to the Attorney-General and a decision by the Attorney-General to direct a reinvestigation of all findings by Customs and Border Protection. The reinvestigation did undertake that consideration of all findings. The majority of the findings of the original investigation were affirmed. However, material evidence which was available to the original decision makers and the original investigation team had not been taken into consideration. It was taken into consideration in the reinvestigation and it changed the critical findings in relation to whether dumping caused injury to Australian industry.

Senator XENOPHON—Perhaps we will go back to that in a minute, but one of the other matters that has been put to me is that the initial investigation viewed 2005 as the base year. Is that correct?

Mr Johannes—That is correct.

Senator XENOPHON—That was the first full year preceding the imports in late 2006—that was the basis?

Mr Johannes—That was the basis for that finding of the original investigation.

Senator XENOPHON—However, didn't the reinvestigation apply 2004 as the base year?

Mr Johannes—The reinvestigation looked at the full injury period, the four-year injury period, to assess the impacts of dumped product on the Australian market, rather than selectively using a base year.

Senator XENOPHON—So for the first investigation you used one particular year; for the reinvestigation you used a longer period, which included the base year but it also included 2004.

Mr Johannes—In assessing injury to the Australian—

Senator XENOPHON—Is that the case—can you just confirm that?

Mr Johannes—In the reinvestigation we followed our usual practice of assessing injury over a four-year injury period.

Senator XENOPHON—Which is different from the initial investigation, which just included one year?

Mr Johannes—The original investigation looked at the four-year period but predominantly focused on one year.

Senator XENOPHON—But you did not predominantly focus on that one year for the reinvestigation?

Mr Johannes—That is correct.

Senator XENOPHON—One of the complaints that has been made is that 2004, which was taken into account in the reinvestigation, was a year impacted at least for Kimberly-Clark by significant capital investment by the company and determined that reduction in returns in 2007 to similar levels in 2004 were the ebb and flow of business, something that Kimberly-Clark would strenuously deny, saying that it was not a fair comparison because of the extraordinary capital investment in that particular year.

Mr Johannes—But the point I was making is we were looking at a four-year period, not just 2004, not just 2005. We looked at injury over the four-year period: an assessment of the impact of the dumped goods on the competitive position of the Australian industry.

Senator XENOPHON—I appreciate your answers, but there is a particular emphasis in the initial investigation in relation to 2005, and you have acknowledged that—is that fair enough? There is a particular weight, a particular emphasis, given to 2005 in the initial investigation?

Mr Johannes—That is correct.

Senator XENOPHON—But in the reinvestigation—and you have said it is in accordance with standard practice or the way these things occur—you have actually looked at a broader period?

Mr Johannes—That is correct.

Senator XENOPHON—In terms of the complaints made, I think SCA had something extraordinary—I think there was a fire in one of their production facilities—that impacted on their operations. But, leaving it to one side, in relation to Kimberly-Clark, they are saying it is unfair because that is not a typical representation of the ebb and flow of trade because of that significant capital investment. And I note that Kimberly-Clark advised me today that since 2002 they have invested \$320 million in their Millicent plant alone. So in terms of that particular year it is not a like-for-like comparison.

Mr Johannes—Which is why, Senator, we do not focus on a particular year. We look at the overall period so that we do not give undue weight to a period which would bias a result one way or the other. We are looking at the issue of whether the dumped goods have caused material injury to Australian industry. In considering whether the dumped goods have caused material injury to Australian industry, we must look at potential other causes of the injury to Australian industry. So a reduction in the profitability of Australian industry due to commercial decisions it makes in relation to capitalisation or where it sources its inputs will over a period of time be relevant, but no single factor is determinative.

Senator XENOPHON—But more emphasis was given in 2005 in the initial examination.

Mr Johannes—In the original determination, more emphasis was given to 2005.

Senator XENOPHON—Was the fact that the No. 4 domestic producer, Merino, went into liquidation in February 2008 considered in either decision?

Mr Johannes—I could not answer that question. I will have to take that one on notice.

Senator XENOPHON—But they were a significant domestic producer-manufacturer and they went into liquidation in February 2008.

Mr Johannes—The three major domestic manufacturers are the two applicants and ABC Tissue Products.

Senator XENOPHON—And Merino were No. 4, and they went into liquidation in February 2008. Do you need to check that or you doubt that or—

Mr Johannes—I will need to check. I think you are using a description of a company which may be different from the description we have.

Senator XENOPHON—Right. The third matter that has been raised by Kimberly-Clark with me is that ABC's visit report advised Customs it was suffering injury from the dumped imports, as outlined. How does that fit into the view that domestic competition is not suffering any material injury as a result of the dumping of products from overseas?

Mr Johannes—It is recognised in the reinvestigation report that all members of the Australian industry, including ABC, suffered injury in the form of loss of market share. That is not in dispute. The question is whether dumping caused material injury to the Australian industry, and the conclusion after the re-examination of all the evidence available to the original investigation team was that the impact on price and on the profitability of the members of the Australian industry was as a result of competition amongst those members.

Senator XENOPHON—Can I just clarify, and this is not a criticism: because of the constraints you have in terms of the review process, you have been constrained in the evidence that could be considered in the context of that.

Mr Johannes—All investigations are constrained to the information which is acquired during an investigation phase, and the statutory process provides for that to close at the point of Customs issuing a statement of essential facts. Up to that point, all interested parties are provided with the opportunity to give evidence and make submissions to Australian Customs on the issues which are relevant. At the issuing of the statement of essential facts, all interested parties have a final opportunity to make further submissions before a final report is prepared for the decision maker.

Senator XENOPHON—And you say that was the case here?

Mr Johannes—That process has been followed in this case and it is followed in all cases—and we are talking about the primary investigation process.

Senator XENOPHON—But not the reconsideration?

Mr Johannes—The review process and any reinvestigation which might flow from the review process are confined to considering the material which was acquired during that original investigation phase.

Senator XENOPHON—Okay. But you can understand the perspective of industry and the unions that they felt that they were constrained because of the rules that apply?

Mr Johannes—I can understand that they might feel that they were constrained from the point of the closure of the investigation phase.

Senator XENOPHON—Not the reinvestigation. Okay.

Senator Wong—Sorry, Senator; is there more on this?

Senator XENOPHON—There is more on this. It is a very important issue, I think we both agree.

Senator Wong—I agree it is, and obviously it is open to you to continue your questions—

Senator XENOPHON—I am nearly finished.

Senator Wong—I would simply reiterate, because it has been perhaps a little bitsy in terms of different questions, that I understood the evidence earlier from officials was in relation to the rights of some of the parties who might be aggrieved and appeal rights in relation to the extant decision, and I also understood Mr Mann as giving evidence that a fresh application can be brought in certain circumstances. So I would hope that, if there are difficulties, those avenues would be known to any parties who are potentially aggrieved.

Senator XENOPHON—If I may, there are two other aspects of it. In terms of the fresh application that the minister has referred to, it will only be prospective and that process could take a number of months. In the meantime, we will be having these products that are up to 45 per cent below the cost in their own domestic market flooding into our market. Is that right about prospectivity?

Senator Wong—I think as a matter of law—correct me if I am wrong—the fresh application, as opposed to the appeal, would be prospective. I do not have any advice, unless officials can assist me, about time frames on that.

Senator XENOPHON—I am just trying to clarify that.

Mr Carmody—They can clarify that, but remember also in relation to the extant position, as it was put, that there is a right of appeal to the Federal Court on the application of the law and that would apply to the decision. And they have 28 days from—

Senator XENOPHON—I think they have got until Wednesday.

Mr Carmody—Yes, but this is the design of the system to give people who feel aggrieved by the decision to take the matter to the Federal Court on questions of law.

Senator XENOPHON—I am nearly done with this, at this stage. It is the case that dumping has been proved in this case, but the additional antidumping duties were removed because material injury could not be proved under the current criteria.

Mr Carmody—On my hearing of what has been put here—I am not a judicial officer—as a result of the review officer's review of the decision, it was concluded that it was not the dumping of material by an overseas company that was causing the material injury; it was the price competitiveness of Australian manufacturers. That was the decision that was taken on review following the Trade Measures Review Officer's review and our review of that. As I said, the position under the law is that people then have 28 days to go to the Federal Court on questions of the application of the law. That is factually what has been found. I think a lot of the discussion that has been here just illustrates how difficult these cases can be and why we have the Trade Measures Review Officer and the Federal Court appeal processes.

Senator XENOPHON—Very quickly, as I am conscious of time, I think you summarised the decision as it being price competitiveness in the industry, not the dumping, that was a factor, so I do not think the issue of dumping is in dispute. But isn't price competitiveness in the context of the toilet paper market impacted upon by the dumping of toilet paper being brought into this market at well below the cost of what it is in the Indonesian market?

Mr Carmody—The decision was that the impact of the importing was not the material factor; it was the competitiveness in the Australian industry and prices charged by Australian manufacturers. We can agree to disagree, and that is why there is an appeal mechanism.

Senator XENOPHON—I appreciate your answer. Finally, there was a report in the *Jakarta Post* on 26 October last year about this issue and it made reference to Indonesia making a complaint to the Australian ambassadors at the WTO warning that there would be a complaint to the WTO about this matter. Can I ask, in terms of the process, to what extent was this process in any way affected, in a formal sense or an informal sense, by any complaints by the Indonesian government in relation to this?

In other words, clearly submissions were made, according to the report in the *Jakarta Post*, by the Indonesian government to the Australian government, complaining about the decision made by then Minister Debus in terms of the anti-dumping duties. To what extent were there any representations made to the re-investigation by the Indonesian government or was that a completely separate process.

Mr Carmody—I am not sure but the investigation would have been conducted on the facts, not on the question of whether some party or government has a complaint.

Senator XENOPHON—Is that the case, Mr Mann?

Mr Mann—Representations from other countries were not of any bearing in the original investigation or the re-investigation. What we have here is a matter of aggrieved parties using a review process which identified basic flaws in the original conclusions drawn on the facts available. That is what was remedied in the re-investigation.

Senator XENOPHON—So the WTO was a completely separate process?

Mr Mann—It had no bearing on this process.

Senator XENOPHON—Thank you for clarifying that.

Senator FIELDING—I want to come back to the issue about the vessel which was intercepted by the Indonesians and just what role the Customs and Border Protection Service played in that issue. Is there a name for that vessel? Is there a name which people use or was it just a vessel which was intercepted by Indonesia and towed to the port of Merak?

Senator Wong—In the Senate, I think that is how it has been referred to.

Senator FIELDING—I cannot go to the nature, I suppose, of the intel you provided to the Indonesians but was that intel any different in nature from other types of intel you have provided to other boats you have been aware of which have been coming in?

Mr Carmody—There is a wide range of intelligence on different beaches at different stages. I cannot answer that question. We provide a variety of intelligence, where it is available and where it can be released.

Senator FIELDING—When were you first aware of that particular vessel?

Mr Carmody—I think I have already indicated in previous questioning that I do not have that information. If it is possible to provide it within the constraints of intelligence and other operational procedures, I will provide that on notice.

Senator FIELDING—Are you aware of any other boats which have been intercepted by Indonesia after you have provided intel?

Mr Carmody—I am aware of instances where Indonesian authorities have intercepted vessels. I am not aware of the exact nature of the intelligence provided or otherwise.

Senator FIELDING—I am not worried about the nature. I am asking: are you aware of other vessels which have been intercepted by Indonesia after you have provided intel?

Mr Carmody—I am trying to draw from my memory, Senator Fielding. I am conscious of the fact that at least one other vessel was intercepted in Indonesian waters; I am not conscious of the nature of any intelligence that was provided. I will take that on notice again and, if I can provide the information, I will.

Senator FIELDING—Was the intel provided on this boat substantially different from intel you provided on other boats?

Mr Carmody—I need to go back and say that we get a whole range of intelligence. Some of that is about vessels that might be on the water somewhere. Some of it is about people potentially being moved around in country. There is a wide spread of information that we get. Where we believe that we can release and where we believe that it can assist in disruption activities we provide that to Indonesian authorities. To that extent, there was nothing unusual, as far as I am aware, on this particular occasion.

Senator FIELDING—The reason why I asked that question is that it is seen to be treated differently—not from your perspective, but—

Mr Carmody—The point is that we have on a number of occasions provided information that has led to disruption and we have provided information, where we can release it, about vessels. There is nothing unusual in that. On this occasion, the Indonesian authorities were able to intercept it and they did that.

Senator FIELDING—Was it a request from us, though?

Mr Carmody—I have been through this before. What I have indicated is—as I just said—that if we have what we might term actionable intelligence that we can release we, in a whole range of circumstances, including this one, provide that to the Indonesian authorities. Ultimately, the purpose of providing that to Indonesian authorities is to preferably lead to a disruption of the particular venture.

Senator FIELDING—As part of the intelligence, was there any request that it would be in anyone's interest that that would be towed back? It just seems odd to a lot of people that that particular one—

Mr Carmody—It was intercepted much closer to Indonesia. They acted on the intelligence to intercept it and take it to Indonesia.

Senator FIELDING—And there was no request or direction given from the Prime Minister's officer to your area?

Mr Carmody—We have been through that.

Senator Wong—We have been through that.

Senator BARNETT—In answer to question No. 76 regarding fake I-phones, you provided a response saying that you are working with Apple to determine the veracity of the allegation and that no customs and border protection has been found to be involved in the importation of fake I-phones and nobody has been charged with a criminal offence. Can you provide an update on that matter? Are those answers still current? If not, you can take it on notice.

Mr Carmody—I believe that that is still current. If there is any further information, we will provide it to the committee.

CHAIR—We will now break for dinner.

Proceedings suspended from 6.59 pm to 8.02 pm

CHAIR—Mr Carmody and your team, welcome back.

Mr Carmody—Thank you.

CHAIR—Minister Ludwig, welcome to the Senate Legal and Constitutional Affairs Legislation Committee for the first time today. It is nice to have you with us again.

Senator Ludwig—Thank you, Chair.

Senator BACK—I want to ask a number of questions regarding the *Oceanic Viking* and the activities in October and November. Could I start by asking you why the vessel was in northern waters at the time of this incident.

Mr Carmody—As best we understand it, the vessel had a number of potential asylum seekers seeking to travel to Australia.

Senator BACK—I am more asking: why was the vessel in northern waters, given the fact that I understand that it normally—

Mr Carmody—I am sorry—you mean the *Oceanic Viking*. What am I talking about? I have now turned the Customs and Border Protection vessel into a people-smuggling vessel. I am sorry, Senator. My mind has not quite clicked back on after the tea-break.

Senator BACK—We perhaps will not have that in the *Hansard*, Mr Carmody.

Mr Carmody—The *Oceanic Viking* was on a patrol in northern waters in response to the threat of people smuggling, and it was being used to transport asylum seekers to Christmas Island when they were intercepted. That was its primary task.

Senator BACK—So it was to be taking people to Christmas Island but, at that time, had no asylum seekers on board in the first instance?

Mr Carmody—At the time that it was diverted it had no asylum seekers on board.

Senator BACK—Thank you. The vessel, I understand, is under charter from a company?

Mr Carmody—Yes, we lease the *Oceanic Viking*. It comes with a captain and crew. Customs and Border Protection has the enforcement officers on it.

Senator BACK—The vessel the Sri Lankan party were originally on—

Senator BARNETT—Senator Back, could I just ask some questions here?

Senator BACK—Please, yes.

CHAIR—Senator Barnett.

Senator BARNETT—Can you advise the cost of the lease for the *Oceanic Viking* and confirm that for us.

Mr Carmody—I will need to take it on notice, but we can provide that. We have had the *Oceanic Viking* for some time, of course.

Senator BARNETT—And, in terms of its patrol in the northern waters, how many days per year is that?

Mr Carmody—Over the years it has been used at different times, when required. In connection with the reason it was there at that time, the government had announced in the previous budget that it was funding an extra 80 days patrolling activity in the northern waters. That was announced in the budget.

Senator BARNETT—I understand that was some \$6 million or a bit more than that over two years. Is that correct?

Mr Carmody—\$6.3 million, I am told.

Senator BARNETT—All right. How much is that per day?

Mr Carmody—I do not have my calculator here!

Senator BARNETT—We will dig that up and we will have a look at that. So that is 80 days per year for two years?

Mr Carmody—That is what the government's budget announcement was.

Senator BARNETT—All right. Thank you. Thank you, Senator Back.

Senator BACK—Thank you. I was asking: why was there a need for the *Oceanic Viking* to come to the assistance of the Sri Lankan party in the first instance?

Mr Carmody—The situation arose because it became a safety of life at sea issue. There had been a call seeking assistance—

Senator BACK—Can I ask from whom that call came. Was it from the Indonesian authorities or—

Mr Carmody—No. I think we went through this at the last Senate estimates, but there was an initial call to the Department of Defence switchboard indicating that there was a boat in distress. That was the initial contact and then there was further contact after that.

Senator BACK—Did that contact come from the vessel itself, do you know?

Mr Carmody—I am not sure whether it was from the vessel itself. If I go back to your question, it was not from Indonesian authorities—

Senator BACK—It wasn't?

Mr Carmody—No.

Senator BACK—So perhaps it was from people on board the vessel?

Mr Carmody—It could have been people on board; I am not sure. It could have been people they had been in contact with. There were a series of telephone calls made.

Senator BACK—Sure. So it was in response then, under SOLAS, to a request as a result of a distress at sea?

Mr Carmody—That was the initial contact that they were concerned about, distress at sea. We contacted AMSA, the Australian Maritime Safety Authority. Because this incident arose in the search and rescue zone of Indonesia, AMSA then contacted their counterpart—BASARNAS, I think it is called.

Senator BACK—So it was then, with the concurrence or request or agreement of the Indonesian authorities, that the *Oceanic Viking* undertook this rescue role?

Mr Carmody—There were a series of events where BASARNAS then advised AMSA that they had not been able to initiate any action over there because of the availability of ships. Within AMSA the Rescue Coordination Centre then took some action that led to a response from Border Protection Command.

Senator BACK—Thank you. My recollection, from what I have read, is that there were 78 Sri Lankan asylum seekers on the vessel. When the *Oceanic Viking* intercepted the vessel, were there others on board? Was the vessel being crewed by Sri Lankans or were there others on the crew of the vessel? Their names or numbers have never been highlighted.

Mr Carmody—I understand there was no crew on board at that time.

Senator BACK—So was the advice that came back that the vessel was, presumably, under its own power or just standing dead in the water?

Mr Carmody—I think that was the issue. There was a problem with the rudder. It was no longer effectively making its voyage and there were obviously concerns about the safety of the people on board.

Senator BACK—Do you know what Indonesian port—if indeed it was an Indonesian port—this vessel departed from?

Mr Carmody—I do not have the detail here of where it departed from, Senator.

Senator BACK—I am interested to know what means the people on board would have had to make contact with AMSA, Australian authorities or other people on their behalf?

Mr Carmody—They had phones.

Senator BACK—On board their vessel?

Mr Carmody—Yes.

Senator BACK—I cannot find evidence of where it was ever given a suspected illegal entry vessel number or status. Was it? Do Customs actually allocate such a number?

Mr Carmody—No, it was not given a number.

Senator BACK—In this particular operation or operations generally, does Defence or the ADF provide strategic advice to Customs on operations of this nature? They are significantly

different, as I understand, to the sorts of operations you would undertake in the Southern Ocean on fishery patrol et cetera.

Mr Carmody—Essentially, patrol activities are undertaken through Border Protection Command, which is a joint command of Defence and the Australian Customs and Border Protection Service. That command utilises Defence assets and Customs and Border Protection assets to deal with a range of maritime security threats, including maritime people-smuggling.

Senator BACK—So the liaison would be relatively close between Defence and your agency in terms of—

Mr Carmody—Border Protection Command operates, as I said, as a joint command.

Senator BACK—As I understand, you have the Southern Ocean Maritime Patrol and Response Unit, or SOMPRU. Could you explain to the committee what its role and responsibilities are?

Ms Grant—SOMPRU was the name of the unit that was set up to accommodate the enforcement officers that go on board the *Oceanic Viking* as it goes about its enforcement tasks in the Southern Ocean. With developments of other vessels joining the fleet we have now changed the title and the former SOMPRU is now part of the Customs Marine Unit. Following the *OV*, we ended up with the *Triton* for northern waters. So rather than having standalone units—the southern unit and the northern unit—we have combined them because they are the same enforcement officers who go on board both vessels.

Senator BACK—Can you tell me specifically what selection processes or training might be undertaken for personnel who would be going into northern waters to undertake the role that they carry out?

Ms Grant—The officers who form the boarding and enforcement detail on board these vessels are Customs and Border Protection officers. If we recruit them from outside the organisation, they go through a range of basic training in customs and border protection technical issues—everything from powers of officers to records of interviews—and then they go through specialist use of force training and the particular training pertaining to the task that they undertake. For the activities in the Southern Ocean there is a higher level of training for those extreme conditions.

Senator BACK—Would these officers operate under some form of rules of engagement?

Ms Grant—Yes. The use of force, which is for self-defence—it is not an offensive arming capability—operates under chief executive officer order No. 1 for personal defence equipment. What we would call rules of engagement, which pertain to the deck-mounted machine guns, is usually chief executive officer order No. 2.

Senator BACK—Are these also specified for individual operations, such as the one we are talking about now, or would they just be generic to all northern or southern operations?

Ms Grant—Each operation has the limitations of the use of force described in the operation order pertaining to the particular operation being undertaken.

Senator BACK—Are they conveyed to the officers who will be participating? Would it be possible for this committee to see—would it be possible to table—an example of the rules of engagement, for example, for the operation we are speaking about?

Ms Grant—The particular operation we are speaking about had an operational order that described the use of force that was permitted for this particular operation, which was personal defence equipment only. The rules of engagement, which are a higher level, involving the machine guns, do not come into play.

Senator BACK—What would be the nature of the directive to security personnel to actually regulate their activities on board?

Ms Grant—It is called the operation order, and that operation order will go through all of the tasks that are to be undertaken on that particular operation.

Senator BACK—Is it able to be tabled or can you take it on notice and provide it for us?

Mr Carmody—We will take it on notice, Senator. What we can provide we will provide.

Senator BACK—Could you advise me what the capacity or otherwise to search in this case the 78 people on board, the asylum seekers, is? Is there a search capacity within those operating orders?

Ms Grant—There is a capacity to search people as they are brought on board our vessel to secure any items that might endanger officers or other people on board the vessel.

Senator BACK—During the time they were on the vessel, other than when they first came on board, would there have been a capacity to search if they had a reason to want to do so?

Ms Grant—No. Once we have done the initial search, there is no general provision to re-search.

Senator BACK—Can you advise us: was there a contingency plan in place to assist the personnel on board the vessel? If so, what constituted and who provided that contingency?

Mr Carmody—I am not sure of a contingency plan in these circumstances.

Senator BACK—From a risk point of view, you must have—

Mr Carmody—I am not quite sure for what. The officers have a patrolled period and this was conducted. Initially, they were on patrol and then they were diverted for a safety of life at sea issue. I am just not quite sure where your question is.

Senator BACK—From a risk point of view, particularly operating in waters that were not Australian waters, would you not have had in place some form of a plan to assist these people should either they have got into difficulty or there have been some external force threatening them?

Mr Carmody—Sorry—

Senator BACK—Under border protection command.

Mr Carmody—This was part of their normal operations. The assessment was clearly that it was safe for them to undertake the operation. I do not know I can add too much more than that.

Senator BACK—Was that reviewed during the course of the period that they were on the *Oceanic Viking*? Was there ever an occasion in which the senior management of Customs had cause to reflect on that and be concerned and perhaps look to some form of a contingency?

Mr Carmody—It was not so much contingency, but when the—what is it called?—swing of the first crew was coming to an end we decided, given the situation at that time, that we would put more officers on in the relieving crew than we had on the initial crew because of the circumstances. I guess, in your terms, that was just as a contingency.

Senator BACK—Was there some form of exclusion zone around the vessel preventing outsiders, fishing boats and other vessels from coming alongside and interacting with the people on board?

Mr Carmody—I think, factually speaking, there was some engagement with the Indonesian navy. Of course, there was no particular incident or concern that arose in the course of the event.

Senator BACK—Can I draw your attention to an article by a Stephen Fitzgerald, an Indonesia correspondent for the *Australian*, published on 4 January. He made mention of a photographer from the *Australian* successfully ‘slinging a mobile phone on board’, one that had been wrapped earlier in a sarong. He wrote:

It was a huge score for The Australian, getting the first interview ... few people knew it was our second attempt ...

They had previously tried. Clearly, they then got that mobile phone on board. I imagine you would have some form of daily situation report that would have come back to senior management in Canberra. Was that reported on?

Mr Carmody—As far as I am aware, it was never confirmed that there was such a phone successfully put on board. We just do not know. We have not been able to confirm that.

Senator BACK—Even though they made light-heartedness of it. He wrote of the first attempt, which failed:

It went safely straight to the fielder’s hands, but he fumbled it, and Norman and Simon watched their chances for an interview sink straight into the ocean.

Couldn’t catch, almost certainly can’t bloody bowl!

The constant and continual reporting in the media would surely have given you and your colleagues to suggest that they had successfully done this, would it not?

Mr Carmody—I do not think it was ever confirmed that it was on board. I do not know that it was ever confirmed that that was exactly communication from on board. I am not saying whether it was or was not; I am saying we were unable to confirm that.

Senator BACK—If you had been able to confirm it, do you think it would have led you to actually put some form of protection in place? Is it not something that—and I will take it from the journalists that they were in contact and that they had put at least one mobile phone, if not more, on board—would have caused you sufficient concern to want to do something about it?

Mr Carmody—As I indicated, there were some discussions and, in fact, there were vessels there from the TNI, but I do not think we felt at any stage any security concerns for the vessel, our officers or the people on board.

Senator BACK—It has been put to me that there was a very high degree—a very high degree—of concern by your security personnel on board. You may or may not have been following the coroner's court in Darwin. I noted on the weekend an article in the *Age* said that Seaman Matthew Pearce testified that mobile telephones—and this is going back to April-May, when that event occurred—were now taken from asylum seekers on the vessels. Would that sort of information not have come through from border protection? Is it not the fact that, if somebody can get close enough to that vessel in international waters or Indonesian waters and throw a mobile phone on board, they would be capable of throwing small arms or anything else on board the vessel?

Mr Carmody—First of all, I think Marion Grant has already indicated that it was standard procedure when people came on board our vessels that they were searched—

Senator BACK—That is correct.

Mr Carmody—and cleaned for mobile phones or whatever. So we were already operating on that basis. Obviously, we had officers on the watch on the *Oceanic Viking*. I repeat that I do not believe there was any particular concern about an incident of something being thrown on board that would cause particular concerns for us.

Senator BACK—Was there an occasion or were there occasions when the security personnel sought authorisation to actually leave the vessel and to create some form of exclusion zone themselves, given their concern for their lack of protection by vessels coming alongside?

Mr Carmody—No. We have no indication of that.

Senator BACK—You have no indication? You would not be concerned that, for example, within a range of the fishing boats able to come close to or alongside they could actually attack the vessel with rocket propelled grenades? None of this occurred or none of this was a concern at any time?

Mr Carmody—We had no suggestion that that was a risk.

Senator BACK—Why not?

Mr Carmody—There was nothing to suggest that that would be an issue in that particular location.

Senator BACK—Even though in other circumstances in those same waters, as is being told to us in the Coroners Court in Darwin at the moment, we have had actions taken by desperate people? It did not occur to you? Do you not think that there was a duty of care?

Mr Carmody—Absolutely. I do not want to go into issues about the coroner's inquiry. But throughout this period essentially the people on board were compliant and our officers had established a very good and professional relationship with them. As far as that side of it goes, as Marion Grant has already indicated, our officers carry personal defence equipment for their personal defence in circumstances such as this.

Senator BACK—Those words that you have just used are not dissimilar to those that were reported in Yemen after the *USS Cole* was blown up. My recollection is that a vessel came alongside, the people on board waved to those in the vessel thinking that it was a garbage boat and the result was 47 people killed. How many hundred were injured I do not recall. There were obvious consequences. It was in unprotected waters. You have told us that there was no contingency plan. We had nobody else from Defence or anybody else giving any level of support in a circumstance that at best could be described, perhaps, at least being potentially unsafe. We had a situation in which it has been reported—and I have no reason to disbelieve the journalist from the *Australian*—that they were close enough to throw mobile phones on board. And you are telling us that there was no level of concern.

Mr Carmody—As I have already indicated, there were discussions with TNI and I understand that there were TNI vessels in that location where the *Oceanic Viking* was. As to our people, as I said, they had established a very professional relationship with the asylum seekers on board. They had personal defence equipment. With the change of crew, we increased the numbers, because the situation had been going on for so long and it was felt preferable to have extra crew on board.

Senator BACK—I want to go to the negotiation process. Can you talk us through how that process was undertaken in terms of eventually negotiating the 78 asylum seekers into leaving the vessel?

Mr Carmody—That was not undertaken by Customs and Border Protection. That was essentially undertaken through the department of immigration, so questions would need to go to them on the detail on how that occurred.

Senator BACK—Would the customs security personal have had security responsible for them as well?

Mr Carmody—Naturally, for anyone on board the vessel we were concerned to ensure their security. But there was never any suggestion, as far as I am aware, that there was significant danger to our people, particularly given that we had increased the number of officers on board and that they had personal defence equipment. As is evident from the outcome, there was never any incident.

Senator BACK—I would disagree with you that there was not an incident. It was known that items had been thrown onboard and those on board were not able to be searched. Time is against us. I will put other questions on notice. However, I will ask one more. In terms of addressing this new challenge within Customs—one presumably expanding from revenue collection to what are clearly operations at sea—what added expertise have you brought on board your executive team to be able to address these operational rather than revenue collection functions?

Mr Carmody—In terms of Border Protection Command, as I have indicated, that is a joint command that draws together Defence and Customs and Border Protection assets. We have had operations on sea for some years now. As Marion Grant indicated, we have extensive training programs there. Border Protection Command is headed by an admiral from the Navy. There are both Navy and Border Protection Command officers—along with other officers, by the way—in that joint command.

Senator BACK—My questions on notice will be regarding employment of and deployment, and finally the resignation or the loss rate of particularly your security personnel. Due to the shortness of time I will place those on notice.

Senator BARNETT—What communications did Customs have with the government and what communications did the government have with Customs during the time of the asylum seekers were aboard the *Oceanic Viking*? Can you provide the dates and the nature of the communications in each case?

Mr Carmody—There is a Border Protection Committee of Cabinet. It is not appropriate for me to discuss what was discussed at that committee.

Senator BARNETT—I fully understand that, Mr Carmody, but what you can advise is the communications between your agency and the government, whether it be the minister or Prime Minister's office or the border protection agency. So you can advise that and you are required to answer that question.

Mr Carmody—These are issues that are discussed through a chain of approaches. The Border Protection Taskforce would have been involved which is chaired by the National Security Advisor and the Border Protection Committee would have been involved. At the task force there would have been a range of discussions. As advised previously, the National Security Advisor worked with government agencies across a range of these issues. As to what discussions he might have had with ministers, I cannot answer that. I do not know that I can go too much further than that. This was managed right across government agencies.

Senator BARNETT—When you say this was managed, do you mean the deal that was brokered with the passengers?

Mr Carmody—The deal is not an issue for me to comment on. They are issues that are appropriately the matter for the Department of Immigration of Citizenship.

Senator BRANDIS—Why not, by the way, Mr Carmody?

Mr Carmody—Our responsibility, which I believe our officers performed professionally, was to respond to a safety of life at sea issue and then to transport the asylum seekers ultimately to the Tanjung Pinang port. Issues about any negotiations that went on as to the passengers leaving the vessel were actually conducted through the aegis of the department of immigration, and I do not feel competent to answer questions about that nor is it my responsibility. That was not our responsibility.

Senator BRANDIS—Mr Carmody, whether it is your responsibility is absolutely irrelevant. The question is whether or not you know the answer. If you do not know the answer, that is fine. But if you do know the answer to a relevant question, it is no objection that another agency had the primary responsibility for the occasion under discussion.

Mr Wilkins—I think Mr Carmody is probably in the same situation as I am in—that is, most of our knowledge about what was transacted in those negotiations was through the cabinet committee. In any event, it is a cabinet matter, and partial in the sense that we did not see everything that was going on. But it is a matter for the immigration department really.

Senator BRANDIS—Those questions will no doubt be asked of them. But can I just make the point to you, Mr Carmody, that it is no answer for any officer who knows the answer to a proper question to say, ‘Well, this is really a matter that concerns another agency.’

Mr Carmody—I was just trying to be helpful.

Senator BRANDIS—If you are asked a relevant question and you know the truth, you are obliged to answer it.

Mr Carmody—I was just trying to be helpful, Senator, in saying that it was through the agencies of the department of immigration that these were carried out. As Mr Wilkins said, I cannot comment on issues discussed at Border Protection Committee of Cabinet. I do not have the precise detail, but I have indicated that the Border Protection Taskforce, the National Security Advisor and other agencies would have been involved in the discussions.

Senator BARNETT—Mr Carmody, I am asking you the question. I have put it once to you and I will put it again, and I would like you to either answer it or take it on notice. What communications did you have with the government and what communications did the government have with you with respect to the passengers aboard the *Oceanic Viking*, which was under your control and management? I am happy for you to take it on notice.

Mr Carmody—I will take it on notice about what information I can provide. I was trying to be helpful in saying that in large part this was discussed in the border protection committee.

Senator BARNETT—I am fully aware of that and that you have had that dialogue with Senator Brandis. We do not want to go over that. I am asking you about the communications. I want the dates of the communications and the nature of the communications. I would like you to take it on notice, please.

Mr Carmody—I will take it in on notice and I will provide what information I appropriately can.

Mr Wilkins—Just to reiterate, a lot of this is transacted through the committee of cabinet. The government communications, in that sense, came through these collective decisions and discussions. We are not at liberty to give out that sort of information.

Senator BARNETT—From whence it comes is not a matter for me. It is a matter for Mr Carmody. If the Customs and Border Protection Service have received communications from the government or from wherever then it is up to Mr Carmody to advise this committee from whence it came and the date that it came. In so doing, Mr Carmody, could you also advise us of the timeline of the events and the nature of the arrangements onboard the *Oceanic Viking* during this particular month-long standoff involving the 78 Sri Lankan asylum seekers last October? I would like you to take that on notice, too, please.

Mr Carmody—Certainly, but you said something about the nature of issues onboard. Could you just amplify that?

Senator BARNETT—The timeline of the events. I would like some further particulars regarding the *Oceanic Viking* such as details of passengers, staff, crew and Customs staff—I presume there were P&O crew—and for you to provide a timeline of events from whence you intercepted this particular vessel: when they got on the vessel, when they got off the vessel

and a timeline of events while they were on the vessel. This was a very major incident and you would have that on your files.

Mr Carmody—Certainly, and we will provide what we can.

Senator BARNETT—I have a final question before passing to Senator Brandis. How long after unauthorised vessels are intercepted does the Minister for Home Affairs report them?

Mr Carmody—How long before he reports them publicly?

Senator BARNETT—Yes, how long is the time period from the interception to when the Minister for Home Affairs reports that advice?

Mr Carmody—It is my understanding that it is as soon as practicable and when we have reliable information for him to report.

Senator BARNETT—How long is that in the ordinary course of business?

Mr Carmody—Well, it is reasonably quick.

Ms Grant—It just depends on the time of the day when the interception occurs. For example, the other day we had an interception in the morning and a media release was published that same day. For interceptions that occur during the night time hours it tends to be a media release earlier the next morning.

Senator BARNETT—So, within 12 hours?

Mr Carmody—I think it will vary according to the circumstances, as has been indicated. It is a question of when you can get—

Senator BARNETT—In the normal course of events?

Mr Carmody—I think Marion has given an indication of the sort of timeframes that applied recently and that would be fairly typical, I think.

Senator BARNETT—So it is certainly within 24 hours but more often than not within 12 hours? Would that be right?

Ms Grant—I think that would be correct but we would certainly be able to pull out the last few press releases and monitor the time of the release versus the time of the interception. Our procedures are that once we have made an interception a release is drafted and it is issued quickly.

Senator BARNETT—Thank you.

Senator BRANDIS—I take you, Mr Carmody, to table seven on page 59 of your current annual report. This is the summary of suspected irregular entry vessels and potential irregular immigrants over three years. Do you see that?

Mr Carmody—I see that, Senator.

Senator BRANDIS—By the way, the acronym SIEV used to be an acronym for suspected illegal entry vessels. I notice it is now an acronym for suspected irregular entry vessels. When was the nomenclature changed?

Mr Carmody—I will have to take that on notice. I cannot remember.

Senator BRANDIS—No. Perhaps it was changed to soften the image of these suspected illegal entry vessels. Can you take it on notice when it was changed and who made the decision to change it? This table tells us that in 2006-07 there were four suspected—I will use the old nomenclature—illegal entry vessels. In 2007-08 there were three and in 2008-09 there were 23. In 2006-07 there were 133 potential irregular immigrants and three crew, in 2007-08 there were 25 and zero crew and in 2008-09 there were 985 and 53 crew. From 1 July 2009 until today how many suspected illegal entry vessels have there been and how many potential irregular immigrants have there been?

Mr Carmody—What dates was that, Senator?

Senator BRANDIS—I want to take up the story from the end of the last reporting period which was 30 June 2009. Since 1 July, the last calendar year, the first day of the current reporting year, how many SIEVs have there been and how many illegal entrants have there been?

Mr Carmody—The information I have is calendar year based. I do not have the financial year data on me.

Senator BRANDIS—Do you have it month to month?

Mr Carmody—No, I have calendar year.

Senator BRANDIS—So if I were to ask you—let me ask you—how many SIEVs and how many illegal entrants were there in January 2010? Are you seriously suggesting you are not in a position to tell me?

Mr Carmody—I have until 8 February 2010, so it is a little bit over January.

Senator BRANDIS—Good.

Mr Carmody—There have been 11 vessels and 607—

Senator BRANDIS—So you cannot disaggregate within the terms of your own reporting period for the purposes of your annual report, but for the purposes of these estimates, you have only prepared yourself to tell us about calendar years whereas your own reporting period is financial years.

Mr Carmody—That is the information I have in front of me.

Senator BRANDIS—You know that this is an issue of significant interest to the parliament, don't you, Mr Carmody?

Mr Carmody—Yes, I do.

Senator BRANDIS—Do you think that is good enough?

Mr Carmody—We had a range of information prepared and the information that was prepared on arrivals and given to me is quite comprehensive but it is calendar year based.

Senator BRANDIS—If that is all you have then that is all we will be able to ask about tonight. In the 2009 calendar year how many SIEVs were there please?

Mr Carmody—In the 2009 calendar year there were 60 vessels.

Senator BRANDIS—And in the 2008 calendar year?

Mr Carmody—There were seven vessels.

Senator BRANDIS—2007?

Mr Carmody—Five vessels.

Senator BRANDIS—2006?

Mr Carmody—Six vessels.

Senator BRANDIS—2005?

Mr Carmody—Four vessels.

Senator BRANDIS—2004?

Mr Carmody—One.

Senator BRANDIS—2003?

Mr Carmody—One.

Senator BRANDIS—2002, as I recall, was the year in which the Howard government tightened the policy. What was it in 2002?

Mr Carmody—The number of vessels in 2002 was one.

Senator BRANDIS—And in 2001?

Mr Carmody—There were 43.

Senator BRANDIS—Okay. I might just pause there. That is a nice sample. In 2001 before the Howard government tightened the policy, there were 43. In the year the policy was tightened there was one; the following year, one; the following year, one; the following year, four; the following year, six; the following year, five; the following year, seven; and in late 2008 the Rudd government changed the policy again and in the following calendar year there were 60. How many have there been so far in the first 40-odd days of 2010?

Mr Carmody—Eleven.

Senator BRANDIS—If one were to extrapolate, not even allowing for the accelerating trend, that is a rate of about nine or 10 a month, between 100 and 120 a year. That is not accounting for the acceleration of the trendline. Mr Carmody, would you please provide the same figures, starting with the 2001 calendar year and going through to the first 39 days of 2010 of the number of suspected illegal entrants, including crew.

Mr Carmody—I am sorry, Senator, you are going to be upset with me; I have people excluding crew as the detail.

Senator BRANDIS—People excluding crew will do. 2001?

Mr Carmody—There were 5,516.

Senator BRANDIS—2002—the year the policy is tightened?

Mr Carmody—In 2002 there was one.

Senator BRANDIS—In 2001 there were 5,516. At the end of that year Mr Howard tightened the policy and the following year there was one.

Mr Carmody—I do not intend, by implication or otherwise, to get involved in policy questions or policy debates on this sort of issue.

Senator BRANDIS—I am just asking you about numbers.

Mr Carmody—I will just answer factually the question without being seen to be engaged in any policy discussion.

Senator BRANDIS—I am just asking you the numbers!

Mr Carmody—As long as that is the understanding on which I am answering.

Senator BRANDIS—2003?

Mr Carmody—Fifty-three.

Senator BRANDIS—2004?

Mr Carmody—Fifteen.

Senator BRANDIS—2005?

Mr Carmody—Eleven.

Senator BRANDIS—2006?

Mr Carmody—Sixty.

Senator BRANDIS—2007?

Mr Carmody—One hundred and forty-eight.

Senator BRANDIS—2008?

Mr Carmody—One hundred and sixty-one.

Senator BRANDIS—And that is the year the Rudd government relaxed the policy. 2009?

Mr Carmody—Again, I make no response to commentary, but in 2009 it was 2,726.

Senator BRANDIS—And in the first 40-odd days of 2010?

Mr Carmody—Six hundred and seven.

Senator BRANDIS—So a bit more than 500 a month.

Mr Carmody—It is one month's figure. Whether you extrapolate that—

Senator BRANDIS—If that figure were annualised it would in fact be a little over 7,000.

Mr Carmody—If that figure were annualised, but whether that means anything is a point on which everyone could have a debate I am sure.

Senator BRANDIS—I think anybody who has gone beyond grade 3 arithmetic can work out what those figures mean, Mr Carmody. Thank you. I want to move on to another topic. I want to deal with the question of staffing levels. Can I take you first to the PBS for this, the current financial year: page 119, table 2.1 'Budgeted expenses and resources'. I am sorry, but I do not have to hand the additional estimates PBS. This is the PBS with the May budget, so it may well be that there is a more recent figure for this. If there is, I invite you to use it. On the most recent PBS I have for the current financial year, the average staffing level of your

agency is 5,500. Is that right? And that is also the number given in your annual report on page 17, table 1.

Mr Groves—Yes, I can confirm that 5,500 was the ASL—average staffing level—number that we used in the 2009-10 PBS and at the additional estimate statement it stayed the same.

Senator BRANDIS—It is the same figure in the additional estimates?

Mr Groves—Yes.

Senator BRANDIS—And those are FTEs—full-time equivalent positions?

Mr Groves—Yes, an average over the financial year.

Senator BRANDIS—If we go to page 125 of your current annual report, table 30, we learn that your total staff numbers as at 30 June 2009 were 3,483 male and 2,439 female, a total of 5,922. Correct?

Mr Carmody—That is at 30 June 2009.

Mr Groves—That is at 30 June and that is a head count number.

Mr Carmody—Which is not an FTE, of course.

Senator BRANDIS—Is it not an FTE?

Mr Wilkins—No, an FTE would take into account people working part-time, for instance three days a week would be counted as 0.6 of an FTE.

Senator BRANDIS—So should we then go back to table 2.1 in the PBS that shows the average staffing level for that year is 5,720. Which is the better figure to use?

Mr Groves—The 5,720 was an estimate at the May budget of where we thought the average FTE number would be for the 2008-09 financial year.

Senator BRANDIS—And the head count number is 5,922, so somewhere in that range between 5,720 and 5,922 we ought to be able to arrive at a sense of what the numbers were in fact on 30 June 2009.

Mr Groves—There is a—

Senator BRANDIS—Or is there another, more useful number, Mr Groves?

Mr Groves—The only equivalent number that we report in the annual report to the basis that is used in the PBS and the additional estimates is at note 13 of the financial statements.

Senator BRANDIS—What page is that, please?

Mr Groves—It is page 195. The number recorded for an average staffing level for the financial year 2008-09 was 5,679.4.

Senator BRANDIS—I see. Why is the average staffing level in the PBS and the average staffing level reported, albeit rather obscurely in the notes to the accounts rather than in the table that purports to tabulate staff numbers, a different figure?

Mr Groves—The 5,720 was an estimate that was made at the time of the publication of the PBS, which would have been roughly around May 2009.

Senator BRANDIS—In any event, I do not want to run into any problems of not comparing like with like. Can we go back to the previous year? Can you dig out the 2007-08 annual report please?

Mr Carmody—I do not think we have a copy here.

Senator BRANDIS—I do, and at page 124—I will show it to you if you want to check my reasoning—there is the identical table to table 30 in the 2008-09 annual report on page 124. Figure 44, ‘Staff numbers by classification and gender as at 30 June 2008’ is the identical exercise to the table of page 125 of the current year’s annual report. That reports that there were 3,681 male and 2,612 female staff—a total of 6,293. On whatever methodology is being used here, I am sure you would agree with me, Mr Groves, that that is a comparing like with like tabulation.

Mr Groves—That is correct. Those two tables are reporting headcount as at 30 June.

Senator BRANDIS—So between the middle of 2008 and the middle of 2009, on a like-for-like comparison, the number of staff at your agency fell from 6,293 to 5,922—a decline, on my calculations, of six per cent. I understand that this is a little more controversial, but as well as you were able to do in your estimate for the 2009-10 year and as reported both in your annual report and the PBS, the staffing will fall to 5,500, which, on a comparison with the baseline figure for 2008, is a decline of 13 per cent. Yet this is at a time when the number of unauthorised arrivals has skyrocketed from 161 in 2008 to 2,726 in 2009 to 607—which, were we to extrapolate it, would be an annualised rate of approximately 7,000—in 2010. Can you explain how it comes to be, Mr Carmody, that as the demand presented by this flood of illegal entrants is cascading, the numbers of people employed by your agency is shrinking?

Mr Carmody—Just a few things on the figure—again, I will not go into whether you can validly extrapolate forecast figures—I was a little bit concerned because I thought I heard you comparing headcounts at 30 June 2009 and 2008 with average staffing levels for 2010—

Senator BRANDIS—Well, I was, as a matter of fact.

Mr Carmody—which is a little bit unfair. However, I will actually—

Senator BRANDIS—If I may finish, Mr Carmody, you would have heard me caveat my question by saying that I acknowledge that this is not exactly a like-for-like comparison, but they are the best figures the agency can put before the committee.

Mr Carmody—Yes, but I guess I wanted to accentuate that they are very different figures—

CHAIR—Mr Carmody, perhaps you could finish what you were saying and then we will go to the next question.

Mr Carmody—I will go on and answer your question, Senator Brandis. Yes, overall staffing levels have been declining in recent years. However, customs and border protection performs a whole range of roles, and that decline is not reflected in the staff that we have engaged in border protection issues, including people smuggling. You would be aware that the government injected a series of sums of money into customs and border protection both for patrol assets and others. We have increased our capacity within what you might call a central intelligence and operational hub for dealing with maritime people-smuggling. So, while I do

not have the figures right in front of me, I am sure you would find that the actual number of staff there has certainly not diminished and, if anything, has increased. We were also given staff for expanding our overseas representation.

In answer to your broader question about staffing levels, we have been through this on a number of occasions, including at the last estimates. You would be aware that customs and border protection, as it has for many, many years under various governments, faced the efficiency dividend. You would be aware from our discussions at the last Senate estimates that we have introduced a range of more risk-based operations in the area of cargo examination and in the area of first-port boarding, and they generated savings. You would be aware that as part of our approach to this we have been seeking to get a more efficient corporate support area. You would be aware that there are certain savings generated by the Gershon review of IT—

Senator BRANDIS—I do not want to cut you off, Mr Carmody—

Mr Carmody—I am just trying to say that all those things go to the total resourcing of the organisation.

Senator BRANDIS—No, that is fine. I understand that. I do not want to cut you off. I am sure the parliament is appreciative of the efforts that you and your agency have made to deal with the dwindling staff numbers you are being allocated by the government, given the range of your tasks. But is it the case, as I think you said much earlier in that answer, that the number of staff specifically allocated to dealing with illegal entrants and suspected illegal entry vessels has been increased in response to the cascade from 161 in 2008 to 2,726 in 2009?

Mr Carmody—I think it has been increased primarily because we have taken on additional responsibilities in maritime people smuggling.

Senator BRANDIS—All right. You may need to take this on notice, but I would like to know, taking 2008 as the baseline or since—

Mr Carmody—We will do it in financial years.

Senator BRANDIS—Financial years at least. Taking 2007-08, so the year ending 30 June 2008, as the baseline, and the allocation of staff wholly or primarily concerned with illegal entrant and suspected illegal entry vessel activity in each year since, and completing it as of today—the date of these questions—I would like to know what movement of staff there has been within your agency towards that function. Do you understand?

Mr Carmody—I understand the question. You will understand that some of these staff are involved in a range of tasks, but we will—

Senator BRANDIS—But that is why I said ‘wholly or substantially’, because presumably there will have to be an allocation made.

Mr Carmody—We will do the best we can to provide that.

Senator BRANDIS—Does it not follow, Mr Carmody, that if you have fewer staff now than you had last year and fewer still than you had the year before that, and you are allocating more staff to the task of responding to this cascade of illegal entrants—to the interception of

illegal entrants and suspected illegal entry vessels—then those staff must be at the expense of other activities engaged in by your agency from which they have been transferred.

Mr Carmody—I have already indicated that we have achieved a range of efficiencies and more targeted and risk based assessments so I do not see that there has been any diminution of our border protection efforts more generally.

Senator BRANDIS—I am not saying that. I am saying that because of the greater demands placed upon you in the discharge of your border protection function in relation to illegal entrants, I would say—and I do not expect you to comment on this—that as a result of the government's policy change there are other aspects of Customs and border protection that are suffering as you seek to meet that greater demand for your resources from a shrinking staff establishment.

Mr Carmody—Again, I would only say the notion of suffering is an inappropriate one because, as I have indicated, in a range of areas like cargo and examination of first port boarding, as discussed at the last estimates, we have introduced more efficient and equally, if not better, effective approaches to protecting borders.

Senator BRANDIS—You will take those questions on notice, won't you.

Mr Carmody—I will.

Senator BRANDIS—Thank you.

Senator BARNETT—Chair, I have two final questions for Mr Carmody.

CHAIR—From your side?

Senator BARNETT—Yes, indeed. Who is on the Border Protection Committee of cabinet?

Mr Carmody—The Border Protection Committee of cabinet is chaired by Senator Evans. The Minister for Foreign Affairs is there, the Minister for Trade, the Minister for Defence, the Attorney-General and the Minister for Home Affairs.

Senator BARNETT—Mr Wilkins gave me the impression that the Prime Minister was either a member or his representative was a member. Does the Prime Minister have a representative on the Border Protection Committee of cabinet?

Mr Wilkins—The Prime Minister can go to any cabinet meeting, as you would know from cabinet conventions. He can turn up at any cabinet committee that he is interested in.

Senator BARNETT—I am aware of that, Mr Wilkins. Is the Prime Minister represented on the Border Protection Committee of cabinet?

Mr Wilkins—The ministers on the Border Protection Committee of cabinet are those that I have indicated.

Senator BARNETT—I would like an answer to my question.

Mr Carmody—The Border Protection Committee of cabinet is composed of ministers—by definition.

Senator BARNETT—Does the Prime Minister have a representative on the Border Protection Committee of cabinet?

Senator Ludwig—You have missed the whole point. The question has actually been answered. The ministers that have been named can go as part of that. Secondly, they could add to that number by asking others to come along. The Prime Minister has gone, and can go, as he is a minister. So no-one would go representing the Prime Minister.

Senator BARNETT—Minister, I do not want to ask a third time, so I can ask it differently. It is a yes or no answer, Minister, frankly. I have got the answer that you have given me, so I will have to ask the question in another way. Has the Prime Minister or a representative of the Prime Minister attended a border protection committee of cabinet in the last six months?

Senator Ludwig—I can say, as far as the attendance of particular ministers and the makeup of the committee would be concerned, that would be a matter that I would suggest is cabinet-in-confidence.

Senator BARNETT—I suggest that we can take advice from the Senate Clerk on that, Minister. I do not accept that answer. You are clearly obfuscating in terms of whether the Prime Minister has been involved in the Border Protection Committee of Cabinet. It is a yes or no answer.

Senator Ludwig—That is a different question again that you have asked, whether the Prime Minister is involved.

Senator BARNETT—Can you answer that question?

Senator Ludwig—The Prime Minister can go to any cabinet meeting, including that one if the Prime Minister so chooses. What I am not going to do is get into a blow-by-blow description of who goes to a particular cabinet meeting. It is in the public interest that we do not mention generally which ministers go to cabinet meetings. Successive governments have taken that view for a whole range of reasons.

Senator BRANDIS—I thought that the view that was uncontroversial and common between both sides of politics was that advice to ministers could not be canvassed and discussions of cabinet and cabinet committees which would include papers could not be canvassed, but that matters of process, including dates and also the identities of people who were present, could be canvassed since neither of those matters reveal the substance of what was discussed.

Senator Ludwig—I think we may differ on that.

Senator BARNETT—When were the Border Protection Committee of Cabinet meetings held in the last six months? Can you advise the dates, the times and the venues?

Mr Carmody—I think it is probably appropriate for the Department of the Prime Minister and Cabinet.

Mr Wilkins—That is something to ask the Department of the Prime Minister and Cabinet.

Senator BARNETT—No, it is not. It is a question to you, Mr Wilkins, and the minister.

Mr Wilkins—It is also something where, if you want an accurate answer, you should address it to the Department of Prime Minister and Cabinet because we may not have been in attendance.

Senator BARNETT—How many meetings have occurred in the last six months? Mr Wilkins, please—

Senator Ludwig—Unfortunately Mr Wilkins may not be in a position to know the answer to that question.

Senator BARNETT—Senator Ludwig, you are representing the Attorney-General. You are here to answer those questions. Let me ask you the question: how many meetings has the Attorney-General attended in the last six months? When and where were those meetings?

Senator Ludwig—I am sure we can take that on notice and provide you with it.

Mr Wilkins—We will certainly take that on notice.

Senator BARNETT—Also, can you advise the identity of those who were present at those meetings? I would like you to either answer that now or take it on notice.

Mr Wilkins—We just have. You asked us who comprised the cabinet committee for this purpose.

Senator BARNETT—Yes.

Mr Wilkins—We have told you who the cabinet committee was.

Senator BARNETT—Yes, and I am asking you who attended to those meetings, Mr Wilkins.

Mr Wilkins—So you want to know who else attended who was not on the committee.

Senator BARNETT—Yes, and in particular the Prime Minister or the Prime Minister's representative.

Senator BRANDIS—And also who did not attend who was on the committee.

Mr Wilkins—I think that is a matter really for the Department of the Prime Minister and Cabinet.

Senator BARNETT—I do not think it is. If the Attorney-General was there, he would know who was at that meeting.

Senator Ludwig—You got a response.

Senator BARNETT—You are obliged to answer under Senate standing orders.

Senator Ludwig—You got an answer in respect of that. You have been asked to ask the Department of the Prime Minister and Cabinet, PMC, that particular question.

Senator BARNETT—I would like you to take on notice my question as to who was there who should have been there and who was not there who should have been there.

Mr Wilkins—I do not know who attended in that case because I do not keep a record of who attends.

Senator BARNETT—On notice, could you please advise how long after unauthorised vessels are intercepted does the Minister for Home Affairs report them? We had that little interlude a few moments ago, Mr Carmody. Could you please take on notice the exact details for the last 12 months with respect to the time period between when advice was given and when the advice was made public by the minister.

Mr Carmody—I will take it on notice. What information we can provide we will provide for the last 12 months.

Senator BARNETT—Thank you.

Senator FEENEY—I want to return to the question of suspected irregular entry vessels, Mr Carmody. You took Senator Brandis to the figures since 2001. I wondered if, taking a longer term perspective, you could describe the trends over, say, the last 30 years and how these trends might relate to international conflicts.

Mr Carmody—I am sorry, Senator, but the only information I have is what I have already provided to Senator Brandis.

Senator FEENEY—But you must have a general knowledge of those periods when Australia has experienced a high number of suspected irregular entry vessels and those periods when it has not, and be able to offer us your own opinion.

Mr Carmody—I have provided factual information. I am a bit reluctant to get into opinions about what might be the cause or whatever. I think they are policy issues.

Senator FEENEY—You certainly did the right thing and resisted the temptation to comment on Senator Brandis's—

Mr Carmody—I will be consistent.

Senator FEENEY—Yes, so I am not inviting you to stray across that line. Perhaps you could take on notice the question: over what periods in the last 30 years have there been the highest rates of suspected irregular entry vessels? Then perhaps you might have some comment about what the push factors might be, as a matter of record, behind those trends.

Mr Carmody—Certainly we will take on board the information over the long term. I am just a little bit reluctant to get into push factors and questions that go to policy, but we will provide what information we can.

Senator FEENEY—I am only inviting you to talk about the past, not the future, so that should hopefully make it a lot easier for you to avoid the partisan minefield that you are so properly avoiding.

I might ask you about trans-Tasman travel and the SmartGate program, the passenger facilitation program. What has been the trend in passenger rivals over the last 12 months?

Mr Carmody—I will get Mr Mann to answer that.

Mr Mann—We saw a quite significant slowdown in the numbers of arriving and departing international travellers following the great financial crisis in October 2008. Up until that time we were seeing an annual growth in the order of a five or six per cent increase in arriving and departing passengers, in total passenger numbers. I think the end result for the financial year 2008-09 was growth of only 0.8 or 0.9 per cent. That is the order of the slowdown that we saw. Since then, however, there has been a pick-up in international traveller numbers.

Senator FEENEY—Over the last six or seven months?

Mr Mann—Yes, this financial year. I will give you some figures on that. We have seen an adjustment upwards in the forecast figures for the 2009-10 year, from 12.53 million to 12.74

million. And if we look at the year to date, we have probably seen, if anything, a greater number of passengers than even that revised forecast that is in the additional estimates.

Senator FEENEY—Can you give that to me as a percentage growth, year to date?

Mr Mann—To date, we have seen an increase of about 6.98 per cent in the volume of total air passengers and 14.7 per cent in the number of sea passengers.

Senator McLUCAS—Is that compared with the same period last year?

Mr Mann—That is year to date. There was 0.8 per cent growth in air passengers over a whole year.

Mr Carmody—But it is growth compared to a six-month period.

Mr Mann—The figures I have just talked about are over the last six-month period.

Senator FEENEY—What is the status of initiatives aimed at streamlining trans-Tasman travel, including the rollout of SmartGate in New Zealand?

Mr Mann—Since the prime ministers of Australia and New Zealand, on 20 August, announced a plan to further streamline trans-Tasman travel, we have seen the rollout of the automated SmartGate passenger clearance system in New Zealand. What is significant about that is that the same process that is used on this side of the Tasman has been adopted for use clearing passengers in New Zealand. We have also had, for some time, the ability for travellers coming from New Zealand to Australia to undertake the first step of clearing our borders by using kiosks that are in the Auckland airport. That basically means that, on arrival into Australian airports, all that is required is to present straight to an automated facial recognition gate, which is a significant streamlining of the process coming into the country. Now New Zealand have adopted the same process. They are also looking at, as part of this initiative, further integrating our two systems, and they are doing some work with us around what an outwards automated process might look like—so, on departing the country, how we could use the same sort of technology to facilitate trans-Tasman travel.

There is other work going on in terms of streamlining biosecurity screening that the Biosecurity Services Group in DAFF would be able to talk to you about. They have been trialling new ways of streamlining Australians and New Zealanders in the secondary inspection for biosecurity purposes. It was also announced that we would be undertaking a joint study, as I said, of integrating and expanding SmartGate and an independent study to investigate what we are talking about as a preclearance model. That is designed to take on board industry views of alternative approaches to streamlining passenger flow across the Tasman and building on the thinking that has been done out of SmartGate—what other obligations around immigration and biosecurity could be integrated into a more streamlined process? The idea there would be that as much of the border security requirements as possible are settled prior to departure from one side of the Tasman. That study is due to be completed over the course of this calendar year and we would be looking to see some recommendations flowing from that. We are just in the final stages of scoping out that study and we will be looking to get that up and running in the near term.

Senator FEENEY—Will that study be publicly released?

Mr Mann—It will be making recommendations to the prime ministers, and it will be up to them to decide what they may wish to do with them.

Senator FEENEY—Can you tell us any more about when? You said later this year. Can you give us any more particulars?

Mr Mann—I think the commitment was that it would be completed by the end of this calendar year. I have just a few statistics on SmartGate. It is now in eight international airports in Australia and has processed over a million travellers into Australia. I notice that the New Zealand customs minister has just announced that their inwards SmartGate has just processed its 50,000th passenger. It has been up and running since December.

Senator FEENEY—I prefer the idea of a million to 50,000.

Mr Mann—The take-up in Australia has certainly grown over the last number of years. Around 37 per cent of eligible travellers are now choosing to use SmartGate to clear the border in Australia. When we first implemented it in Brisbane in 2007 we were getting 13 to 15 per cent, so we have had a significant growth in the utilisation.

Senator FEENEY—Do you have any forecasts about what the growth rate will be, going forward?

Mr Mann—We do not have any forecasts, but we now have a fairly consistent usage rate in all of the eight airports in Australia. It is around the 40 per cent mark. There are a few airports, such as Adelaide, where it is a little lower than that, but we think getting to 40 per cent is—

Senator FEENEY—So presumably there are some airports where the rate is slightly higher. Can you tell us which ones they might be? Which of the eight are performing the best? We occasionally slide into parochialism, don't we!

Mr Mann—Cairns, Perth and Melbourne are probably the standouts, closely followed by Brisbane. I should indicate that they have been up and running for some time. Sydney is still fairly new.

Senator FEENEY—Thank you very much for that. That is all I have about SmartGate. I have one question on illegal fishing, Mr Carmody. In the last 12 months, what has been the incidence of illegal fishing? What sort of environment have Customs and Border Protection been operating in when intercepting illegal fishing?

Mr Carmody—In 2005-06, or around that period, when there were significant incursions into our waters, from the public comment and ministerial comment it was obvious that it was a very significant issue. On one measure, you just do not see that sort of commentary anymore, which is a reflection of the fact that we believe that we have made very, very significant inroads into the threat of illegal foreign fishing. The number of apprehensions continues to be very, very low. I think there have been about 16 this year.

Ms Grant—In 2008-09 we had a total of 27 apprehensions. To 7 February this year, for the 2009-10 partially completed financial year, we have had 17 apprehensions.

Senator FEENEY—What about 2007-08? Do you have that number?

Ms Grant—Yes. There were 156 apprehensions in 2007-08.

Senator FEENEY—Mr Carmody, we are obviously delighted that you are expressing such confidence about the performance. To what would you ascribe the success?

Mr Carmody—I think it is due to a range of initiatives. To be completely bipartisan, under the previous government there was significant support for—

Senator FEENEY—You do not need to be bipartisan with me, Mr Carmody.

Mr Carmody—I like to maintain my credibility. Under the previous government there was significant effort put into a policy of apprehending rather than just cautioning illegal foreign fishers. The vessels were, in appropriate circumstances, destroyed and there were prosecutions undertaken. One key factor was that people understood that when they came into our waters there was a high likelihood of them being apprehended, with potential prosecution of the crew and the loss of their vessel. In addition to that, there was a whole-of-government information campaign, supported in Indonesia, that got out into the fishing villages. Our officers were out there reinforcing the messages of the kind that I have talked about. Those things combined, I believe, had the effect that we are talking about.

Senator FEENEY—Thank you very much. I have no further questions.

CHAIR—That brings us to the end of questioning for Customs.

Mr Carmody—Could I just add a couple of things. I have been advised that the investigation conducted by us with apple did not involve any illegal involvement by Customs officers. So that is the position there. I also want to go back and make sure I made this point in response to Senator Back's questions about security onboard the *Oceanic Viking*. I did mention that following consideration of an assessment by the commander of the crew at the time of leaving the vessel and following consideration of the sorts of issues raised by him, even though overall it was a very professional environment and there was a good relationship, as a result of those issues we did increase, as I think I mentioned, the number of crew when we brought in new officers to make sure that issues were covered.

Senator FEENEY—I think you made that clear.

Mr Carmody—Thank you.

CHAIR—I need to advise that, despite the fact that I understand coalition senators had indicated they had questions for the Australian Crime Commission, the CrimTrac agency and the Australian Government Solicitor, because we are now running so far behind time Senator Brandis and Senator Barnett have indicated they will put questions on notice to those agencies. We will move to the Attorney-General's Department now, dealing with cross-portfolio issues initially.

Senator BRANDIS—Can I indicate my first questions will be to outcome 2, subprogram 2.2.2, international crime cooperation. My first area of inquiry is in relation to extradition. I just wanted to ask a couple of questions about the Gabe Watson case. Are you familiar with the case in Queensland in which a citizen of Alabama was, after a plea bargain, convicted of manslaughter relating to the death of his wife during a scuba diving expedition in Queensland?

Ms Jackson—Yes, I am.

Senator BRANDIS—Are you able to tell the committee, please: has the Attorney-General's Department received any communication from or on behalf of the Attorney-General of Alabama, the accused's domicile, or on behalf of the Alabama authorities in relation to the suggestion—about which I pass no comment—that upon the expiry of his sentence in a Queensland court he might be extradited to Alabama?

Ms Jackson—The department has received no direct inquiries from either Alabama authorities or US authorities on that matter.

Senator BRANDIS—When you say 'no direct inquiries', can you expand a little more on why you qualify it? Have there been indirect inquiries?

Ms Jackson—There has been some liaison between the department and Queensland authorities.

Senator BRANDIS—That in fact takes me to the very place I wanted to go. Ms Jackson, I would like to know please—if you would not mind taking us through this in a sequential way, and, if possible, by reference to any relevant documents—what communication there has been between the Queensland government and your department in relation to this case, and, in particular, to the question of the possibility of the extradition of Watson to the United States upon the completion of his sentence in Queensland.

Ms Jackson—There has been correspondence between the Queensland attorney and the Minister for Home Affairs. I think there have also been discussions at officer level but none specifically on the question of extradition.

Senator BRANDIS—Do you mean by that answer: none of the discussions, or none of the discussions or the correspondence?

Ms Jackson—There has been no direct discussion or correspondence concerning extradition.

Senator BRANDIS—All right. So, Ms Jackson, is it fair to say that the Queensland government has never raised with the Commonwealth the question of the possibility of Watson's extradition?

Ms Jackson—I would have to take that on notice.

Senator BRANDIS—Do you know, to the best of your knowledge?

Ms Jackson—To the best of my knowledge, there has been no specific discussion of extradition.

Senator BRANDIS—Do you have the correspondence to hand?

Ms Jackson—No. I am sorry. I do not.

Senator BRANDIS—I would like you to take these questions or requests on notice, please, Ms Jackson. I would like you to produce for the committee all correspondence between the Queensland government and the Commonwealth concerning the Watson case. If, in that correspondence, there is content which for proper reasons you consider should be redacted, no doubt you will take that course and explain it in your written answer. But I would like to see the full course of correspondence between the Queensland government and the Commonwealth in relation to the Watson case. More specifically, and I suppose this is part of

the question I have just asked you, I am concerned to know on what date the Queensland government, either by correspondence or orally at officials level if it happened during the course of a meeting or a telephone conversation, first raised the Watson case with the Commonwealth. Has your department opened a file on the Watson case?

Ms Jackson—Yes.

Senator BRANDIS—Who is the officer who maintains that file?

Ms Jackson—It would be an officer of the Extradition Unit.

Senator BRANDIS—In that file we will find all of the correspondence between the Commonwealth and the Queensland government and, may I take it, a diary note or a file note of any relevant conversations? Is that right?

Ms Jackson—Yes.

Senator BRANDIS—Would the file contain anything else?

Ms Jackson—I could not say.

Senator BRANDIS—Would you expect that, in the ordinary course of record-keeping, that it would?

Senator Ludwig—That does seem a little—

Senator BRANDIS—It is a little, but officers, particularly experienced officers who are familiar with particular types of procedures, would have a reasonable expectation as to the likely content of a file on a particular case.

Ms Jackson—I imagine it could also contain file notes of discussions with supervisors.

Senator BRANDIS—Do you mean internal discussions within the department?

Ms Jackson—Yes.

Senator BRANDIS—May I take it from one of your earlier answers that it does not contain any correspondence with any American authority?

Ms Jackson—Not in relation to the US prosecution. There was correspondence previously in relation to the Australian prosecution.

Senator BRANDIS—With the American authorities?

Ms Jackson—Yes.

Senator BRANDIS—What was the nature of that correspondence?

Ms Jackson—It concerned a request for assistance from the US authorities.

Senator BRANDIS—To do what?

Ms Jackson—I do not know.

Senator BRANDIS—You said it contained a request for assistance—assistance to do what?

Ms Jackson—I do not know the nature of the specific request, but it was for assistance with material for the Australian prosecution.

Senator BRANDIS—I understand. That clarifies it a little. Unless I misunderstand you, this was a request that emanated from the American authorities to you for assistance with the Queensland prosecution?

Ms Jackson—No, it was an Australian request to the US.

Senator BRANDIS—I see—for assistance with the prosecution in Queensland. In any event, this file contains no request from the Queensland government for assistance with potential extradition proceedings concerning Watson?

Ms Jackson—Not as far as I am aware.

Senator BRANDIS—I do not think I can take that any further. Thank you, Ms Jackson. You will take those questions on notice? I have some questions in relation to the bill of rights. Perhaps you might know the answers to these.

Mr Wilkins—I might even know the answers!

Senator BRANDIS—The Brennan committee reported to government in late October last year. I wonder whether the person possessed of the appropriate knowledge would bring the committee up to date on how the matter has progressed since then.

Mr Wilkins—The matter is being discussed and considered at a cabinet level. That is probably about all we can say about it.

Senator BRANDIS—Has it gone to cabinet?

Mr Wilkins—Yes.

Senator BRANDIS—When did it go to cabinet? What was the earliest of those several times?

Mr Wilkins—Very soon after the report was handed down. I do not know the exact date.

Senator BRANDIS—When was the most recent of those several times?

Mr Wilkins—That I do not know.

Senator BRANDIS—This year?

Mr Wilkins—I really do not know.

Senator BRANDIS—Senator Ludwig, are you in a position to tell us when we might have a decision in relation to the report of Father Brennan's committee?

Senator Ludwig—The information I have at hand is that the government, as has been outlined, is giving serious consideration to the National Human Rights Consultation committee's recommendations and we will respond in due course. The timing is obviously a matter for government. I think it is reasonable to say that the government welcomes the committee's report. The committee has provided the government and the community with a valuable document that I am sure you have read. I think consultation has demonstrated that there are strong views for and against the introduction of a charter of rights. It also shows that there are many ways to protect human rights including through education and increased parliamentary scrutiny. But back to your germane point the timing will be a matter for government.

Senator BRANDIS—Is it fair to surmise from the answer you have just given that no final decision on the charter of rights issue has yet been made?

Senator Ludwig—I cannot answer that. I can say that the government is giving serious consideration to the National Human Rights Consultation Committee's recommendations and we will respond in due course.

Senator BRANDIS—All right. Senator Ludwig, you are of course a member of cabinet. You heard Mr Wilkins tell us the matter has been to cabinet several times since shortly after the report was delivered in October last year. Can you tell us most recent occasion on which the issue was discussed? I am not going to ask you the substance of the discussions, just the date.

Senator Ludwig—I do not recall.

Senator BRANDIS—Was it this year?

Senator Ludwig—I do not recall. I am not going to go into whether a document has been discussed in cabinet or not, quite frankly.

Senator BRANDIS—Has there been a cabinet submission prepared or is this being discussed at large, as it were, without submission?

Senator Ludwig—Is that directed to me?

Senator BRANDIS—Yes.

Senator Ludwig—That would be matter that you could ask the Attorney-General's Department as to whether they have. I am not going to get into the topics that are dealt with in cabinet.

Senator BRANDIS—I will take up your invitation, Senator Ludwig. Mr Wilkins, has a cabinet submission been prepared?

Mr Wilkins—Yes, Senator.

Senator BRANDIS—Was that prepared this year or last year?

Mr Wilkins—Last year.

Senator BRANDIS—Okay. About how long after the National Human Rights Consultation Committee report was delivered was that submission prepared?

Mr Wilkins—It was an iterative process, so it is difficult to say. Before it went to cabinet it was possibly a month or so.

Senator BRANDIS—All right. I am not obviously going to ask you about the content but was that submission specifically about the Brennan report.

Mr Wilkins—Yes.

Senator BRANDIS—Thank you. I do not think I can take that any further.

Senator BARNETT—On that matter, in answer to question No. 43 from me—and thank you for the answers by the way which have been comprehensive following last estimates—the cost to date of the National Human Rights Consultation process was 2.972 million. It says that

some further costs were still to be paid, so I am just confirming on the record whether that could be updated in terms of the total cost.

Mr Wilkins—Do you want us to update it now?

Senator BARNETT—I am happy for you to take it on notice. I do not mind.

Senator BRANDIS—They might be able to update it now.

Senator BARNETT—It is a lot of money, the taxpayers would be interested in this.

Ms Jones—Since the time that we answered that question on notice there has been approximately another \$120,000 in expenditure that has been processed.

Senator BARNETT—So we can see well over 3 million debt in total to date.

Ms Jones—Just over 3 million.

Senator BARNETT—All right. Are there any further costs expected in the coming months in this financial year?

Ms Jones—It is possible that there are some further minor costs associated with the captioning of some video material that was made from the public hearings that were held here in Parliament House.

Senator BARNETT—Can you take on notice to advise the committee accordingly of those costs when they come through?

Ms Jones—Yes.

Senator BARNETT—Thank you.

Senator BRANDIS—One last thing—I do not think this is trespassing beyond any of the rules—has Father Brennan addressed the cabinet in relation to his report?

Senator Ludwig—I would still go back and indicate that matters that deal with cabinet are cabinet-in-confidence and I am not going to discuss the agenda or what goes on in cabinet in respect of those matters.

Senator BRANDIS—I am simply asking whether a person who is not a member of cabinet has been invited to address the cabinet in relation to a topic.

Senator Ludwig—As I have indicated, I am not going to address issues that go to the content of what goes on in cabinet. You would be well aware of that.

Senator BRANDIS—I would not dream of asking about the substance of anything that is said, Senator Ludwig. Thank you. On a somewhat related matter, you may have seen a report in the *Australian Financial Review* newspaper on 20 January by James Evers, legal editor, under the headline ‘Labor eyes referendum on republic’, which created something of a brief brouhaha within the government. The article states:

Federal Attorney-General Robert McClelland said a referendum on federal-state relations was “very much one of the balls in play” ...

“I do think from the point of view of the federation that [constitutional change] is an issue that at some stage does require addressing,” Mr McClelland told *The Australian Financial Review*.

“In that sense, I can say that it—

that is, federal-state relations—

is one of the four potential referendum questions that are being considered both in my department and in Prime Minister and Cabinet.

“The four potential referendum questions are obviously the republic, the recognition of Indigenous Australians, the third is local government and the fourth is this issue of cooperative federalism.

“The timing of those things is there will be nothing happening this electoral term but while it involves discussion between my department and Prime Minister and Cabinet — and ultimately cabinet itself — I certainly wouldn’t dismiss the prospect of further examination or a potential [referendum] question in the next term.”

Mr Wilkins, I want to direct you specifically to that part of Mr McClelland’s remarks which are directed to the discussion of these four potential referendum questions within your department. What is the position in the Attorney-General’s Department in relation to the consideration of those four potential referendum questions?

Mr Wilkins—Which were the four?

Senator BRANDIS—Mr McClelland expressed himself a little vaguely, but one was federal-state relations, one was the republic, one was the recognition of Indigenous Australians and the other was local government. These are obviously shorthand descriptions of issues, for which I have no criticism of Mr McClelland. Can you tell us what the status of consideration within your department is of constitutional reform in those four areas?

Mr Wilkins—What do you mean by ‘the status of consideration’

Senator BRANDIS—The Attorney-General, to use his words, has said that these are ‘questions that are being considered both in my department and in Prime Minister and Cabinet’, so—

Mr Wilkins—We are clearly considering. We would be derelict as the department of state for law matters if we did not think about these things.

Senator BRANDIS—That is what I am trying to tie you down on, Mr Wilkins. I want to know how far consideration of these issues has gone. Is it merely reflection or has there been some process established or some more concrete shape given to the progression of an agenda along any of these lines?

Mr Wilkins—I think the best way to describe it would be that people are looking at different scenarios and thinking through what might be possibilities, not that there has been any submission going anywhere advocating anything or—

Senator BRANDIS—Well, Mr McClelland said, to use his words, there had been ‘discussion between my department and prime minister and cabinet’. Do you know about those discussions?

Mr Wilkins—Yes, I have had some discussions. But, once again, they were sort of exploratory; they were looking at what are the issues around, say, the referendum act or how might you pose a question on this, that or the other thing. There are some technical issues in relation to the Wakim case and the Hughes case, and obviously we have been looking at different possibilities. So I would not say that anyone is actually racing to put up submissions on this stuff at the moment.

Senator BRANDIS—I am not saying that you are saying that, Mr Wilkins; I just want to know how far this has progressed. Has a paper been prepared within your department in relation to these matters?

Mr Wilkins—There have been a variety of papers, for example, done for SCAG on Wakim and Hughes in the past.

Senator BRANDIS—Focusing your answer specifically on the question the Attorney-General focused on—that is, the desirability and imminence of referenda on these four issues—has there been a paper prepared within your department on that question or any aspect of that question?

Mr Wilkins—There have been a variety of considerations of the adequacy of current referenda legislation, I think it would be fair to say. That is looking at the means or the manner in which that act might operate in this sort of context.

Senator BRANDIS—Has any officer or officers of your department been given the task, either by themselves or in collaboration with other officers, of developing a proposal for a referendum in relation to any one or more of these four matters?

Mr Wilkins—No.

Senator BRANDIS—Have the discussions to which the Attorney-General referred in this press article between your department and the Department of the Prime Minister and Cabinet at any point taken the shape of correspondence between A-G's and PM&C relating to this particular matter?

Mr Wilkins—No.

Senator BRANDIS—All right. There are other topics I want to come back to but for the moment I will pass over to other senators.

Senator LUDLAM—First of all, I am seeking some information, not for this session but probably for the next, as far as the structure of the department is concerned. What is the name of the office or the section within the Attorney-General's Department that supports the coordination of information sharing between state and territory police departments? Is there such an office of coordination?

Mr Jordana—Not per se. We have policy responsibility for issues to do with the general issue of information sharing both between Commonwealth agencies and between Commonwealth agencies and state and territory agencies. As it relates, for example, to criminal issues that would be the responsibility of the Criminal Justice Division.

Senator LUDLAM—It is not quite policy coordination that I am after; it is more operational coordination of databases and so on. Is there no such agency?

Mr Jordana—In our department we would not be responsible for that. Obviously CrimTrac as an organisation is a body that brokers information sharing between state and territory police agencies around Australia. It plays a very important function in that regard. The Australian Crime Commission itself would have a role in that regard.

Senator LUDLAM—The general questions I have are around access to justice. Can you provide us with an update on the implementation of the access to justice task force report recommendations.

Mr Wilkins—Yes, we can. I will ask Matt Minogue, who was one of the people in charge of that task force and is now involved in implementing it, to answer.

Mr Minogue—Essentially, after the access to justice report was launched by the Attorney-General in September of last year, he asked the task force—as we were then—to undertake public consultation on the report and the recommendations. Government had already accepted the central recommendation of the task force report, which was for the development of a strategic framework for access to justice which would guide decisions relating to access to justice broadly defined. Not just by the department but by all agencies. So, in terms of the consultation, we undertook a range of consultation, both written submissions and electronic submissions—we were hoping to go as broadly as possible—but also a number of public consultations. We held consultations in Canberra, Wollongong, Brisbane and Sydney. We met with a variety of people raising various issues. Essentially what we were after was some feedback on some of the recommendations. We had some areas of particular priority. You cannot do everything at once, so we asked what views should we seek to implement within government as a matter of priority. Approximately 60 public submissions were received. They are currently being analysed and will be put to the Attorney-General for his decision in terms of what would go next.

In terms of which particular recommendations—in addition to the ones that have already been accepted—would be picked up, that is really a matter for government to decide, so I cannot comment too closely on that. The other additional thing that has progressed was in the November SCAG meeting. One of the issues for decision in that meeting was the access to justice report and what Commonwealth and state attorneys-general did was adopt the principles of the access to justice report as a SCAG decision. So they have now been adopted as principles that SCAG ministers have adopted.

Senator LUDLAM—Can you tell us whether or not you have examined the 31 recommendations that were made by the references incarnation of this committee in the access to justice inquiry report that we tabled a short time ago?

Mr Minogue—They are currently under consideration by government.

Senator LUDLAM—That was not quite the question. Have you personally been involved?

Mr Minogue—Yes, I have been involved in some of those discussions.

Senator LUDLAM—Does the task force still exist as such, or has it concluded its work?

Mr Minogue—No, not as such. The second stage implementation work has been taken over by a section in my branch in the department, so the work continues but the task force itself has ceased its work.

Senator LUDLAM—Just for future reference, how do we identify that section?

Mr Minogue—The relevant branch is the justice improvement branch.

Senator LUDLAM—Justice improvement—who could argue with that?

Senator BRANDIS—The whole branch?

Mr Minogue—The branch undertakes a range of other functions as well.

Mr Wilkins—It could be a whole department, Senator.

Senator LUDLAM—How many people would you say are working full-time on access to justice as opposed to the broader framework of justice improvement?

Mr Minogue—In terms of our branch, there would probably be five, I think. But some of those have only come on board quite recently. So, in terms of a full-time equivalent, that is probably not quite accurate. But in terms of what access to justice means in terms of the broader view, I could not really comment on it. In terms of the numbers in our branch, it is probably four or five.

Mr Wilkins—It might be misleading to think that they are the only people working on access to justice. The point of setting up a task force was to provide a blueprint for a number of different areas of the department and outside of the department for other departments to consider. So, for example, you might say that the entire branch of people who deal with legal aid and legal assistance are in fact looking at the material recommendations of access to justice—and the people dealing with administrative law, people looking at judicial processes, some of the philosophy around the way the judiciary acts, the ombudsman, and even some other departments.

Senator LUDLAM—Okay, I think that is a fair point. Did the task force and the work that is currently going on inside that branch come to the same conclusion as the Senate Legal and Constitutional Affairs References Committee—that is, that Aboriginal women in particular are really finding themselves at the bottom of the pile in terms of access to justice, whether it be the resourcing of their advocates, language barriers, geographical isolation or a whole range of factors? Was your work congruent with what the Senate inquiry found?

Mr Minogue—It is certainly consistent with that; that is right. We did not find that in quite the same terms, and to some extent there was already the national Indigenous framework work going on, so we did not seek to replicate that in the same detail, but certainly barriers to justice for women, Indigenous people, those with low levels of education and resourcing and those in remote localities were all identified.

Senator LUDLAM—Has that work been concluded in time to be fed into the budget deliberations for this current budget cycle? Is that part of the thinking?

Mr Minogue—The timing of the government response to the Senate's report really is a matter for government.

Senator LUDLAM—Not the Senate report so much as the work the department was already undertaking through the task force and what has followed on. Obviously you will have discovered exactly what we did or will be very well aware of it: the sector is in crisis.

Mr Wilkins—It is a bit difficult to talk about the budget process without getting involved in some of those cabinet decisions, but, needless to say, that report, as the Attorney indicated, is important. It informs the way we are thinking about a range of issues including money, funding and budgets.

Senator LUDLAM—I will leave the access-to-justice work there after one final question. I think I have asked this a number of times, and it was noted in the Senate report. Is the issue of justice reinvestment, which is being trialled in the United States, being taken up anywhere at all?

Mr Minogue—It is certainly one of the things being considered in the context of the response to the Senate committee report. I would be reluctant to comment in any more detail than that.

Senator LUDLAM—Reluctant to comment?

Mr Minogue—I am not in a position to comment because the content of the response is still a matter for government.

Senator LUDLAM—Okay. I have a couple of quick questions on national security law and policy, which I think are still general program questions. Thanks very much for your time this evening. This is something I touched on earlier in the day: can anybody point us to the location of the counterterrorism white paper and whether there is any such thing?

Mr Jordana—As I indicated earlier in the day, the counterterrorism white paper is something that has been led by the Department of the Prime Minister and Cabinet. Obviously we have had input into those discussions, but where it is at is a matter for them, and frankly I am not quite sure where it is at at the moment.

Senator LUDLAM—I am certainly not asking you to express opinions on behalf of PM&C. Has the Attorney-General's Department, or its various agencies and instruments, concluded its input into that process, or are you still actively engaged?

Mr G McDonald—We have been inputting into that process. We have answered all the questions.

Senator LUDLAM—I beg your pardon?

Mr G McDonald—We have input all the inputs that we have been requested to put into the process. I cannot comment on whether the process is completed or not.

Senator LUDLAM—When was the last time you made inputs into that process or were asked to provide some kind of material or feedback?

Mr G McDonald—I cannot be completely specific about that, but certainly within the last month.

Senator LUDLAM—But you have no reason to imagine that your input into that process is complete—or do you feel as if you have signed off on what you were expected to provide?

Mr G McDonald—We have provided everything that we have been asked to provide.

Senator LUDLAM—Thank you very much. That work has been ongoing, I guess, for a couple of years now, and just in the last month you have been getting the impression that perhaps your contribution is complete?

Mr G McDonald—Yes. I would not say it was as long as two years, but certainly over the last 12 months.

Senator LUDLAM—Thank you very much; that is helpful. How many submissions were received, as far as you are aware, as part of the national security legislation public consultation that the Attorney released last year?

Mr G McDonald—It was about 50.

Senator LUDLAM—I am aware of around 1,330 which came from work my office did in publicising that, encouraging people to provide input. Presumably, you are not counting more than 1,000 submissions from those people. I was not trying to entrap you there.

Mr G McDonald—No.

Senator LUDLAM—I was just expecting it to be a larger number.

Mr G McDonald—We certainly did not get that many.

Senator LUDLAM—Including email submissions, as opposed to postal or wherever they came from.

Mr Wilkins—We had better take little notice. Are you saying that you know of 1,000-odd people having sent as email?

Senator LUDLAM—That is correct—1,330 is a number I have. Those are just the ones which were forwarded through our office or we were aware of people making a submission.

Mr Wilkins—So you forwarded them to the department?

Senator LUDLAM—No, they did not come directly from us but we kept tabs on the number of people who inputted. We were encouraging people to engage with the process because we thought it was a useful one.

Mr G McDonald—I will have to take it on notice because—

Mr Wilkins—And we might come back to talk to you about them.

Senator LUDLAM—That sounds good. That might be really helpful because people have made submissions to that process in good faith. If it has not been recorded at all—you believe you have only 50 inputs—that has skewed your sample greatly.

Mr Wilkins—The notes we have here may not be comprehensive. So let us check it out.

Senator LUDLAM—That is fine, thank you. We will come back to that later, I suspect. Do you have any information you can provide us with as to the exposure draft which we saw last year, where people provided feedback? Where is that process up to and when can we expect some kind of resolution?

Mr G McDonald—We have been working on a bill which comes out of that process. We are quite advanced with the development of that bill.

Senator LUDLAM—All right. Is there anything you are able to tell us? I am not sure how far we can stray into detail here. Does the department get any great significance from the exposure draft?

Mr G McDonald—I cannot really going into that at this stage. I cannot pre-empt what is going to be introduced.

Senator LUDLAM—Okay. It was worth asking. I have a couple questions about the Anti-Counterfeiting Trade Agreement. I understand I am going to have to put some of these questions to your colleagues in Foreign, Affairs and Trade, but I understand the Attorney's Copyright Law Branch has also been advising the government on the ACTA negotiations. Is that something you are able to help us with?

Mr G McDonald—No, not me.

Senator LUDLAM—You just get away from the big table as quickly as you can! Ms Daniels, I am not expecting you to disclose any specifics of the talks, which I gather are happening in secret, or the negotiating position which Australia is taking to the talks. What exactly can you tell us about the proposed agreement and what it is expected to cover?

Ms Daniels—First of all, you are right that the Department of Foreign Affairs and Trade is the lead department on these negotiations. This department has participated in all the negotiating rounds to date in relation to the discussions on potential copyright provisions. The aim of the treaty, in broad terms, is to seek an agreement which will provide practical international standards on enforcement on intellectual property in general, broad international support which complements the existing international treaty system.

Senator LUDLAM—There was a report in the *Financial Times* on 28 January, which I do not expect you to have in front of you, which indicated that leaked drafts of the agreement—I suppose you will appreciate that most of what the public knows about these talks has come from leaks because very little has been release is officially—include reference to internet service providers, ISPs, being more responsible for the content they distribute. The proposals include fines and imprisonment, non-commercial file sharing and increasing reliability of ISPs, which has some resonance at the moment given the iiNet case, which was settled only a week or so ago. Are these aspects of the negotiations, as far as you are aware?

Ms Daniels—What I can say is that there are internet provisions being discussed during negotiations, and the Department of Foreign Affairs and Trade has the areas under discussion on its website so I can refer you to some information on their website.

Senator LUDLAM—Yes, I am aware of what is there. You have said that Foreign Affairs and Trade are taking the lead in the negotiations. Can you describe for us the role that you or your office is playing?

Ms Daniels—An officer from my branch attends each of the negotiation rounds to assist Foreign Affairs with technical questions about our law that are raised by other countries in the negotiations.

Senator LUDLAM—When are you expecting those negotiations to conclude? When might we see a draft text?

Ms Daniels—I do not know when we will see a draft text. I know that between now and the end of the year there are three meetings forecast. The lead countries pushing for this treaty—that is the United States and Japan, who started these negotiations—would be looking to conclude a treaty within the next 12 months.

Senator LUDLAM—Is it the case that the treaty is seeking to ‘multilateralise’, if you will, the kind of intellectual property agreements that already exist under the Australia-US Free Trade Agreement? Are we seeking to spread those sorts of terms amongst other countries?

Ms Daniels—The negotiating parties in the anti-counterfeiting trade agreement do not all have agreements with the United States. We are one country that does. New Zealand, for example, does not. There are other countries in the rounds that do not. The EU are part of the negotiations as well and they do not have an agreement with the United States. There is a variety of negotiating positions on each of the areas in the treaty.

Senator LUDLAM—But are the negotiations seeking to multilateralise, if you will, the kinds of agreements that already exist under the US-Australia Free Trade Agreement, as far as intellectual property is concerned?

Ms Daniels—I could not say whether it will be the standards in the Australia-US Free Trade Agreement.

Senator LUDLAM—Is that because you are not sure, or because it is not an accurate proposition to put?

Ms Daniels—I do not think that we are at a stage to be able to make that assessment.

Senator LUDLAM—Some analysts have commented that Australian copyright law is actually already somewhat stricter than the United States law on third-party liability. Does that sound like a reasonable proposition?

Ms Daniels—I guess the recent iiNet litigation, which you referred to earlier, has looked at Australian third-party liability law. To the extent which we can talk about US law, they have different terms for dealing with the same issues, but, as a generalised statement, I would have thought our law is very close to the US law in this area.

Senator LUDLAM—That is all I have on that unless there is anything else that you are able to tell us about the negotiating position that Australia is taking into those talks. What interests are we pursuing in those talks?

Ms Daniels—Our general interest is to look for some commonality of the standards across enforcement issues in relation to intellectual property broadly. That is not just copyright. It is also trademarks, for example.

Senator LUDLAM—Is there any reason why we have entered into these negotiations outside the World Intellectual Property Organisation framework; why we have we departed from that train of negotiations on these issues?

Ms Daniels—To date, the World Intellectual Property Organisation has not normally dealt in enforcement matters in its treaty areas.

Senator LUDLAM—That is the key reason?

Ms Daniels—That would be one of the main reasons, yes.

Senator LUDLAM—Thank you very much for your help. I have one or two more other questions—I will come back to counterterrorism, if I may. My understanding is that there is a COAG review of the operation of the Anti-Terrorism Act that is due to take place this year.

Could you just update the committee on the involvement of your department in that review and whether that has commenced?

Mr G McDonald—COAG indicated that the arrangements for putting that review process in place should start midyear and that it should report at the end of the year. On where we are up to, we have had discussions on the Legal Issues Subcommittee of the National Counter-Terrorism Committee about some of the practical aspects of establishing that, but at this stage it is still very early days.

Senator LUDLAM—What impact would a federal election have on that process if it is anticipated to be happening in the third and fourth quarters of this year?

Senator Ludwig—That seems a little speculative.

Mr G McDonald—Yes, it is a bit speculative.

Senator LUDLAM—I am not going on a fishing expedition, but he has timed his review right in the middle of an election campaign, hasn't he?

Senator Ludwig—I do not know. You would need to ask the Prime Minister that.

Senator LUDLAM—I could put that question to you, Minister. Sorry, if this is completely out of line I will pursue a different line. Is there any contingency planning for that or are you seriously anticipating having that work done by the end of the year?

Mr G McDonald—It is essentially a COAG decision. It is not prescribed by legislation. COAG decided in 2005 that the actual review would be established in June 2010. The review would commence in December 2010 and it would provide a written report to COAG within six months of the commencement of the review. I have got a copy here of the COAG decision from the COAG meeting on 10 February 2006, should you like a copy of it.

Senator LUDLAM—That is just part of their regular communiqué and in the public domain?

Mr G McDonald—Yes.

Senator LUDLAM—But we would not expect to see anything potentially in public or even back to COAG until mid-2011, if all goes well?

Mr G McDonald—Yes.

Senator LUDLAM—My final question is around a Human Rights Council report from the special rapporteur issued in December of last year into the protection of human rights while countering terrorism. Is that a report that you are familiar with?

Mr G McDonald—I am aware of that report in general terms.

Senator LUDLAM—I will not ask you to quote from it if you do not have it in front of you. One of the points that were raised was that countries that lack constitutional or statutory safeguards around the information on individuals, and the protection of data that has been collected about individuals, have radically transformed their surveillance powers. Australia was included in that list of countries. I am interested to know whether we extend domestic privacy safeguards to our cooperation with third party countries and private actors when personal information on individuals is collected. That might sound a little bit convoluted.

When we are collecting information for domestic data and intelligence gathering activities, what confidence can Australian citizens have that that material is not being shared with third parties overseas that might have completely different privacy regimes?

Mr G McDonald—That is a question that I do not have a specific answer for. I would have to take that one on notice.

Senator LUDLAM—If you could point us to a specific bit of policy or something I think it would be quite helpful. What I am specifically interested in is this: are there particular data sharing agreements with countries in our region that handle bilateral exchanges of material that is collected on individuals here?

Mr G McDonald—I think some of what you might be referring to is the responsibility of the Department of the Prime Minister and Cabinet in terms of privacy laws. So that might be the place where you could make further inquiries.

Senator LUDLAM—All right. Within the limits of your mandate, could you provide us with anything?

Mr Wilkins—I think you will find that it is actually tied up with the privacy legislation that constrains at least state actors and probably private actors in terms of assuring themselves that when they pass information around there is some protection. The minister on my left is in charge of that.

Senator Ludwig—He does not seem to be handling it quite competently! But it will go to issues of cross-border data flows. There are clearly protocols in place to deal with that.

Senator LUDLAM—Is that a conversation I should pursue somewhere else?

Senator Ludwig—PM&C, I think. You may need to put those questions on notice.

Senator LUDLAM—My final question relates again to surveillance policy in Australia. In the same report the case of United Kingdom surveillance cameras is discussed. They are used to monitor political process. The images are kept in a database and that material is used to track individuals who are involved in peaceful protests. Is there a national policy in Australia for the use of imagery from surveillance cameras or is that regulated entirely at a state and territory level?

Senator Ludwig—You should put that on notice to PM&C, I think.

Senator LUDLAM—Why would that not be a question for the officers here?

Senator Ludwig—I am giving you the opportunity. It would deal with cross-border data flows, I suspect—

Senator LUDLAM—I am sorry, but I have moved on. I beg your pardon. It is not necessarily data sharing with other countries agencies overseas, but purely its use for Australian domestic purposes.

Senator Ludwig—So it is internal data flow only?

Senator LUDLAM—Yes.

Senator Ludwig—Does it relate to the storage of data?

Senator LUDLAM—The collection and storage of data, but it is more—

Senator Ludwig—That would be in the privacy legislation, I believe, and the question then could still be put to Prime Minister and Cabinet—

Senator LUDLAM—I am happy to do that.

Senator Ludwig—on the storage and use a particular information, particularly if it is private information.

Senator LUDLAM—Are you asking me not to put that question to the officer here?

Senator Ludwig—No, you could put the question. I will not stop you from doing that. I am just indicating that the question may be better directed to Prime Minister and Cabinet.

Senator LUDLAM—All right.

Mr Wilkins—We will take it on notice though, if you want to ask us. We will probably go off and talk to Prime Minister and Cabinet.

Senator LUDLAM—I am just interested to know how that material is regulated and whether there is a national framework for material that is captured and stored. I am not talking about criminal activity obviously, but peaceful—

Senator Ludwig—Then you are talking about the privacy act—the national privacy principles.

Senator LUDLAM—I will be guided by you, but any information you can provide I would greatly appreciate.

Mr Wilkins—It would probably be unlikely that people are capturing that sort of information.

Senator LUDLAM—Some of it is captured. There are an awful lot of surveillance cameras in Australia.

Mr Wilkins—You mean those sort of dumb surveillance cameras?

Senator LUDLAM—I do not know how dumb they are; they look like cameras to me.

Mr Wilkins—But you want to know what happens to that footage?

Senator LUDLAM—I want to know what happens to that footage when it records legitimate political protests, demonstrations and that sort of thing. What legislation—state, territory or Commonwealth—guides the use, storage and dissemination of those images?

Mr G McDonald—I will take that on notice. I am aware that there is some state legislation, but I do not know enough to answer the question properly.

Senator LUDLAM—I will leave it there. Thanks very much for your help tonight.

Senator BRANDIS—I know Senator Trood has an interest here too. I just want to persist a little beyond where Senator Ludlam left off with the counter-terrorism White Paper. I understand that the lead department here is PM&C, but the Attorney-General's Department is a participant participating department in this process, is it not?

Mr G McDonald—Yes.

Senator BRANDIS—I will quote some words the Attorney-General used once again to the *Australian Financial Review* on 7 August 2009 responding in fact to some observations by

Senator Trood complaining about the delay in the production of the counterterrorism white paper.

Senator McClelland said the government would not be rushed into releasing the counter-terrorism white paper, which would come toward the end of the year—

that is, toward the end of 2009—

“We’ll be doing it thoroughly, methodically and it will be solid,” Senator McClelland said.

The counterterrorism white paper was due in December 2008—that was when, according to the government, it was first supposed to be released. In August of last year the Attorney-General said that it would be released by the end of 2009—that is, about a year late. It is now February 2010 and there is still no sign of it. I think the committee is entitled to know what has become of it. I am not going to ask you questions to which you are going to merely refer me to PM&C, so let me approach it this way: can you please describe to us, Mr Wilkins, the nature of the Attorney-General’s Department’s involvement in the preparation of the counterterrorism white paper?

Mr Wilkins—Yes. We have been part of a group of departments that have met to consider the report and we have contributed material to the report.

Senator BRANDIS—How many such meetings have there been since this process began in 2008?

Mr Wilkins—Lots and lots, actually.

Senator BRANDIS—When you say ‘lots and lots’, by that do I take it more than—

Mr G McDonald—Scores.

Senator BRANDIS—All right. If there have been scores of meetings in a period of getting on for two years since this process was initiated, that means there must have been several meetings a month for the last two years. Is that about right?

Mr Wilkins—I do not quite understand the logic there, Senator.

Senator BRANDIS—If there have been scores of meetings, which means at least multiples of 20, and the process has been under way for a bit under 24 months, there must have been—

Mr Wilkins—About one a month or something.

Senator BRANDIS—No, more than one a month. Depending on what multiple of 20 ‘scores’ means, several a month.

Mr Wilkins—It might be 15 or something. But there have been a lot of meetings.

Senator BRANDIS—All right. Which are the departments and agencies which have been involved in those meetings?

Mr Wilkins—Which are the agencies? I do not know of the top of my head.

Mr G McDonald—It is the full—

Senator BRANDIS—Are you the representative, by the way, Mr McDonald?

Mr G McDonald—I am the head of the National Security Law and Policy Division, which—

Senator BRANDIS—So you are the one who goes to these scores of meetings?

Mr G McDonald—I have certainly been to quite a number of these meetings, and some of my branch heads have been to them.

Mr Jordana—Senator, this type of exercise obviously operates at a whole range of levels. I have attended some meetings myself. Depending on the topic and which component of the exercise was addressed at the time, some of the meetings would have been held at more junior levels. So they would have been held at a whole series of cascading levels.

Senator BRANDIS—I understand that it is a complex thing that involves a lot of officials across government, but this process does seem to be a rather cumbersome leviathan. When the government announces something will be published at the end of 2008 and when in August 2009 it is still not there and a senator—indeed, not any senator but Senator Trood, one of the parliament's respected experts in this field—complains and the Attorney-General says, 'Well, it'll be finished by the end of 2009,' and when here we are in 2010 and there is still no sign of it, I think we are entitled to try to drill down into the process and find out what the delay is.

Mr Wilkins—I think we have explained the process now, Senator.

Senator BRANDIS—All I have been told is that there have been scores of meetings involving various officials at different levels.

Mr Wilkins—Yes.

Senator BRANDIS—Okay. You mentioned a paper before, Mr Wilkins. Do I understand you to mean by that that there is a document, albeit, presumably, a draft?

Mr Wilkins—No, I did not mention a paper.

Senator BRANDIS—You referred to a paper or a document.

Mr Wilkins—No—

Senator BRANDIS—Yes, you did.

Mr Wilkins—I referred to material.

Senator BRANDIS—Has there been a draft prepared?

Mr Wilkins—A draft of?

Senator BRANDIS—The counterterrorism white paper.

Mr Wilkins—Unsurprisingly, of course there has been a draft prepared.

Senator BRANDIS—I am obviously not going to ask you about the content of it. When was the first iteration of the draft prepared?

Mr Wilkins—I do not know, Senator.

Mr Jordana—Can I perhaps just add something there, Senator?

Senator BRANDIS—Yes, Mr Jordana.

Mr Jordana—This type of process inevitably is a rolling kind of process, and to say that there is the first draft, the second draft or the third draft is not really the way it works. I know you smile every time I use the words ‘iterative’, but it is the way that the operation works: there is a rolling process whereby the document is refined and continues to be refined.

Senator BRANDIS—Mr Jordana, I think any of us who have been involved in government understand that documents go through drafts and that it is, as you say, a rolling process, but sooner or later this rolling process has to come to a rest and the various iterations actually have to produce a final document, and that has not happened yet. I am just trying to inquire, particularly in view of the fact that the government is by its own concession in breach—significantly in breach now—of at least two deadlines, the earliest of which is more than a year ago, how far from completion or conclusion we are.

Mr Wilkins—There are two things. One is that events that occurred at the end of last year, of which we are well aware, have meant that there are significant issues that require reconsideration in the sense of this, and the timing of the release—

Senator BRANDIS—Just to clarify: I think I know what you are talking about, but what specifically do you mean when you say that?

Mr Wilkins—I am talking about the bombing attempt on the plane on the 25th—

Senator BRANDIS—Oh, I see. But surely it cannot be the case that, every time there is a terrorist episode anywhere in the world, that further delays production of the government’s counterterrorism white paper.

Mr Wilkins—No, no; that is true, Senator. But there were some aspects to this and, certainly, it had an impact on the consideration of some important issues around intelligence, for our allies as well, which requires us to think about some of these matters. All I am saying is that that has required further thinking about some of the things which we might have thought were settled policy. As to when this is released, that is a matter for government.

Senator BRANDIS—We understand that, but it cannot be the case that every time there is a terrorist episode—

Mr Wilkins—No, I am not saying that.

Senator BRANDIS—Well, you seem very close to saying that, Mr Wilkins.

Mr Wilkins—But I am not saying that, Senator. I am not.

Senator BRANDIS—Well, okay, but—

Mr Wilkins—As you might have noticed, there was a very strong and very deliberate policy response by the United States of America to that event which raised questions about reciprocal and complementary measures, and we need to take those into account.

Senator BRANDIS—That is not the point, though, is it?

Mr Wilkins—I think it is.

Senator BRANDIS—The point is that the government has said, ‘There will be a counterterrorism white paper.’ We are at liberty, I think, to infer from that that the counterterrorism white paper will be published—

Mr Wilkins—Yes.

Senator BRANDIS—and therefore, at the end of what Mr Jordana describes as this rolling process—through however many iterations and subject to however many appropriate reconsiderations or further thought that might go into it—the day must come, according to the government’s declaration of intent, when this paper will be published. We know that it is now more than a year late and that two deadlines set by the government for itself—there may have been more, but there are two that I can identify—have been breached. Now, Mr Wilkins, have those who are involved at the peak level in the review of these drafts and the preparation of the final document set a deadline for themselves beyond which the counterterrorism white paper is to be produced?

Mr Wilkins—No, I think the timing of the release is a matter for the government.

Senator BRANDIS—No, I did not ask about release; I asked about production.

Mr Wilkins—And I think, as I indicated to you, there has been further work done in the light of that event.

Senator BRANDIS—Sure. Well—

Mr Wilkins—It is a matter for the government when it releases this report.

Senator BRANDIS—No. I am sorry, Mr Wilkins—

Mr Wilkins—When it considers it is an adequate report as well.

Senator BRANDIS—Mr Wilkins, you know as well as I do that the question of when the government releases something and when something that goes to government has been produced in a final form which makes it suitable for the government to consider releasing it are two different questions. I am asking you about the latter of those two questions. I well understand—

Mr Wilkins—Yes, but the two questions are linked. If you produce a report and the government wants more work done on it then it is not completed.

Senator BRANDIS—Okay. Let me ask you about that then. Have you produced a document which the government has sent back and asked for more work to be done on?

Mr Wilkins—Something occurred on the 25th which required us to think through further questions.

Senator BRANDIS—Would you answer my question, though. Have you handed a document to government which they have handed back to you and requested more work to be done on?

Mr Jordana—It does not quite happen like that, Senator. There has been, obviously, work on a particular product but sometimes the way in which the product is then adjusted and finetuned and so forth does not represent itself necessarily in a specific document coming back and being anointed or not being anointed. Sometimes those finetunings are part of a bilateral discussion we might have with PM&C, or PM&C would have with some other agency.

Senator BRANDIS—Sure. I understand there are process issues. I understand there are complexities. I understand there are multiple contributors. I understand this happens against a background of dynamic events like, for example, the attempted bombing in Detroit on 25 December. But, allowing for all of that, the task here is to produce a document for public release. It is now more than a year late. When is it expected, if it is expected, that a final document will be handed to government?

Mr Wilkins—It does not work like that, Senator. What aspect of government? It can go to a committee of cabinet. Then it has to go to a budget committee, perhaps. It has to be considered by different ministers.

Senator BRANDIS—These are all explanations of why something is not happening—that is, the document is not being produced in final form. But given that the policy objective declared by the Prime Minister and the Attorney-General is to produce a document, and all of this complex, iterative work is designed presumably to the end of producing a document, when is the document going to be produced?

Mr Wilkins—You mean when is the document going to be finalised?

Senator BRANDIS—When is the document going to be finalised in the sense of: in a form in which those responsible for it hand it to government and say, ‘This is the document’?

Mr Jordana—The secretary has already answered the question—when the government is satisfied with it.

Senator BRANDIS—I am sorry, Mr Jordana, we seem to be going around in circles. The government will only indicate whether it is satisfied or not with a document which is offered to it by those responsible for its preparation as being a fit document for the government to consider releasing. You know that as well as I do.

Mr Wilkins—If you are asking whether drafts have been shown to government, the answer is yes.

Senator BRANDIS—When was the last time a draft was shown to government?

Mr Wilkins—I do not know, and I was not a party to that, but certainly I have seen drafts.

Senator BRANDIS—Mr Jordana, do you know?

Mr Jordana—I cannot quite recall exactly. The question is a little bit difficult to answer because when you say ‘when was it looked at by government’ I am not even too sure what that means.

Senator BRANDIS—Ministers.

Mr Wilkins—There was one late last year.

Senator BRANDIS—Is that the most recent?

Mr Wilkins—Yes, I think so.

Senator BRANDIS—Was that sent back to think about again after the 25 December incident?

Mr Wilkins—When you say ‘sent back’, there was a view, I think, that there were aspects of it that needed to be reconsidered.

Senator BRANDIS—That is happening at the moment, is it?

Mr Wilkins—Yes.

Senator BRANDIS—When is it expected that the next iteration, taking into account the reconsiderations prompted by the 25 December episode, will be delivered to ministers?

Mr Wilkins—That is a question for the cabinet—

Senator BRANDIS—No, it is not. I am asking you when you expect to hand it over, not what they expect to do with it.

Mr Wilkins—It is a question for the cabinet because it is contingent on certain policy decisions being made by cabinet.

Senator BRANDIS—Oh, I see. So are you being held up, are you, because you are awaiting certain decisions which will bear upon the content of the final document?

Mr Wilkins—No, we are not being held up, but obviously if you are going to put out a white paper then it has to embody policy decisions made by government.

Senator BRANDIS—Given, ex hypothesi, these policy decisions have yet to be made—

Mr Wilkins—They may have been made, Senator.

Senator BRANDIS—Well, to the best of your knowledge they are yet to be made—and without asking you about government policy, what are the topics or in what areas are those policy decisions that you are waiting for?

Mr Wilkins—I cannot indicate that. That is subject to cabinet confidentiality.

Senator BRANDIS—Well, Mr Wilkins, let me approach it this way—

Mr Wilkins—It has to do with national security.

Senator BRANDIS—Let me approach it this way: what are the matters which presently stand between where you are now with this document and a document with which you and the authors of it are satisfied is in a fit condition to hand to ministers as a final document?

Mr Wilkins—That is asking me the same thing in a different way.

Senator BRANDIS—No.

Mr Wilkins—Senator, you are basically asking me what are matters before cabinet at the moment.

Senator BRANDIS—I think you have revealed too much. You seem to be suggesting to me by way of answer that what is holding this up are matters before cabinet which are yet to be resolved. If that is the case, that is the case, and that is certainly not the fault of you or the joint authors of the document, but we are nevertheless faced with a situation in which a document about counterterrorism of all things, which one would have thought was an urgent priority, is more than a year late and is still being delayed. I think it is legitimate for me to ask why.

Mr Wilkins—You have, and we have explained.

Senator BRANDIS—Perhaps I am being a bit slow, Mr Wilkins. Just summarise for me why the document is being delayed.

Mr Wilkins—I think I have answered your question.

Senator BRANDIS—Just summarise for me to bring this bracket of questions to an end.

Mr Wilkins—Perhaps you would summarise your understanding.

Senator BRANDIS—My understanding is entirely based on your answers, Mr Wilkins. Just summarise for me will you please the reasons why this document is being delayed.

Mr Wilkins—What is the question, Senator?

Senator BRANDIS—Please summarise for me.

Mr Wilkins—Yes, what is the question you want me to answer?

Senator BRANDIS—Please summarise for me the reasons—

Mr Wilkins—No. I will answer questions.

Senator BRANDIS—the production of this document is being delayed.

Mr Wilkins—We have been over that.

Senator BRANDIS—If we have been over it, I am not asking you anything new.

Mr Wilkins—So what is the question, Senator?

Senator BRANDIS—Would you be kind enough, Mr Wilkins, to summarise for me the reasons why the production of this document has been delayed?

Mr Wilkins—Because of intervening circumstances.

Senator BRANDIS—They being?

Mr Wilkins—No. You asked me to summarise and I just summarised.

Senator BRANDIS—That is not a summary.

Mr Wilkins—If you feel that is an inadequate summary—

Senator BRANDIS—Mr Wilkins, with respect, it is bordering on impertinence to say ‘because of intervening circumstances’. That reveals nothing. What are the intervening circumstances that you say are delaying the production of the document?

Mr Wilkins—One of the intervening circumstances I told you was 25 December.

Senator BRANDIS—You did, thank you. What are the others please?

Mr Wilkins—That is the one I indicated.

Senator BRANDIS—I know it is. What are the others? You just said to me a few seconds ago that that was ‘one of the intervening circumstances’. I would like to know the others please.

Mr Wilkins—The other is the government needing to decide when it wants to release the report.

Senator BRANDIS—That will not be a decision that is made until it has the report, Mr Wilkins, as we both know. What are the other intervening circumstances, please?

Mr Wilkins—There are not any that I indicated.

Senator BRANDIS—I am sorry?

Mr Wilkins—There are no others that I indicated.

Senator BRANDIS—Do you want to reflect on that answer, Mr Wilkins?

Mr Wilkins—I explained the process.

Senator BRANDIS—You said there were intervening circumstances. You identified one as a terrorist event in America on 25 December—

Mr Wilkins—Which required reconsideration of policy, which is being done.

Senator BRANDIS—Yes, you have made that clear. You said that was one of the intervening circumstances. When I asked you what the others were, the only other you identified was the government's decision to release it.

Mr Wilkins—Well, that is the only intervening—

Senator BRANDIS—That is not an intervening circumstance; that is an ultimate decision post the delivery to the government of the document. You know that as well as I do. What are the other intervening circumstances?

Mr Wilkins—Let me correct my answer.

Senator BRANDIS—I think you should, frankly.

Mr Wilkins—That is the only intervening circumstance that I know about.

Senator BRANDIS—The terrorist episode in the United States?

Mr Wilkins—Yes, which gave rise to policy questions.

Senator BRANDIS—All right. So that occurred about seven weeks ago. How much longer, that being the only intervening circumstance, will it be then before the document is handed to ministers, having regard to the further consideration prompted by that event?

Mr Wilkins—I do not know the answer to that question. You will have to ask the Department of the Prime Minister and Cabinet that.

Senator BRANDIS—But you are one of the agencies involved in it—

Mr Wilkins—Yes, but I do not know at what point it would be considered complete by them for handing on to—

Senator BRANDIS—As far as you are concerned, Mr Wilkins, is the Attorney-General's Department's contribution to the document—

Mr Wilkins—Well, I go back to the—

Senator BRANDIS—Let me finish my question, please. You do not know what I am about to ask you. As far as you are concerned, Mr Wilkins, is the Attorney-General's Department's contribution to the document, taking into account the further consideration of matters arising from the 25 December incident in the United States, now complete?

Mr Wilkins—As far as I am concerned, yes.

Senator BRANDIS—I want to turn to one other topic, please.

CHAIR—Senator Trood, do you have questions on this topic first?

Senator TROOD—I do. Mr Wilkins, you have agreed with Senator Brandis that it is now since at least December 2008 since an undertaking was given to the Australian people that this counterterrorism white paper would be produced. You have also agreed, I think I am right in saying, that you expect this will establish some policy in the area. Is that correct?

Mr Wilkins—A white paper is a policy paper.

Senator TROOD—So you expect this document to provide you and indeed the whole of government with some guidance as to the conduct of Australia's counterterrorism policy. Is that correct?

Mr Wilkins—That is what a white paper is, Senator, yes.

Senator TROOD—I am correct about that, am I? I just want to understand the nature—

Mr Wilkins—Yes, you are correct in your understanding.

Senator TROOD—Good. So can I take it that, in the 15 months or so that we have been waiting for this document, no work has been done on the development of Australian counterterrorism policy?

Mr Wilkins—No.

Senator TROOD—I cannot take it as that?

Mr Wilkins—No.

Senator TROOD—So, in the absence of a policy document—a broad statement of policy direction—you have continued to work on the evolution of policy in this area. Is that right?

Mr Wilkins—Yes, and so has the parliament and so have numerous departments of state, and there have been lots of bills debated in the parliament. There has been a lot of work done on terrorism. What a white paper does is to pull that together and to review it holistically.

Senator TROOD—What then are we waiting for within the white paper?

Mr Wilkins—I just explained that to Senator Brandis.

Senator BRANDIS—You did not, actually. You just said something happened in America on 25 December and, after correcting an answer, said that was the only reason.

Senator TROOD—And you have actually said nothing about the content of the policy. That is not an unusual response to questions in estimates, but I am interested to know the extent to which this has prevented the evolution and the development of policy in this area. You have made the point—and I think it is a good one—that things have been happening in the international arena which bear upon the development of Australian counterterrorism policy. I am alarmed about the fact that, in the time that we have been waiting for this document, there does not seem to have been any development of counterterrorism policy, which is a dynamic event, I think it is fair to say. You are saying that you have been working in areas—

Mr Wilkins—Not only the Attorney-General's Department but a number of departments have been working in the area.

Senator TROOD—Perhaps you could just tell the committee the areas in which the Attorney-General's Department has been working in relation to counterterrorism.

Mr Wilkins—Certainly. I will get Mr McDonald to list them for you.

Mr G McDonald—We touched earlier on the issue of development of legislation. We circulated the discussion paper concerning the various reviews that were conducted of counterterrorism legislation. That is certainly one area. Another area is the aviation security area. There has been quite a deal of work in that area. In particular, there was an aviation paper. In the area of e-security, a tremendous amount of work has been done—the establishment of a national e-security cert and improvements in that area and a whole e-security strategy. That can be relevant.

Of course, in our budget processes over the previous budget and this budget, we have continued to fund measures—or the government has continued to fund measures—and develop measures that are relevant to counterterrorism. It is certainly the case that quite a deal has been done during this period. I suppose one of the biggest things, and this came out of the National Security Statement, is the whole idea of trying to integrate all our coordination in terms of all the different hazards, including terrorism itself, and trying to integrate better and get better coordination and better use of resources to deal with terrorism as well as other hazards.

Senator TROOD—That is helpful.

Mr Wilkins—There is other stuff, obviously, which—

Senator TROOD—I am sure there is—

Mr Wilkins—There is a lot of work being done in terms of modelling on critical infrastructure and the effect of these sorts of events on critical infrastructure which this department has been eminently involved in. That is only what this department—

Senator TROOD—I am sure there is a lot of ‘stuff’, as you characterise it, taking place. Can I take it that the Attorney-General’s Department regards itself as being innovative and continuing to work to respond to the challenge that you see that Australia faces from counterterrorism, that the things that Mr McDonald has referred to—e-security, aviation security, et cetera—are a part of what you see as a continuing process of ensuring that Australia’s national security is protected against the terrorist threat? Is that correct?

Mr G McDonald—Yes.

Senator TROOD—So you are continuing to be proactive about these things?

Mr G McDonald—Yes.

Senator TROOD—If that is the case, what is going to be in the white paper, if you have continued to undertake and develop policy without the direction of the white paper? You seem to be out there doing things without the guidance and the direction of the white paper. Is there much more that needs doing? And, if there is more that needs doing, then are you not failing to do your duty?

Mr G McDonald—No.

Senator TROOD—Well, you have just agreed with me that you are undertaking the activities that you need to undertake to protect Australia’s security, insofar as they are responsibilities of the Attorney-General’s Department.

Mr Wilkins—That is right.

Senator TROOD—As I understood Mr McDonald's response—which I acknowledge was not complete, but he gave the committee an indication of the things that you were doing—and as I understand you to also be saying, you are continuing to be proactive in defending the nation's interests in these areas.

Mr G McDonald—Those things were not done in a vacuum. They were done with reporting to government and getting government decisions on individual aspects of it. Of course, there was a national security statement as well.

Mr Jordana—Ultimately, when we approach an issue such as terrorism, we are guided by the government. The government's approach to counterterrorism will be reflected ultimately in the white paper. The two are indivisible.

Senator BRANDIS—But that is the very point, if I may come in there. Of course what you do in undertaking this exercise will reflect the government's approach to counterterrorism—and by 'government' may I take it you mean ministers?

Mr Jordana—Yes.

Senator BRANDIS—You have produced several iterations of a draft. We know that at least one of those late last year went to ministers. So we still do not have the document, even though it is now well over a year late. If there is a delay here—if there is a decision-making paralysis here—nobody is saying it lies with you, Mr Jordana. Plainly it lies with your interlocutor—that is, the ministers, who have considered this document but seem immobilised from making a decision about it.

Senator Ludwig—That is entirely speculative. We have indicated that the timing of the release of the counterterrorism white paper is a matter for the government.

Senator BRANDIS—Senator Ludwig, please do not mislead the committee. It is not a question of the government timing the release of the document, because we know from the witnesses, who are not defending a political position as you are, that no final document has yet been accepted by the document. At least one document, Mr Wilkins told us, went to government late last year and it has come back. So there is no final document yet on which government has signed off. It is not a question of a release date.

Mr Wilkins—I did not say that it had come back. It could well—

Senator BRANDIS—Is it still with the cabinet, Mr Wilkins?

Mr Wilkins—Ministers could well be writing their own document. It is a supposition on your part that only officials can write documents.

Senator BRANDIS—Let us illuminate my supposition, Mr Wilkins. You say that the document went to government late last year. You say that I am wrong to say that your evidence was that the document came back to you.

Mr Wilkins—I am not sure what 'coming back' means.

Senator BRANDIS—Is the document that you submitted to the government late last year still with ministers?

Mr Wilkins—I did not submit any document.

Senator BRANDIS—You said that a document went to government late last year.

Mr Wilkins—It did not come from me.

Senator BRANDIS—That is not the point.

Mr Wilkins—We had input into a document.

Senator BRANDIS—Which went to government late last year.

Mr Wilkins—Yes.

Senator BRANDIS—And it has not been returned?

Mr Wilkins—I do not know what returned means in this context. It has not been released by government and other processes—

Senator TROOD—Mr Wilkins, you at least agree with us, do you not, that the Attorney-General's Department has completed, as you understand it, all the obligations that you have in relation to this document? That is to say, you have provided all the information and all of the responses that you have been asked to provide in relation to this document.

Mr Wilkins—That is right.

Senator TROOD—So far as you are concerned, you have fulfilled all of your responsibilities in relation to this document.

Mr Wilkins—Yes.

Senator TROOD—Insofar as there is a delay in the completion of this document and a decision about its content, it is elsewhere within the bureaucracy; within the system. Is that correct?

Mr Wilkins—Yes.

Senator TROOD—And the elsewhere, presumably, is in the Prime Minister's office. Is that correct?

Mr Wilkins—I do not know.

Senator TROOD—Are you suggesting that you cannot reasonably calculate where you think the delay is? Where have you been providing your information to?

Senator Ludwig—You are asking the witness to speculate on where the—

Senator BRANDIS—No, he is not, actually. You are trying to cover up what is as obvious as can be. But the public servant cannot say that the counterterrorism white paper has been held up by paralysis at the ministerial level.

Senator Ludwig—That is the wild statement that you usually make at this time of the evening. I thank you for your contribution, but that is not what the evidence has been.

Senator BARNETT—What is the total cost to date of the cost of legal aid provided to the nine Sydney terrorists who were arrested in November 2005? In an answer to a question tabled this morning by me, the cost as at 30 September 2009 was \$10.117 million. What is the total cost to date? I refer to the answer to question No. 51 and the answer to question No. 52

noting the costs of the solicitors and the two counsel as being \$650 per day, with junior counsel at \$988 per day and senior counsel at \$1,612 per day per co-accused—for each co-accused. So what is the total cost to date?

Ms Jones—We have the figure that we received from the New South Wales Legal Aid Commission as reflected in the revised answer to the question on notice that was sent through on Friday. That is the most recent figure that we have from the New South Wales Legal Aid Commission.

Senator BARNETT—Can you provide a breakdown of those costs and advise the committee accordingly?

Ms Jones—I would have to take that on notice and get that information from the New South Wales Legal Aid Commission.

Senator BARNETT—Thank you. I will put further questions on notice. I wonder if the secretary can respond to the questions that we asked earlier—I think that you were considering it—on the classifications board and the law enforcement agencies. It was question No. 40.

Mr Wilkins—Are you putting those on notice? They will take several—

Senator BARNETT—No. It was a question I asked earlier. You were considering whether you could provide a copy of the letters to the law enforcement agencies that you wrote to around the country—and you have provided a list of those in an answer to a question on notice.

Mr Wilkins—I have not been able to ascertain that. It will mean getting their views on it, so it is not going to happen overnight.

Senator BARNETT—So you will come back to us.

Mr Wilkins—Yes.

Senator BARNETT—Thank you for tabling the list of adult magazines called in for classification.

CHAIR—That concludes our examination of the Attorney-General's Portfolio. I thank all of you for attending today. You will now have to deal with questions on notice. For those of you who have sat here all day, I will not make any apologies on behalf of my other colleagues, I have to say. Tomorrow, the committee will examine Immigration and Citizenship Portfolio, commencing with the Office of MARA. I now declare this meeting adjourned until 9.00 am tomorrow.

Committee adjourned at 11.01 pm