



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 24 MAY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Monday, 24 May 2010**

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

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

Senators in attendance: Senators Abetz, Barnett, Boswell, Brandis, Crossin, Feeney, Hanson-Young, McGauran, McLucas, Humphries, Ludlam, Parry, Ryan and Trood

Committee met at 9.03 am

ATTORNEY-GENERAL PORTFOLIO**In Attendance**

Senator Wong, Minister for Climate Change, Energy Efficiency 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 Geoff McDonald PSM, Acting Deputy Secretary, National Security and Criminal Justice Group

Dr James Popple, Acting Deputy Secretary, Civil Justice and Legal Services Group

Outcome 1—A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system**Program 1.1 Attorney-General's Department Operating Expenses—Civil Justice and Legal Services****Access to Justice Division**

Ms Alison Playford, First Assistant Secretary, Access to Justice Division

Mr Matt Minogue, Assistant Secretary, Justice Improvement Branch

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

Ms Kelly Williams, Special Adviser, Federal Courts Branch

Ms Allison Wood, Director, Federal Courts Branch

Civil Law Division

Mr Kym Duggan, Acting First Assistant Secretary, Civil Law Division
Ms Janette Dines, Assistant Secretary, Office of Legal Services Coordination
Ms Janet Power, Special Adviser, Office of Legal Services Coordination
Mr David Bergman, Assistant Secretary, Bankruptcy Policy Branch
Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch
Ms Marjorie Todd, Assistant Secretary, National Legal Profession Reform
Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch
Ms Helen Daniels, Assistant Secretary, Copyright and Classification Policy Branch

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

Office of 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

Social Inclusion Division

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division
Dr John Boersig PSM, Assistant Secretary, Human Rights Branch
Ms Amanda Davies, Special Advisor, Human Rights Branch
Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch
Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch
Ms Tamsyn Harvey, Assistant Secretary, Native Title Unit
Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Program 1.2 Attorney-General's Department Operating Expenses—National Security and Criminal Justice**Criminal Justice Division**

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

National Security Capability Development Division

Mr Mike Norris, Acting 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 Eddie Carthew, Acting Assistant Secretary, Counter-Terrorism Capability Development Branch

Emergency Management Australia

Mr Martin Studdert AM, Director-General, Emergency Management Australia
Ms Diana Williams, Assistant Secretary, Security Coordination Branch
Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch
Mr Jim Dance, Assistant Secretary, Crisis Coordination Branch
Mr Kevin Rheese, Director, Relief and Recovery Section

National Security Resilience Policy Division

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
Ms Marcella Hawkes, Director, E-Security Policy and Coordination Branch

National Security Law and Policy Division

Mr Geoff McDonald PSM, First Assistant Secretary, National Security Law and Policy Division
Mr Lionel Markey, Acting 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
Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Unit

Program 1.3 Justice Services**Access to Justice Division**

Ms Alison Playford, First Assistant Secretary, Access to Justice Division
Mr Matt Minogue, Assistant Secretary, Justice Improvement Branch
Ms Vicki Parker, Assistant Secretary, Marriage and Intercountry Adoption Branch
Ms Toni Pirani, Assistant Secretary, Family Law Branch

Social Inclusion Division

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division
Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch
Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch
Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Civil Law Division

Mr Kym Duggan, Acting First Assistant Secretary, Civil Law Division
Ms Janette Dines, Assistant Secretary, Office of Legal Services Coordination
Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

Office of Legislative Drafting and Publishing Division

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

Program 1.4 Family Relationship Services**Access to Justice Division**

Ms Alison Playford, First Assistant Secretary, Access to Justice Division
Ms Toni Pirani, Assistant Secretary, Family Law Branch

Program 1.5 Indigenous Law and Justice**Social Inclusion Division**

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Mr Peter Arnauo, Assistant Secretary, Indigenous and Community Legal Services Branch

Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch

Ms Tamsyn Harvey, Assistant Secretary, Native Title Unit

Program 1.6 National Security and Criminal Justice**Criminal Justice Division**

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

International Crime Cooperation Division

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

Ms Alex Hutton, Special Adviser, International Legal Assistance Unit

Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority

People, Information and Technology Division

Ms Hilary Russell, General Manager, People, Information and Technology Division

National Security Capability Development Division

Mr Mike Norris, Acting 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 Eddie Carthew, Acting Assistant Secretary, Counter-Terrorism Capability Development Branch

Emergency Management Australia

Mr Martin Studdert AM, Director-General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Mr Jim Dance, Assistant Secretary, Crisis Coordination Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

National Security Resilience Policy Division

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

Ms Marcella Hawkes, Director, E-Security Policy and Coordination Branch

National Security Law and Policy Division

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

Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Unit

Outcome 2—Good governance in Australian Territories through the maintenance and improvement of the overarching legislative framework for the self-governing territories, and laws and services for non-self-governing territories

Mr Julian Yates, 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

People, Information and Technology Division

Ms Hilary Russell, General Manager, People, Information and Technology Division

Administrative Appeals Tribunal

Ms Megan Cassidy, Acting Registrar

Ms Chris Matthies, Acting Assistant Registrar

Mr Steve Wise, Chief Finance Officer

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Stephen Hayward, Executive Director

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

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 Tim Barrett, Commander, Border Protection Command

Ms Roxanne Kelley, National Director, Enforcement and Investigations

Mr Nigel Perry, Acting National Director, Maritime Operations Support

Mr Andrew Rice, Acting National Director, Intelligence and Targeting

Dr Ben Evans, National Director, Law Enforcement Strategy

Australian Federal Police

Mr Tony Negus APM, Commissioner

Mr Peter Drennan APM, Deputy Commissioner, National Security

Ms Mandy Newton, Deputy Commissioner, Operations

Mr Andrew Wood, Chief Operating Officer

Mr Tim Morris APM, Assistant Commissioner

Australian Government Solicitor

Mr Ian Govey, 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 Padma Raman, Executive Director

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

Australian Institute of Criminology/Criminology Research Council

Dr Adam Tomison, Director

Mr Tony Marks, General Manager and Chief Financial Officer Corporate

Australian Law Reform Commission

Professor Rosalind Croucher, President

Sabina Wynn, Executive Director

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, Executive General Manager, Intelligence

Mr Peter Clark, 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

The Hon Trevor Griffin, Acting Convenor

Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch

CrimTrac Agency

Mr Ben McDevitt AM APM, Chief Executive Officer

Mr Jeff Storer, Chief Operating 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 Teresa Kane, Acting 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

Insolvency and Trustee Services Australia

Ms Veronique Ingram, Chief Executive and Inspector-General in Bankruptcy
Mr Gavin McCosker, National Manager
Mr Bob Morison, Chief Finance Officer
Mr Matthew Osborne, Principal Legal Officer

National Capital Authority

Mr Gary Rake, Chief Executive
Mr Philip Wales, Executive Director, Corporate
Ms Alison Walker-Kaye, Executive Director, Estate
Mr Andrew Smith, Executive Director, Plan

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar
Mr Franklin Gaffney, Director, Corporate Services and Public Affairs
Mr Hugh Chevis, Director, Service Delivery
Mr Hardip Bhabra, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions
Mr Graeme Davidson, Deputy Director, Commercial, International and Counter Terrorism
Ms Stela Walker, Deputy Director, Corporate Management

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel
Ms Susan McNeilly, General Manager and Chief Finance Officer

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 expenditure in respect of the year ending on 30 June 2011 and the particulars of certain proposed expenditure in respect of the year ending 30 June 2011 for the Attorney-General's and the Immigration and Citizenship portfolios. We are required to report to the Senate on 22 June 2010. The committee has set Friday, 9 July 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, the committee secretariat has copies of the rules. I 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, which I incorporate into *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (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 to, 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).

(Extract, Senate Standing Orders, pp 124-125)

CHAIR—We will begin today's proceedings with cross-portfolio questions for the Attorney-General's Department, then move to the Administrative Appeals Tribunal, proceed through agencies and then hopefully move on to the department at some stage. The program will be suspended today for breaks, as advertised. I draw people's attention to the fact that we have an hour and a half every day this week for dinner rather than an hour—somebody needs to bring some work and life balance into these estimates proceedings at some stage!

[9.05 am]

Attorney-General's Department

CHAIR—I begin by welcoming the minister, Senator the Hon. Penny Wong. Good morning, and welcome to our estimates proceedings.

Senator Wong—Good morning, Chair.

CHAIR—Minister Wong is representing the Attorney-General and the Minister for Home Affairs. I also welcome Mr Wilkins and officers of the Attorney-General's Department. Minister, do you wish to make an opening statement to begin with?

Senator Wong—No, although I probably should say that I also have Energy Efficiency in my portfolio. We might want to make sure the record reflects that.

CHAIR—Thank you for highlighting that for us. Mr Wilkins, do you want to make an opening statement today?

Mr Wilkins—Yes, Madam Chair. It might be useful to give the committee an overview. There are some issues that might arise later in the estimates committee. Some of the matters pertain to other portfolio agencies that will be appearing before the committee. The budget has provided funding over the four years from 2010-11 for a range of strategic measures. The key measures include strengthening national security, combating organised crime, improving access to justice through legal assistance services, enhancing promotion and protection of human rights, countering violent extremism in our communities and strengthening Australia's border security, national security and border security measures to address tasks that are critical for sustaining national security, including significant intelligence-gathering initiatives,

regional security cooperation, and tackling border security issues with substantial funding for the staged commissioning of eight new replacement customs patrol vessels.

Under the heading of combating organised crime, a criminal intelligence fusion centre is to be established within the Australian Crime Commission, new analytical technologies will greatly enhance the work of AUSTRAC, and together these projects will help combat organised crime enterprises that are now estimated to cost the community more than \$15 billion annually.

Under the heading of implementing Australia's human rights framework, as you know the Attorney has stated a government position on that. There is money to enhance the protection and promotion of human rights and responsibilities. The government will provide \$18.3 million over four years, including \$6.6 million to the Australian Human Rights Commission and \$2.1 million in grants to non-government organisations.

Under the heading of countering violent extremism, almost \$10 million over four years will be directed to countering violent extremism by developing programs at all levels of government that focus on identifying and diverting people at risk of violent extremism. Programs will be developed in partnership with local communities to supplement the work of law enforcement agencies.

Under the heading of access to justice, to implement the strategic framework for access to justice the government will invest an additional \$154 million over four years to improve access to justice in the community by resourcing and providing support for legal aid, Indigenous legal services and community legal services.

These initiatives were developed in close collaboration between the department and the portfolio agencies. Madam Chair, I have a number of things that I would like to say about the department at some point, but, given that this is a cross-portfolio section of the estimates committee, perhaps when we look at the department we can deal with some of those issues. If it is all right with you, could I make another statement at that point?

CHAIR—You can.

Mr Wilkins—Thank you.

Senator BARNETT—Through you, Chair: Mr Wilkins, if you want to make those statements now about the department, I have no problem with that.

Mr Wilkins—All right.

Senator BARNETT—That seems like a sensible proposition.

CHAIR—All right.

Mr Wilkins—If the committee is in agreement with that, Madam Chair?

CHAIR—Considering we are looking at cross-portfolio issues now, if you have issues pertaining to the department that you want to put on record, it might pre-empt some answers to questions. If you want to do that now, perhaps that would be good.

Mr Wilkins—The funding for the new measures for the Attorney-General's Department announced in the budget amounts to \$153.4 million over four years. Further funding of \$91.8 million has been provided for legal assistance payments to states and territories under national

partnership agreements paid through Treasury. In addition to the new measures the department will provide savings of \$83.5 million over four years from its existing programs.

The new measures for the department are as follows: \$154 million over four years for improving access to justice. In September 2009, the government adopted the strategic framework for access to justice. The framework is based on principles of accessibility, appropriateness, equity, efficiency and effectiveness. Consistent with the framework, the government is injecting significant resources towards legal assistance services in the budget. This new funding is a central element of a package of measures to improve access to justice across the federal civil justice system. The 2010-11 budget provides \$154 million over four years for legal assistance. This includes \$92.3 million for legal aid, \$34.9 million for Indigenous legal aid and \$26.8 million for community legal services.

The funding provided in the budget will address service pressures faced by legal assistance providers. The funding also will be provided with a more strategic approach to the legal assistance service delivery. It is intended that the focus of legal assistance services be directed away from high-cost litigation to early intervention services, which help people resolve disputes before they escalate to larger problems, which we know can impact severely on people's wellbeing.

The reforms will be driven by the National Partnership Agreement on Legal Assistance Services that is currently being negotiated with state and territory governments. The agreement will modify Commonwealth funding policy to allow legal aid commissions to be able to spend Commonwealth funds on vital early intervention and prevention services of all law types, Commonwealth and state. This policy reform will be made possible through the additional funding for legal aid commissions from the budget. The additional funding for Indigenous legal services will allow service providers to meet increased demand for services, particularly in the areas of criminal law and family law. New funding for community legal services will be directed to enhance services targeted towards groups of identified need, including older persons, persons at risk of family violence, consumer credit and those in rural, regional and remote areas.

Funding has also been provided in the budget to allow the continuation of a successful pilot scheme under which community legal services are providing valuable legal assistance to clients at family relationship centres. Then there is \$11.7 million over four years to contribute to the implementation of a new Australian human rights framework. This provides funding for positive and practical measures to improve human rights protection in Australia, focusing on enhanced education and increased consideration of human rights in the development of laws and policy. It includes \$2.1 million in grants to non-government organisations for community education.

There is \$9.7 million over four years for countering violent extremism. This is to counter the threat of home-grown terrorism that was highlighted in the counter-terrorism white paper. This funding will provide for measures to identify and divert people at risk of violent extremism. This will be done in consultation with the community and with the state and territories. Of the allocated \$9.7 million, \$2.9 million will be allocated from the existing funding for the National Action Plan to Build on Social Cohesion, Harmony and Security.

There is \$47.3 million over four years, including capital of \$25.1 million, for projects to support the increased population on Christmas Island. Services included in this package of measures include adequate sewage treatment, provision of additional staff housing and continuation of expanded health, education and community policing services. Essential infrastructure on Christmas Island is designed for a population of 2,000. The population of the island is currently approaching 4,500 due to immigration activity.

Senator BARNETT—Was that 4,500?

Mr Wilkins—That is correct, Senator. The package is further to a \$50 million package announced in December 2009 that has funded additional education, medical and policing personnel as well as expansion to wastewater treatment infrastructure to be completed by October 2010. Upgrades to the Christmas Island power station will be completed by 2011.

There is \$7.5 million over three years from 2011-12 for ongoing maintenance of the Cocos-Keeling Islands runway after a \$28 million refurbishment project is completed by the Department of Finance and Deregulation during 2010-11. As you will appreciate, refurbishment of the runway will ensure that the vital link with the Australian mainland is maintained, essential services to the local community are delivered and operational support for Australia's northern defences is maintained. There is \$17.9 million, including capital of \$5.3 million, in additional resourcing to establish a personal property securities register. The funding will allow a new PPS registrar to commence work in mid-2010 to manage the transition to the new system. Funding provided in this budget will be recovered through user fees once the new PPS register is operational.

Then there are other measures to implement the access to justice framework—the court and AAT fees. Consistent with the Attorney-General's access to justice framework, \$66.2 million will be available from changes to fee structures of the federal courts and the AAT. In November 2009, the Standing Committee of Attorneys-General agreed to develop a harmonised approach to options for greater cost recovery of justice services. A working group is working on a methodology for a national approach. While these changes will make a contribution to the services being provided, the changes fall substantially short of implementing full cost recovery.

Fee increases will take account of the ability of parties to pay. Increases for corporations will be more significant than for individuals. Parties facing financial hardship will pay a modest fee to make an application. This is significantly lower than normal fees. It will encourage parties to resolve matters without resorting to hearing and to ensure that they make some contribution to the service provided. Increases to fees for long trials in the Federal Court, with higher fees for those over five days and more for those over 10 days, will provide incentives to take steps to identify the real issues in dispute so as to minimise the length of hearing. It is appropriate that parties involved in long trials, which take up significant resources, should make a greater contribution.

Agencies in the Administrative Appeals Tribunal also will be subject to a fee for unsuccessfully defending or for challenging a decision, unless there are compelling reasons to do so. This was a recommendation of the Access to Justice Task Force report. These measures seek to reinforce a cultural shift away from expensive adversarial litigation and multiple

layers of merits review. Regulations currently are being developed in consultation with the courts to implement those fee changes.

Then there is the judiciary. In consultations with the Federal Courts, efficiencies have been identified where it is expected that early intervention and more active case management will lead to continued reductions in workloads. The budget provides \$17 million over four years from not filling two vacant positions in the Federal Magistrates Court and not appointing four judicial officers in the Family Court and one judicial officer in the Federal Court following upcoming retirements.

Since 2006-07, Federal Court filings declined by 21.5 per cent from 4,925 in 2006-07 to 3,864 in 2008-09. Impacts of the active case management provisions, which were passed by parliament last year, and the rollout of the so-called rocket docket, which was trialled in Victoria, are expected to lead to further efficiencies. Family law filings in both the Family Court and the Federal Magistrates Court family law jurisdiction in the same period also decreased—a total of 12.48 per cent from 25,539 in 2006-07 to 19,200 in 2009-10. The government is confident that funding cuts to the federal judiciary will not impact on the ability of the courts to deal with their workloads.

There are family law payments to the states: \$9.1 million over four years has been reallocated from family law payments to states for services provided under the Family Law Act 1975 and the child support scheme. Claims in this area from the states have reduced in recent years consistent with the decrease in total family law filings with the introduction of the family relationship centres and compulsory mediation before the court. These savings can be achieved within the framework of existing arrangements with the states and will not impact on the services provided by the states.

Then there is the Family Relationship Services Program. The government has reallocated \$48.4 million over four years from the Family Relationship Services Program, which had a total appropriation across both this department and FaHCSIA of \$253 million in 2009-10. This is a program which has grown significantly in recent years from a total appropriation of \$121 million in 2006-07. The reallocation represents a reduction of only around three per cent to the overall program. The majority of these savings—\$27.9 million over four years—has been found by reducing internal government spending. There is a reduction of \$6.4 million over four years for forums and the development of resources. These activities were held primarily to establish new services. The sector is now well established and operating many of its own forums, which the government uses to actively engage with the sector.

There will also be a reduction of \$6.5 million over four years for research and evaluation activities. As the committee is aware, six major research proposals were concluded this financial year, including the Australian Institute of Family Studies evaluation, which was the largest empirical examination of the family law system ever. The research has provided a huge evidence base in this area, which has reduced the need for funding of this type of activity over the next four years.

There is a transfer of \$16.8 million to provide free legal assistance services in family relationship centres. This is actually money being reinvested in the family law system through the community legal sector. Providing early and targeted legal assistance contributes to better

outcomes, which will increase the likelihood of parents being able to resolve their disputes without going to courts because they will have a better understanding of their legal position. There is only a limited impact on direct service delivery.

I will move on to financial assistance—

Senator BARNETT—Mr Wilkins, are you going to outline that in due course—the limited changes and efficiencies in service delivery, or will we deal with that at a later time?

Mr Wilkins—We can deal with that now if you like, Senator. There are sort of three points really. The government will achieve efficiencies by implementing a more consistent approach to how post-separation services collect fees from individuals who have the capacity to pay. It is estimated that these changes will net savings of around \$1.2 million per year beginning in 2010-11: moving upwards, that will total around \$5.2 million over four years.

Secondly, there will be the introduction of a means test for the second and third hour of family dispute resolution and family relationship centres. Clients with incomes over \$50,000 will make a modest contribution of \$30 per hour for the second and third hour from the first three hours. This will affect only 32 per cent of clients. It is appropriate for those that use mediation services to contribute to the cost, if they are able to afford it. Separating families will continue to receive all other free services and support from the family relationship centres, including intake and assessment screenings, information sessions and group programs on parenting after separation.

There will be \$4.5 million over four years achieved from administrative efficiencies and streamlining service delivery of counselling services provided under the Family Relationship Services Program with the other types of post-separation services. After this reallocation, there will be some \$164 million for 2010-11 in the Family Relationship Services Program. That funding will continue to be used to provide post-separation services, \$155 million; family pathways networks, \$2.8 million; legal advice services as part of the family relationships advice line of \$1 million per annum; support services related to international child abduction of the Hague Convention is \$0.2 million. It will leave approximately \$5 million for continued work on family law development initiatives. In 2009-10, this funding was used for a range of family violence initiatives, support and education for service providers and research. \$9.1 million in savings over four years will be achieved from efficiencies created by a review of the guidelines for a range of schemes of legal assistance administered by this department. Changes to the guidelines for these schemes will result in better targeting of assistance to the circumstances in which it is needed, ensure that the schemes complement legal assistance services provided by legal aid commissions and other service providers, and that remuneration for solicitors under these schemes is consistent with other schemes of legal assistance.

Then there is the National Native Title Tribunal, and savings of \$17.1 million over four years will be achieved by increased efficiencies in the tribunal. Recent amendments to the Native Title Act 1993 are likely to lead to reduced reliance on the mediation function of the tribunal, making these savings possible. For the Indigenous justice program's night patrol services, savings of \$6 million over four years will be achieved from the Closing the Gap in the Northern Territory law and order measure. Night patrol services are now rolled out in all

designated communities. In most instances, major capital investment is in place. Revised funding levels are adequate to ensure service levels are maintained while also maintaining a capacity to respond to emerging issues.

Other efficiencies which I might indicate to the committee include savings of \$9.7 million over four years for the completion of the National Chemical, Biological and Radiological Program. Provisional funding in the forward estimates is no longer required as the objectives of the Capability Improvement Program have been achieved. Achievements there include joint initiatives with the United States through the Department of Prime Minister and Cabinet, joint research with the Defence Science and Technology Organisation and establishment of research-oriented forums between the first responder community researchers and the national security science and technology unit. As you would appreciate, there are also other significant savings generated by other agencies in the portfolio, which they can speak about.

In addition, the government will continue to fund a number of programs administered by the department which are significant and I should draw your attention to: the National Leadership and Coordination of Intercountry Adoption in Australia will receive \$11.1 million over four years. The 2009-10 budget resulted in \$79.3 million being allocated over four years to the National Disaster Resilience Program for natural disaster mitigation. This is in addition to funding already committed through several existing programs which will operate under the umbrella of the National Disaster Resilience Program, bringing the total amount to \$110 million over four years.

The department is implementing this program through a national partnership agreement. This agreement with all jurisdictions was signed by the Prime Minister on 9 December 2009. The national partnership agreement has two key advantages: first, it provides a significant increase in efficiency and administration of national funding for emergency management. Second, it improves the targeting of funds within states and territories through the completion of state-based risk assessments.

A small part of the program has been used to undertake projects of national significance to emergency management as recommended by the National Emergency Management Committee, the NEMC, and approved by the Attorney-General. Also the national leadership of identity security policy will receive \$23.6 million over four years. The use of false or stolen identity facilitates terrorism and organised crime and undermines the security of our borders. Robust identity security can significantly contribute to current and future reform initiatives, including enhancing border security, including through the use of biometrics, the prevention of terrorism and organised crime and support of citizen participation with government online, including supporting holistic service delivery reforms.

Funding also will complete implementation and continue operation of the National Document Verification Service. There is also the National Emergency Call Centre connectivity, which amounts to \$1.7 million over four years. This funding provides for the technical solution that will enable time critical calls to the National Emergency Call Centre to be answered quickly during crises. There is anti money-laundering and counter-terrorism financing reforms of \$1.8 million over four years to ensure that Australia has a strong anti money-laundering and counter-terrorism financing legislative framework. This funding will enable the department to develop a range of anti money-laundering or counter-terrorism

financing measures. This includes the enhanced regulation of alternative remittance dealers to reduce the risk of money transfers being used to fund people-smuggling ventures and other serious crime. That was announced by the government on 9 April 2010.

Telecommunications interception capability amounts to \$11.2 million over four years for the Attorney-General's Department as part of the multiagency resourcing of \$101.6 million over four years. This funding will ensure that our telecommunications interception capability keeps up with technological changes in the telecommunications industry.

For the information of the committee, you might notice that instead of two outcomes in the way the budget papers are structured, there is now a single outcome that focuses on both the law and order components of the Attorney-General's Department. This was seen to be important in providing coherence and unity in terms of the department. I might say that that gives effect to some of the most important aspects of what we have been trying to achieve out of the report delivered to me by Roger Beale.

In conclusion, I might say a few words about the Beale report. I have been bemused by some of the reporting around the Beale report. When I commenced as secretary, now some 18 months ago, I commissioned Roger Beale to do a report on the department. He made various recommendations that comprise a blueprint and have comprised a blueprint for rolling out various programs. I can assure the committee that the changes and reforms to the department have put us in a position to fulfil and support the Attorney-General in his role as first law officer. There has been some reporting of the Beale report as if it was done yesterday. In fact it was done 18 months ago. The issues Beale identified have now been addressed and are in the process of being addressed.

In relation to the department's support for the Attorney as first law officer, there have been a number of changes: first of all, amendments to the legal services directions to require copies of all requests for constitutional advice from the Australian Government Solicitor be provided to the department, which ensures better monitoring of significant constitutional issues; release of new guidance notes on the obligation on the Financial Management and Accountability Act agencies to report to the Office of Legal Services Coordination on significant issues that arise in the provision of legal services; and new arrangements for coordination of cabinet submissions which ensure that the department now receives a copy of all cabinet submissions and is able to obtain AGS input, if it is required and not already been obtained.

These changes have improved the department's capacity to support the Attorney in his role as first law officer. Of course we continue to keep these issues under review. We are working closer than ever with the Australian Government Solicitor to ensure that the legal advice coming to the Attorney-General, particularly in his role as first law officer and member of the cabinet, is of the foremost quality and that he can discharge his obligations as the first law officer of the Crown.

I am somewhat bemused by the various reportings of the Beale report, given that it was a report that I commissioned and which I have used in terms of restructuring and reconfiguring the department. Some of the programs that we have just been talking about—access to justice and the framework for organised crime—are things that have come out of a greater emphasis on strategic policy, which has some about as a result of the implementation of the Beale

report. I am happy to answer any other questions about that report. I will conclude on that note. I am happy to take questions now from the committee.

CHAIR—Cross-portfolio questions. Senator Barnett.

Senator BARNETT—Thank you, Mr Wilkins. That is one of the longer introductory remarks that I have heard, but thank you for that. Whether it is a pre-emptive strike by the department to try deal with some of the questions that we will be addressing under the department's portfolio, I hope you understand that we will be addressing various parts of outcomes 1 through to the end of the sessions with the department. In your introductory remarks, you said the capacity on Christmas Island previously was in the order of 2,000.

Mr Wilkins—Yes.

Senator BARNETT—Now you are saying the numbers are approaching 4,500—is that correct?

Mr Wilkins—That is right.

Senator BARNETT—That includes the staff, the contractors and the illegal immigrants or the asylum seekers, as it were?

Mr Wilkins—And the regular population of the island.

Senator BARNETT—What is that figure, exactly? Do you have it with you? You said it was approaching 4,500. Do you know what that figure is now?

Mr Wilkins—It is 4,500.

Senator BARNETT—Right, it is 4,500.

Mr Wilkins—Approaching 4,500—I do not have the exact number.

Senator BARNETT—When we get to that, I would like a breakdown of that.

Mr Wilkins—I am sure people come and go, so it is a bit difficult to sort of—

Senator BARNETT—I would like to you. You would know how many residents there are there, how many departmental staff and contractors at any point in time.

Senator Wong—We will do the best we can, but obviously the population may fluctuate a little. We can give you are our best estimates on that.

Senator BARNETT—Thank you, Minister. I assume that is a record.

Mr Wilkins—Compared with what?

Senator BARNETT—It has never reached that figure before?

Mr Wilkins—I do not know.

Senator BARNETT—You will let us know?

Mr Wilkins—Yes.

Senator BARNETT—You have talked extensively about the family relationship centres. I put on notice that we will be vigorously addressing the issue of cuts to the family relationship centres.

Senator Wong—We are looking forward to your vigour.

Senator BARNETT—You have also raised the issue of legal aid. The cuts to legal aid have caused great consternation in Tasmania and I understand in the Northern Territory. Norman Raeburn, the chairman of National Legal Aid and the head in Tasmania, said that Tasmania has been duded. There are a considerable number of reports and correspondence about that. I have had feedback from the President of the Law Society of Tasmania about his dismay at the cuts in Tasmania. People come into the Legal Aid Commission who have passed the means test and the merits test, but they are simply turned away because they do not have the funds to meet their needs. You would not be denying that, Mr Wilkins?

Mr Wilkins—Yes, I would, Senator.

Senator BARNETT—You are disagreeing with Norman Raeburn's proposition?

Mr Wilkins—Yes, if that is what he said. I doubt that is what he said exactly because they are certainly not going backwards. Extra money is being injected into the legal aid system.

Senator BARNETT—I will read you a report in today's *Mercury* which states:

The Legal Aid Commission says it has had to stop acting for parents involved in child protection cases this year because it simply does not have enough funding.

'At the moment we're focused on providing lawyers for the children because of budget constraints' he said.

'It's literally that we don't have the money to spend on people.'

That was the director, Norman Raeburn. You can have a look at that in the break. I can assure you that I also have an article in which Norman Raeburn says:

The big boys have scooped the whole pool and the little guys got totally duded—

referring to Tasmania. I draw that to your attention. I assure you, Mr Wilkins, that we will be addressing that in the appropriate section in due course.

Senator Wong—Senator, I wonder whether you could do two things. Firstly, if you are able to provide a copy of the document from which you will be questioning, perhaps the department will have an opportunity to consider it. Secondly, could you clarify whether you are reading from the Hobart *Mercury* or simply communications from the gentleman in question?

Senator BARNETT—As I said in my comment, I was reading from today's Hobart *Mercury*, Monday, 24 May, where director Norman Raeburn was quoted. He said that Tasmania had been duded. No doubt the department would have read the article in the *Australian* on 14 May 2010 headed, 'Big boost to legal aid funding leaves small states "duded".' It written by Nicola Berkovic.

Senator Wong—With respect, I do not think a headline is what you want the department to be responding to. If you have information that you want the department to respond to, we are happy to do that. I inquire also whether you have anything original from the gentleman in question or simply a newspaper article. Obviously, we would prefer to respond directly to information that is from the horse's mouth, as it were.

Senator BARNETT—From the horse's mouth, you have me. I am speaking, and I have talked to the president.

Senator Wong—What about—

Senator BARNETT—Let me finish, please, Minister.

Senator Wong—But that is not from the horse's mouth, Senator. With respect, you are an opposition senator.

Senator BARNETT—Let me finish. The horse's mouth is as follows. I am speaking as a lawyer and as a senator for Tasmania and I have spoken to the President of the Law Society of Tasmania, Graeme Jones. He has expressed concern about this. As well, I am reporting on two media reports: today's *Mercury* and the *Australian* quoting Norman Raeburn.

Senator Wong—That is fine. If you do not have anything original or any communication—

Senator BARNETT—I have given you both sources, and that is normal for estimates.

Senator Wong—Senator, that is fine. I just wanted to clarify that you had no original communication and that we are simply being asked to respond to media reports. That is fine; we will do what we can.

Senator BARNETT—The original communication is between me and the President of the Law Society of Tasmania. I cannot get more original than that, Minister.

Senator Wong—You are a lawyer, Senator, and you know that is not original.

CHAIR—Senator Barnett, at this stage you have got your information from newspaper articles. When we go to questions for that output, when we get to the department, Mr Wilkins, perhaps your people will be mindful of the fact that they will need to have specific details about funding arrangements for each state and territory.

Mr Wilkins—Would you like me to answer that now or leave it till later?

CHAIR—It is up to Senator Barnett. He is running the questioning.

Senator BARNETT—If you have a brief response, Mr Wilkins. We have to get on to the other part of it. We will address this in due course but if you have a response—

Mr Wilkins—I am happy to talk about it later, but the brief response is that Tasmania is in fact getting more money under the new agreement. That is the first thing. Secondly, the areas that have been canvassed in the media—and I only have the media reports to go on—are in fact state responsibilities, not Commonwealth. So the money that the Commonwealth makes available is not specifically for those sorts of issues. That is really a matter for the state government of Tasmania to provide funds to its Legal Aid Commission. There is some overlap, obviously, between issues to do with children and issues to do with families. But if these are matters about child neglect or abuse, et cetera, they are really matters for states and state funding. As you will appreciate, the Commonwealth funds are for Commonwealth matters.

Senator BARNETT—Indeed. I think the state Attorney-General may have a different view to you. I understand that she has written to the federal Attorney-General. That is what is reported in today's media. We will get to the bottom of that once we get to legal aid. Maybe I could move on while we are in cross-portfolios to advise that my understanding from the secretariat is that we have two outstanding questions from the February estimates. In your

opening remarks you did not advise as to the reasons why you have not answered those questions. They are questions 117 and 129. It is always useful to know.

Senator Wong—Senator, I wonder if you would permit us to take that question on notice and I will get some advice about that, or perhaps we can come back to that later.

Senator BARNETT—Thank you. I just wanted to flag with you the review of Commonwealth legal services procurement, which is \$167,625. It relates, obviously, to legal costs. The promise was made by the Attorney prior to 2007 election that legal costs would be cut. We know that in the 2008-09 year it was some \$555 million across the whole of government, which is a record for any Australian government. I would like to know the legal costs across the whole of government to date for this financial year. Perhaps I could just put you on notice and you could get back to us on the costs. Then I would like to get a copy of this report, the *Report of the review of Commonwealth legal services procurement*, which cost \$167,000.

Mr Wilkins—So you want the year-to-date spend across the entire government?

Senator BARNETT—Yes.

Senator Wong—We will have to take that on notice.

Senator BARNETT—Secondly, I want that *Report of the review of Commonwealth legal services procurement*, which cost \$167,000.

Mr Wilkins—It has been published.

Senator BARNETT—Do we have a copy? I have not seen it.

Mr Wilkins—It is published. It is on the web—

Senator BARNETT—I will have a look at that.

Mr Wilkins—but we can try and get you a copy.

Senator BARNETT—Thank you. The board appointments question I asked, No. 119, was: what is the gender ratio on each board and across portfolio? Before I go to that, can I just clarify the government's position—perhaps the minister might assist us—with regard to the gender balance across portfolios in terms of board appointments. I understand that there was a commitment made in the lead-up to the election, Minister, with regard to the gender balance. Could you just clarify the government's position regarding the importance of the gender balance?

Senator Wong—I am sorry?

Senator BARNETT—The government's position regarding gender balance.

Senator Wong—I am sure it is probably better than the Tasmanian Liberal Senate representation, which is all male, Senator. But I will certainly get some information about that.

Senator BARNETT—All right. I note that the answer, for which I thank the department, highlights the various agencies within the portfolio. There are two that have 50 per cent, the Human Rights Commission and the Australian Institute of Criminology. The Classification Review Board has less than 50 per cent male representation and the Criminology Research

Council has 50 per cent. The Insolvency and Trustee Service Australia is at zero per cent, the Inspector-General in Bankruptcy is zero per cent, the International Pro Bono Advisory Group is 50 per cent and the National Intercountry Adoption Advisory Group is 15 per cent. All the other agencies are way over 50 per cent, with many of them being 100 per cent.

I was wondering whether you could respond to that, either now or in due course, Mr Wilkins, as to whether there has been a failure in government policy and promises in terms of its commitment to meeting promises to ensure gender balance. You are doing a lot of talking between yourselves, but we cannot hear what you are saying, Minister, or Mr Wilkins. Would you like to share your views?

Senator Wong—I am not sure which of the comments was a question, Senator. Perhaps you could be clear with us what you want us to do.

Senator BARNETT—Sure. Could you respond to the facts, as given in the answer to the question on notice, as to whether there has been a breach of promise by the Rudd Labor government to ensure a gender balance across the portfolio?

Senator Wong—It is quite extraordinary, Senator, that you, as a member of a party that sends no women to Canberra from your state, are doing this. But we are very happy to have—

CHAIR—Senator Barnett, are you talking about recent appointments or all appointments across the Attorney-General's Department, or boards, courts, tribunals? What are we talking about here?

Senator BARNETT—I am responding to the answer to question on notice No. 119, about all the portfolio agencies. The department has kindly broken it down to male and female.

Senator Wong—I think Ms Leon can give you some explanation of the response. I think you would find, if you looked across government that this government has sought to increase the number of women in relation to a range of appointments. I would welcome, if you wanted to do that, a comparison on a whole range of fronts on that issue. But if you are asking for an explanation of the answer to the question on notice that has been filed the department can provide that. Is that what you are asking?

CHAIR—Ms Leon, do you want to clarify something here?

Ms Leon—Senator Barnett, the question on notice asked for the gender balance as at a point in time on all of these bodies. As you would appreciate, the largest bodies in the portfolio are the courts and tribunals. The appointments to courts are appointments that last until retirement age; they are not appointments for a term of years that would give the government the opportunity over the period of time that the government is in office to simply replace the gender balance of the groups that it has inherited. So the gender balance that you have in these agencies reflects the appointments that have been made over time, particularly to the courts, rather than the appointments necessarily that have been made by this government. If you wish us to give you the figures of appointments made by this government, we can take that on notice.

Senator Wong—I think I have that. I understand it is some 48 per cent female since we came to government.

Senator BARNETT—We will address this at a later time. I do not think we will pursue it any further. Minister, the position is that, in terms of making promises and delivering on the promise, that is one thing. You are comparing apples with oranges if you are trying to compare what we have now with the gender balance we had years ago. That is a different matter. The point is whether you are delivering on your promise.

Senator Wong—No, that is what you are doing, Senator. The advice I have been provided with is that 48 per cent of the appointments that this government has made has been women—that is, appointments to court. That is significantly better than occurred under your government. If anybody is doing the apples and oranges issues—with respect, Senator—I think it is you.

Senator BARNETT—I table a letter from the Law Society of Tasmania together with a letter from the Chief Justice of Tasmania relating to the National Legal Profession Reform, which has created a deal of interest. I just want to foreshadow that we will pursue this again in due course, but, Mr Wilkins, I want you and your department to have a copy of it.

Mr Wilkins—Sure.

Senator BARNETT—The Chief Justice in Tasmania refers to the proposal as an insult to the profession because it compromises the independence of the legal profession. Could I do that.

Mr Wilkins—Sure.

Senator BARNETT—So we can address that in due course. Secondly, I have a letter from the Hon. Justice McColl, President of the Judicial Conference of Australia. She has written to me as chair of the Legal and Constitutional Affairs References Committee regarding the issue of complaints against judicial officers. I just want you to have that in advance of discussion on that point in due course. In regard to that, the references committee of the Senate Standing Committee on Legal and Constitutional Affairs has delivered two reports, in November and December last year: one is on who judges the judges and the complaints-handling system, and the second is the access to justice report, which was very comprehensive. Standing orders of the Senate and procedural orders and resolutions of the Senate, No. 37, provide that responses from government are given within three months of that report. We are now sitting at close to six months. I was wondering whether you could advise as to why there has been that delay and when we are likely to see a response.

Mr Wilkins—I will take those questions on notice and come back to you.

Senator BARNETT—Thank you for that. With regard to the restructure, you have advised the committee about the changes in agency outcomes and programs. How are the department and administrative programs going? You have advised that there is a significant change. Is that going according to plan? Have any concerns been expressed to the department with respect to that restructure?

Mr Wilkins—No. The impact of that has been, in a number of areas, to galvanise action and to have a clearer focus. Certainly I spoke about the fact that there is a single outcome now for the department instead of two different ones. We have spoken in previous estimates committees about the greater emphasis on bringing together an ‘all hazards’ approach in the

area of emergency management and counterterrorism. That seems to be working particularly well. Those issues of merging two different strands of activity seem to have created some synergies and some important gains have been made in that respect. Bringing it together under a single central deputy, who is a chief operating officer and also in charge of strategic policy—namely, Ms Leon—has been very successful in integrating and getting greater efficiencies for both financial and personnel management of the department and also looking across the department in terms of strategies. There are a number of those issues, such as access to justice and organised crime, and some issues around offshore enforcement.

There are a whole range of areas under emergency management where using task forces drawn from people across different branches as well as agencies across the portfolio, as well as even agencies outside the portfolio, with time limits and specific terms of reference, has led to significant outcomes and results. There are a whole range of areas. The two most prominent ones are the organised crime framework—and some of the legislation that has come out of that work has come before the parliament already—and access to justice. But there are other matters such as cybersecurity, for example.

Senator BARNETT—We are certainly looking forward to addressing that. My last cross-portfolio question relates to consultancies. We are aware that the government hit a record of nearly \$1.2 billion since coming to office in 2007 in relation to consultancies awarded or contracts awarded for consultancies. In your portfolio, as in this one, since 2007 some \$46,760,000 has been spent on consultancy services. I want to put you and your department on notice that I would like to look at consultancies Nos 2.009, 2.015, 2.040 and 2.057. They are listed in the answers to questions on notice, which you have kindly provided—question No. 124. Thank you.

CHAIR—Are there any other cross-portfolio questions? No? Thank you, Mr Wilkins.

[9.59 am]

Administrative Appeals Tribunal

CHAIR—Ms Cassidy, good morning and welcome to our estimates process. Before we go to questioning, do you have an opening statement that you wanted to provide to us?

Ms Cassidy—No.

Senator BARNETT—Thank you, Ms Cassidy, for being here. There have been some emerging concerns about the government's commitment to properly resourcing administrative law systems in Australia. I wonder, firstly, whether you have a document specifying the workload and performance information relating to the tribunal.

Ms Cassidy—I do have such a document, but it is not ready to hand up at this time. I can give you any information you would like from that if you have particular things you are interested in. I do not have a document to hand up for you, Senator, but I can speak to any questions you might have about our workload.

Senator BARNETT—Is that similar to a document you had in February?

Ms Cassidy—We have had them in the past to hand up, yes. There was nothing terribly remarkable in it on this occasion, so I have not brought one along with me, but I am more than happy to.

Senator BARNETT—Is it consistent with the February document in terms of trend for settlement? At that time it was the highest rate in 10 years.

Ms Cassidy—Yes. We are still running at 83 per cent.

Senator BARNETT—Was it 83 per cent at the time?

Ms Cassidy—That is correct.

Senator BARNETT—And that has continued?

Ms Cassidy—That has continued, yes.

Senator BARNETT—All right. How is the finalisation of the WA mass market tax minimisation schemes that you mentioned in the February estimates going?

Ms Cassidy—It is travelling nicely. We are getting settlements in regularly. At this stage, however, it looks as though we will finish not by the end of this financial year but by the end of the calendar year—that is, that last rump of about 500 or 600 matters that we have on hand.

Senator BARNETT—So it has blown out from the end of the financial year to the end of the calendar year?

Ms Cassidy—It looks as though it will take that long, yes, just because of the bulk of settlements coming through and getting the tax office to work through that with us collaboratively.

Senator BARNETT—Can you advise the committee how many matters are referred by members and conference registrars for alternative dispute resolution? Do you have those figures with you?

Ms Cassidy—The total number of matters?

Senator BARNETT—Yes, for this financial year.

Ms Cassidy—We run a myriad of conferences as part of our pre-hearing process. I would have to take on notice just how many we have done so far this financial year. I can give you information for the last financial year, which is in our annual report.

Senator BARNETT—Sure. Can you give us a feel? Is it going up or down or is it about the same?

Ms Cassidy—We pretty much run conferences in each matter that we have. There are very few that settle before they get to the conference stage. We would have normally two conferences per matter. So there are many thousands of matters referred for a pre-hearing conference. In terms of other more specific types of ADR—mediation, mutual evaluation, conciliation—those figures have been stable. I can let you know that, but precise figures I would have to take on notice for you.

Senator BARNETT—If you could, thank you. When was the last time you used a user satisfaction survey?

Ms Cassidy—That would have been in December 2008.

Senator BARNETT—How much do they cost?

Ms Cassidy—The precise figure I would have to take on notice. I think it was around \$40,000.

Senator BARNETT—Why don't you use them, say, more often than every three years?

Ms Cassidy—We are due to do another one at the end of this calendar year. We do try to do them every two years.

Senator BARNETT—Every two years.

Ms Cassidy—Sorry, Senator, I have just been corrected; it is every three years.

Senator BARNETT—Every three years. Okay. Have you had any positive results on efficiency and time saving from the updated TRACS case management system?

Ms Cassidy—We have not collected specific figures. We do not have the data collection capability to measure the efficiencies that that generates. However, anecdotally I can let you know that it does make the job of our case service officers much easier. It makes my job much easier to be able to look into the system to see where a matter is at. It is much more sophisticated and it has much more information in it than the old mainframe system that we did have. Anecdotally I can let you know that it makes the work flow much easier for the tribunal, but we have not specifically measured how it does that at this time.

Senator BARNETT—Are you planning to do that?

Ms Cassidy—We would like to see more capability built into it. We have no specific plans to measure specifically how TRACS improves efficiency.

Senator BARNETT—With regard to your budget allocation—I am looking at the PBS, page 64—can you advise your response to the budget allocation for the AAT for this year and for out years.

Ms Cassidy—Our budget allocation is relatively static, so we do not have a specific response to that allocation. It is as we expected.

Senator BARNETT—You have had a report done—I see a consultancy here—by Bendelta Pty Ltd on the functions and workload of the AAT. That was started in December 2009 and finished in March 2010, for \$122,650. That is a lot of money for a report such as that. What is the result of the report and what are its recommendations?

Ms Cassidy—The report is being finalised. Essentially, it is a way in which the tribunal hopes to find efficiencies internally to maximise our effectiveness. We are reviewing our workload—who does what and when at the tribunal—and whether that is the most efficient way to do things. We are also reviewing the functional allocation of all the tasks associated with managing an application from lodgement through to finalisation.

It is a big job because it involves looking at every step of the process and every role in the tribunal to make sure that they are doing the best work possible at the level that they are at. What we hope to arrive at with that is a workload resourcing model which will ensure that we are adequately staffed, and not overstaffed anywhere, in each of the registries, big or small. It has been a big project and it is ongoing. We are just finalising the report at this stage, and the functional workload model.

Senator BARNETT—Do you have an executive summary of the report that you can provide us?

Ms Cassidy—Not with me. I will have to take that question on notice.

Senator BARNETT—Where is the report?

Ms Cassidy—The report is at the registry. I can certainly supply the committee with an executive summary, if you would like one.

Senator BARNETT—How long would that take?

Ms Cassidy—I will take that question on notice, if that is okay.

Senator BARNETT—Is that weeks or months?

Ms Cassidy—I could get you something within the week.

Senator BARNETT—Thanks very much for that; it is appreciated. What are your staff numbers now compared to 30 June last year?

Ms Cassidy—One hundred and sixty-seven.

Senator BARNETT—And at 30 June last year?

Ms Cassidy—At 30 June last year it was 154.

Senator BARNETT—So it has gone up slightly?

Ms Cassidy—Yes.

Senator BARNETT—Do you anticipate growing the numbers or reducing the numbers?

Ms Cassidy—I anticipate that our numbers will remain relatively static and possibly drop a little, depending on the outcome of this review.

Senator BARNETT—So you do not have any key areas that you are targeting for redundancies?

Ms Cassidy—No.

Senator BARNETT—Based on that review? It is a functions and workload review. Obviously, you are looking at areas where you can make efficiencies, which includes redundancies.

Senator Wong—Hang on, Senator. There are a whole range of non sequiturs in that question. If you want to ask what the review is targeting, you can do that. If you want to ask what efficiencies are included, you can do that. But to put to the witness that she obviously must be considering redundancies on the basis of no evidence before the committee is not a sensible way, if I could suggest, of asking the witness a question.

Senator BARNETT—Perhaps I can just ask, Ms Cassidy, if you can advise whether there are any particular areas that you are targeting for efficiency and for redundancies?

Ms Cassidy—No, not at this stage.

Senator BARNETT—Thank you.

CHAIR—Ms Cassidy, thank you for your time today.

[10.10 am]

Australian Human Rights Commission

CHAIR—I welcome Ms Branson, Mr Innes, Mr Gooda and Ms Broderick to our estimates process. Do you have an opening statement that you want to make?

Ms Branson—I would simply like to advise the committee that since the commission was last before the committee the then executive director, Ms Susan Roberts, has left the commission for family reasons. She was required to move with her family away from Sydney. I am very pleased that we have a new executive director with us now, and that is Ms Padma Raman, who is with us today.

CHAIR—Welcome. On behalf of the committee I welcome you to your new position. Mr Innes, Mr Gooda or Ms Broderick, do any of you have an opening statement?

Ms Branson—No, thank you.

CHAIR—We will go to questioning then.

Senator BARNETT—Thank you, Ms Branson, for being here and welcome to your new CEO. I would like to go firstly to the human rights consultation process. Can you confirm exactly how much has been spent by the taxpayer on that consultation process? I have an answer to a question on notice of some \$2.9 million, but I assume that should be updated now.

Ms Branson—The figure is \$90,280, of which \$35,880 was expended under a fee for service arrangement with the Foundation for Young Australians—that is, the money did not come from the taxpayers but from the Foundation for Young Australians—and \$54,400 was spent from the commission's budget.

Senator BARNETT—Perhaps it would be better if the department clarified this answer to a question on notice. I do not have the number with me, Mr Wilkins, but it was for the human rights consultation, and the entire process was some \$2.9 million.

Mr Wilkins—That is correct—\$2,933,730.

Senator BARNETT—Could you give us an update on that figure? Is that still accurate or has it been—

Mr Wilkins—That is still accurate. That is the final figure.

Senator BARNETT—Can you clarify the breakdown? Ms Branson is talking about \$90,000 and you are talking about \$2.9 million, so can we just clarify that?

Mr Wilkins—Yes. In round figures there was \$1.053 million for the secretariat staff, \$434,000 for travel and accommodation, \$366,000 for committee fees, \$353,000 for advertising, \$63,000 for design and printing, \$133,000 for venue hire and catering, \$261,000 for research projects, \$83,000 for public hearings, \$46,000 for writers and editors and \$139,000 for 'other' in a total of \$2,933,730.

Senator BARNETT—Have you got a list of how many consultants were contracted under that process, and could you provide that?

Mr Wilkins—There were three.

Senator BARNETT—Have you got their identity and what they were paid?

Mr Wilkins—I will get Katherine Jones to provide you with that information.

Ms Jones—There were three separate consultancies engaged to provide research and other information for the committee. The first one was the Colmar Brunton community research report. The total cost of that was \$175,480, GST exclusive. The second project was the Colmar Brunton devolved consultation project. The total cost of that was \$49,145, GST exclusive. The third was the Allen Consulting Group economic and social cost-benefit analysis. The total cost of that was \$77,272, GST exclusive.

Senator BARNETT—Are those three reports public?

Ms Jones—They are included in the report of the consultation committee as attachments at the end of that report.

Senator BARNETT—Thank you. Have you got a breakdown of the cost to Father Frank Brennan and the other consultation leaders?

Ms Jones—I do, yes.

Senator BARNETT—I am happy for you just to table those costs. I know there are quite a few, unless it is going to be brief.

Ms Jones—I can give you the total amounts. We have checked with committee members and they are okay with us providing that information. Father Frank Brennan, as chair, was paid for 119 days of work, totalling \$159,800, GST exclusive. Mary Kostakidis worked for 105 days and was paid \$68,794, GST exclusive. Mick Palmer worked for 34 days and was paid \$22,328, GST exclusive. Tammy Williams worked for 120 days and was paid \$80,135, GST exclusive. Mr Philip Flood worked for 53 days and was paid \$34,955, GST exclusive.

Senator BARNETT—And you previously published a daily rate.

Ms Jones—That is correct. I can give that to you again now. The chair of the committee was paid \$1,364 a day, GST exclusive, and members were paid \$665 a day when they performed consultation related work. The members were part-time appointments.

Senator BARNETT—Ms Branson, do you feel let down now that the government response has been delivered and we are not heading towards a human rights act in Australia?

Ms Branson—I am disappointed that there is no human rights act for Australia proposed, yes.

Senator BARNETT—You are going to receive an additional \$6.6 million over the next four years as part of the \$18.3 million funding for the Australian Human Rights Framework. Can you provide a detailed breakdown of how these funds are expected to be expended, at least for the extra \$1 million allocated for 2010-11, explaining for each item whether it relates to new activity of the commission under the framework or just to more funding for existing activities?

Ms Branson—Sorry, I am not able to give you at this stage detailed proposals. As you know, the funding was announced quite recently. It will now subject to the commission's usual planning processes. What is proposed is that the commission will engage itself in human rights education for the community. We will decide precisely how to do that through our usual planning processes and after consultation with the Attorney-General's Department.

Senator BARNETT—We are talking about educational purposes which you will be pursuing over the next 12 months and the following years for which you have been funded with taxpayer funding; can you give us a feel for the make-up of that educational material? What will be in it?

Ms Branson—What is proposed is that we will develop and then deliver community education programs about rights and responsibilities, providing seminars and material online. We will develop materials and programs to raise awareness of other components of the Australian Human Rights Framework, including the consolidated antidiscrimination acts and programs to complement education by NGOs under the new grants program. We will shortly begin recruiting staff to undertake this work, but the exact nature of the program, as I have indicated, has not yet been determined.

Senator BARNETT—We have a bit of an issue. The Australian Human Rights Commission's view of human rights and their place in Australia is different to that of many others in the community and, from time to time, to that of the government. At the last estimates committee, it was confirmed in an answer to a question that you believed that the Australian government has got it wrong with respect to the Criminal Code and with respect to the ASIO legislation. You say that the Australian government is either in breach of our international obligations or we are acting inconsistently with our international obligations under various international conventions. The commission has a different view to the government and indeed a different view to many in the community. So the question is: what will you, as a commission, be doing in terms of imparting this information to the Australian community? What view will you be representing? Will you be representing the view of the commission or will you be representing the view of Australian government?

Ms Branson—There are a number of questions in there and, with respect, some assumptions that I do not accept the accuracy of. What we will be doing is focusing on rights and responsibilities under international instruments, and we will be focusing on the components of the Australian Human Rights Framework. The Australian Human Rights Commission made a submission to this committee with respect to security legislation. It is that submission that we earlier addressed.

We were with other groups and organisations in urging the government to amend that legislation to make it more consistent with Australia's international human rights obligations. The Australian government, as I understand it, commenced the review process because it itself was concerned that the legislation should be reviewed through a human rights framework. My feeling from seeing submissions that went to your committee and from listening to the Law Council, which I did on Friday while I was waiting to give evidence to this committee, is that the views of the Human Rights Commission are very much aligned to the views of other organisation and individuals that made submissions to the committee.

Senator BARNETT—Yes, which are inconsistent with the view of government and inconsistent with the legislation before the committee, which was prepared by prepared by the Australian Labor Government.

Senator FEENEY—So what?

Senator BARNETT—Ms Branson, do you have a response to that—that your views are inconsistent and different to the Australian government's?

Ms Branson—We and others have recommended amendments to that legislation.

Senator BARNETT—Could we use—

CHAIR—Along with the Law Council, if my memory serves me correctly.

Senator BARNETT—Really the key question is whether you are going to be implementing an educational campaign which is consistent with the commission's views or whether you will be implementing a campaign consistent with the Australian government's views. I would like to know which one it will be. Perhaps the minister or Mr Wilkins might like to respond if Ms Branson is not willing to continue with any further response.

Ms Branson—I do not wish to suggest an unwillingness, Senator Barnett. We will be focusing on rights and responsibilities in the human rights area as we understand them by reference to obligations which Australia has taken on by signing international conventions concerned with human rights. The content will be informed by international jurisprudence with respect to those rights and responsibilities, and we will be addressing those within the framework of the national human rights framework announced by the Australian government.

Senator BARNETT—Can I ask for two examples? What is the view of the commission with respect to the Australian government's intervention measures in the Northern Territory? Do you believe and do you support the views of many in the community who believe that Australia is in breach of our international obligations under the various international conventions regarding race?

Ms Branson—The Racial Discrimination Act was suspended in its operation in the Northern Territory when the emergency response was introduced. We and others have called for the Racial Discrimination Act to again be made applicable to the Northern Territory.

Senator BARNETT—Will you be supporting efforts to appeal to the United Nations—specifically, the United Nations Committee on the Elimination of Racial Discrimination? Would you support that effort as a commission?

Ms Branson—I am not sure precisely what you mean, but I do not think the matter has come before the commission for consideration. Therefore, I think I am unable to answer that.

Senator BARNETT—But you believe that Australia's current intervention measures—the government's intervention measures in the Northern Territory—are contrary to the UN Convention on the Elimination of Racial Discrimination; is that correct?

Ms Branson—The suspension of the Racial Discrimination Act seems to us to be inconsistent with the convention on racial discrimination, yes.

Senator BARNETT—Right. That is one example. Let us go to the second example, which is the Australian government's recent decision—

CHAIR—Senator Barnett, before you proceed: Ms Branson, can I get you to reiterate that we currently have a bill before the parliament, which I understand the Coalition is supporting, that reinstates the Racial Discrimination Act?

Ms Branson—That is correct.

CHAIR—And you are supporting that legislation?

Ms Branson—Yes.

Senator BARNETT—The second example relates to a decision by the Australian government recently—it was 9 April—in which the ministers for immigration, foreign affairs and home affairs announced that there would be no processing of new asylum claims from Sri Lankan nationals for three months and from Afghan nationals for six months. What is the commission's view with respect to that decision?

Ms Branson—The commission has conveyed to the minister that the commission is concerned about this decision. We believe that it may be taking Australia down the path of not complying with its international human rights obligations.

Senator BARNETT—May do, or is—because the decision has been implemented.

Ms Branson—Some aspects of it may depend on the motivations of the decisions taken. I am not privy to all of those. We are concerned that it may result in certain people being subject to arbitrary detention. An obligation not to do that is contained in the International Covenant on Civil and Political Rights. We are also concerned with our obligation under the Convention on the Rights of the Child only to detain children as a last resort and for the shortest appropriate period of time. We are concerned that this decision has resulted in children being detained for significant periods of time.

Senator BARNETT—I will move on. The human rights framework states that the government will introduce legislation requiring that each new introduced bill and delegated legislation, subject to disallowance, will be accompanied by a statement which outlines its compatibility with the seven core UN human rights treaties to which Australia is a party. This is a question perhaps for the minister if she is able to respond: when will this initial legislation be introduced? Could the minister confirm that that is her understanding of the framework proposed for Australia?

Mr Wilkins—What legislation?

Senator BARNETT—The framework stated that the government is introducing legislation to require that each new bill coming into the parliament and delegated legislation will be accompanied by a statement which outlines its compatibility with the seven core UN human rights treaties. Is that correct? When will the legislation be introduced?

Mr Wilkins—We are hopeful that it will be introduced in the current sittings of the parliament.

Senator BARNETT—Very good. Who will make the assessment of whether Australia's laws are compatible with these seven core United Nations human rights treaties?

Mr Wilkins—Initially the minister introducing legislation, and then presumably committee.

Senator BARNETT—Which committee?

Mr Wilkins—The new parliamentary joint committee.

Senator BARNETT—What role will the Australian Human Rights Commission have, if any, with respect to the assessment?

Mr Wilkins—No formal role.

Senator BARNETT—Okay. Finally, Ms Branson, you have stated that approximately \$90,000 was spent by the commission on building public awareness. Is there a breakdown of these costs available?

Senator Wong—She gave them when you asked her the question.

Senator BARNETT—A breakdown, I said.

Senator Wong—Of the 30 and the 58, whatever it was, that Ms Branson has outlined already.

Senator BARNETT—It was in two parts.

Senator Wong—She gave the two parts. Do you want a further breakdown?

Senator BARNETT—Yes. I am happy if you have those figures there, Ms Branson.

Ms Branson—I do not have them here. I have the breakdown, but the only taxpayer funded money which came from our budget was \$54,400. I thought we had previously provided a breakdown, but we can readily do so. I think we might have done previously, but if you wish us to do it again we will go back over our previous answers.

Senator BARNETT—Thank you.

Proceedings suspended from 10.30 am until 10.47 am

CHAIR—We will recommence with the Australian Human Rights Commission. Senator Hanson-Young.

Senator HANSON-YOUNG—My first questions relate to the government's announcement about not only the dismissal of the Human Rights Act but also what it said it would do—the proposal for the joint human rights standing committee and human rights in education. Has the commission been briefed on those proposals? If so, what is your understanding of your involvement?

Ms Branson—We have had some briefings from the Attorney-General's Department. Some of the work we will be doing will be done in consultation with the department—for example, working on the reconsideration of the discrimination legislation. There is to be human rights training in the Australian Public Service, and we will be providing some assistance to the Attorney-General's Department in that regard.

There is the education funding that we discussed earlier in these hearings which will be community based education around understanding of fundamental human rights, not at a highly technical level but at the more general level that is appropriate for community education—about the importance of treating individuals with respect, avoiding discrimination and rights of that kind. The details of that, as I have indicated, have not yet been worked out, but the framework will provide, as it says, 'a framework within which we will be conducting those activities'.

Senator HANSON-YOUNG—In relation to the proposal and the policy of the government to merge all the current anti-discrimination instruments together into one act, what do you foresee as the process for making this happen, considering that numerous pieces

of legislation have already been flagged as needing amendment to achieve equality and tackle a number of other anti-discrimination issues? How will the process of merging those work? Do you believe that it will work?

Ms Branson—The commission looks forward to the harmonisation project and looks forward to the opportunity to make submissions to government on that harmonisation project. We will be particularly anxious to ensure that no standards of protection are dropped in the course of the harmonisation project. But it is, of course, a program that will be managed by the Attorney-General's Department.

Senator HANSON-YOUNG—In merging all those various instruments are you concerned that there would be, say, a lowest common denominator approach that would see some rights not adopted or areas dropped as opposed to perhaps needing to be further advanced?

Ms Branson—We would be very disappointed if that were to happen but we have no reason to think that it will happen.

Senator HANSON-YOUNG—Should some overall act looking at equality and antidiscrimination ensure it is broad enough to recognise sexual orientation and gender identity as issues with which we need to deal through antidiscrimination laws?

Ms Branson—The commission has written to the Attorney-General expressing concern that Australia's industrial laws now, through the Fair Work legislation, provide greater protection against discrimination in these areas than does the nation's antidiscrimination legislation. We hope that would be rectified by the harmonisation process.

Senator HANSON-YOUNG—Thank you. My next question is to Ms Broderick, the Sex Discrimination Commissioner. What capacity do you have at the moment to work specifically on gender equality issues within your unit?

Ms Broderick—The resources that we currently have are one director of a sex and age discrimination unit. We have 2½ policy officers and we have one person for administrative support. Then, of course, we can draw on the more centralised resources of the commission, which come into the media, legal, complaints, and across the different portfolios.

Senator HANSON-YOUNG—Throughout this process, however, it will roll out in the merging of the various instruments. Whether it be your independent unit or perhaps even, Ms Branson, the others within the broader commission, do you feel you have the resources you will need to ensure that you have all eyes on the ball to ensure that none of these issues is dropped? In fact, will you use this as an opportunity to advance equality as opposed to stifling it?

Ms Branson—What we do is limited by resources but we are able to prioritise those resources which we have. We see this exercise as a very important one and we will do what we can to ensure that all necessary and appropriate submissions from the Australian Human Rights Commission reach the Attorney-General.

Senator HANSON-YOUNG—Thank you. I will move on to other issues. Senator Barnett touched on some of these issues earlier but I have some more specific questions, firstly relating to the government's policy around the suspension of the Sri Lankan and Afghan applications for asylum.

Senator Wong—I am assuming, Senator, that you will not be asking the same questions.

Senator HANSON-YOUNG—No. The Greens have a very different position from the Opposition as to why we believe this is a bad piece of policy. Ms Branson, were you given any indication before the public announcement by the ministers that this decision was going to be taken?

Ms Branson—I received a telephone call from the Secretary of the Department of Immigration and Citizenship approximately 10 minutes before the announcement.

Senator HANSON-YOUNG—Have you had any contact or discussions with your international counterparts in relation to what this policy change means for Australia under the different international conventions and protocols to which we are a signatory?

Ms Branson—We have not approached international agencies or sister agencies to discuss the matter, no.

Senator HANSON-YOUNG—You are aware that a number of international organisations—some 146, I think—have condemned the policy as a breach of not just the refugee convention but also various other international instruments?

Ms Branson—I am aware that those views have been expressed, and some views, as I indicated to Senator Barnett, are the same kind as have been expressed by the Australian Human Rights Commission.

Senator HANSON-YOUNG—What is your understanding of how realistic the three-month or six-month suspension may or may not be? Obviously the announcement by the ministers—and I say ministers because three of them made the announcement—was carefully scripted. They said it was not a definite and that it would be reviewed. Have you had any further discussions about whether these periods would be extended?

Senator Wong—Senator, can we be clear about what you are asking? I think you said ‘is it realistic?’ If that is really a question about the capacity of the immigration department to process people and manage those timetables, I think that is a matter for DIAC. If there is an aspect of what you are asking which is about Ms Branson’s agency perhaps you might need to re phrase the question.

Senator HANSON-YOUNG—Thank you, Senator Wong. Ms Branson, are you aware of any discussions relating to extending the three-month or six-month suspension periods?

Ms Branson—There have been no discussions about it. I am not entirely sure about the ambit of your question, but from previous work of the Australian Human Rights Commission we are aware that if detention is indefinite, so that people do not know the end point, or even when there would be an end point of consideration of their case, that increases the pressure and the potential for mental health harm from the detention. We have expressed the view to the minister that we would like either for the suspensions to be terminated earlier or for an announcement to be made that they would come to an end at the end of the respective periods. But I am not privy to the government’s proposal in this area.

Senator HANSON-YOUNG—Has the commission been made aware of any legal advice as to whether this suspension breaches our own migration or antidiscrimination acts?

Ms Branson—No. I am not aware of legal opinion on those questions.

Senator HANSON-YOUNG—Are you aware of any legal advice on whether we are indeed breaching our obligations under the refugee convention?

Ms Branson—The commission itself has expressed the view it may be arguable that singling out those who claim asylum and who come from two particular countries might—we have not said that it would—be inconsistent with the non-discrimination provision of the refugee convention. The principal concerns that we have expressed, as I indicated to Senator Barnett, are under other conventions.

Senator HANSON-YOUNG—In relation to the detention of children—and I know you did reference that in relation to Senator Barnett's questions—do you accept that children are detained in immigration detention?

Ms Branson—There are, of course, levels of detention. We are extremely pleased to see that no child is being held in any high-security place of immigration detention. But the definition of 'detention' that we use is whether the people are free to come and go from the place where they are held. There are women and children on Christmas Island who are not free to come and go from the place where they are held, and we understand, therefore, that they are in detention.

Senator HANSON-YOUNG—Have you seen the construction camp on Christmas Island where women and children are detained?

Ms Branson—Yes. I have visited it myself.

Senator HANSON-YOUNG—What is your view, or what is the commission's view, on the conditions in which that facility holds women and children?

Ms Branson—The commission published a report on its most recent visit to Christmas Island, which was a visit undertaken in August 2009. Our report was published a couple of months later. We expressed the view in that report that the construction camp was an unsuitable place for children to be detained. It was at that stage without any grassy area where children could play; it had limited, if any, capacity for ordinary family life to be carried on, in the sense of family meals being prepared for families to gather together to share. It is a relatively crowded place. The accommodation itself could, I think, fairly be described as basic accommodation in transportable style units. Sorry; I am reminded that it was actually July that we were there.

Senator HANSON-YOUNG—So the numbers of children being detained there today would have increased significantly.

Ms Branson—It has increased significantly. I understand that the number of buildings within the perimeter may have been increased, so it may indeed be a more crowded site now than it was when I visited it.

Senator HANSON-YOUNG—Does the commission have any plans to inspect the facilities in the near future, given the recent policy announcements relating to suspension of claims and also the increase in the number of people detained in that facility?

Ms Branson—Three staff of the Australian Human Rights Commission will visit Christmas Island, and they will leave for the island later this week. We have under consideration whether we have the capacity to visit other places of detention because we believe that there was an expectation that we will maintain our record of inspection of places of detention.

Senator HANSON-YOUNG—It must be pretty difficult to get to Christmas Island. I have been there myself and it was not particularly easy. Is that something for which you specifically budget?

Ms Branson—The cost of flights to Christmas Island to date has been met for us by the department, for which we are extremely grateful. But, as I have indicated, we do take the view—sorry?

Senator BARNETT—Which department?

Ms Branson—The Department of Immigration and Citizenship. But we do take the view that a decision to deprive people of their liberty does carry a responsibility to ensure that they are treated appropriately and in line with Australia's human rights obligations. We are conscious, of course, that people in immigration detention are in vulnerable circumstances. Where they are held far from the major centres of population in Australia, transparency can be seen to be less effective than it would be if they were held where they could be more readily visited by members of the community.

We think it is important that we, along with others, of course, inspect those places. I am sure you are aware that we are not the only agency that has a role in monitoring immigration detention. The Commonwealth Ombudsman does this and the Red Cross does it as well. The United Nations High Commissioner for Refugees of course has a role to play. But each of us has a different and distinct role, although we do now meet together to discuss that and to ensure that, so far as possible, we coordinate what we do.

Senator HANSON-YOUNG—What is the specific and distinct role of the commission in that, as opposed to perhaps the Ombudsman?

Ms Branson—The commission's distinct role is to monitor places of detention by reference to Australia's international human rights obligations, and then to publish reports that are available to be read, most importantly, by members of the Australian community.

Senator HANSON-YOUNG—Public reporting on what it is that you find?

Ms Branson—Public reporting against those standards.

Senator BARNETT—Have you published those reports on each visit to Christmas Island?

Ms Branson—We have visited Christmas Island only twice. On the first occasion it was before it was open to take detainees and the second occasion, as I have indicated, was in July last year. All our reports are publicly available.

Senator HANSON-YOUNG—Going from what you just said relating to the extended responsibilities that we have when detaining people in isolated locations, I guess you would then be concerned about the reopening of the Curtin detention centre?

Ms Branson—We are concerned about the reopening of the Curtin detention centre.

Senator HANSON-YOUNG—In the past, when the detention centre was operating as a detention centre five or six years ago, did the commission ever visit it when it detained people?

Ms Branson—We did. I think we visited on three occasions. We visited on more than one occasion, yes.

Senator HANSON-YOUNG—And what was the opinion of the commission on the conditions?

Ms Branson—I think Commissioner Innes would have made those visits, and he is sitting beside me. Sorry, it was not Commissioner Innes, but our reports were critical of that detention centre. Apparently, the now Professor Ozdowski did the inspection.

Senator HANSON-YOUNG—Thank you. I think I remember. Perhaps it was referenced in the Children in Detention report.

Ms Branson—The Children in Detention report, yes. It was.

Senator HANSON-YOUNG—Have you been approached by the immigration department, or have you approached the immigration department to visit Curtin detention centre?

Ms Branson—We have not been invited to visit.

Senator HANSON-YOUNG—Would you be looking to visit the centre once it has been opened?

Ms Branson—We will.

Senator HANSON-YOUNG—Again in relation to this role that you say is specific because of the fact that you are able to report publicly and assess the standards and conditions against specific international obligations, I do note that in the budget there was money put aside specifically for the Commonwealth Ombudsman to continue those types of investigations and scrutiny. Is there anything in your budget that allows you to continue that independent oversight?

Ms Branson—The commission, as you know, has been inspecting detention centres for more than a decade. We do not receive dedicated funding for that purpose. However, we have been assisted by the Department of Immigration and Citizenship with respect to meeting some of the cost of doing that. But the very substantial demand it makes on the personnel resources of the commission of course is not assisted by that, although we are grateful for their help with travel and accommodation costs on Christmas Island.

Senator HANSON-YOUNG—So that is an area in which you would like to see further assistance so you could arrange your own inspections?

Ms Branson—It is difficult for us to maintain this work and it would be particularly difficult to increase the work, on the level of funding that we have, without making decisions to cut back on other areas of work in the commission which we believe are important.

Senator HANSON-YOUNG—I guess what you are saying is that you foresee the work actually becoming more if there are further detention facilities opened and operating. Surely that means there is more, even just travel, to do, let alone reports to write.

Ms Branson—As more people are held in detention in more places in Australia and as the numbers increase, even in centres that have been used before, potential concerns about meeting Australia's obligations rise. If we were to maintain the level of inspection that we have in the past to meet the circumstances that we now have and which might be foreseen in the near future, it would be a very significant drain on our resources if we were to do it without additional funding.

Senator HANSON-YOUNG—Just stepping back to the issue children in detention, are you aware of children, babies indeed, being born in immigration detention as of the last six months?

Ms Branson—I believe I read a press report to that effect, but I have no other information about it.

Senator HANSON-YOUNG—Assuming that that press report is correct, and I am not sure which one you read, but at least one child has been born in detention in the last couple of months—I am off to see them on Saturday, indeed—how does that make the commission feel? What type of view to do you take on the idea of children being born in detention?

Senator Wong—Senator, I have not intervened in relation to this line of questioning because this is an independent statutory agency. I have not sought to put my view that Ms Branson is not entitled to express an opinion, but I do think asking the commission how it feels about a particular press report is probably stretching the licence a little.

Senator HANSON-YOUNG—What is the commission's opinion of children being born in detention centres?

Ms Branson—The matter has not come before the commission for decision, but we have on a number of occasions drawn attention to the provisions of the Convention on the Rights of the Child that provide that administrative decisions with respect of children, in the case of such decisions a primary consideration should be the best interests of the child.

Senator HANSON-YOUNG—Will the commission consider doing a further report of children in immigration detention, given that quite some time has lapsed and there has been a change of government and also a change of policy since the last report was written?

Ms Branson—You will be aware, I am sure, that every time we conduct an inspection, we report on that inspection on the impact on women and children, and what we observe about women and children in that place. If the question is directed to whether we are about to do another inquiry of the size and comprehensiveness of the previous one, that is not presently before the commission for decision. It would be difficult for us to fund such an inquiry.

Senator HANSON-YOUNG—Okay. They are all my questions.

Senator McLUCAS—Commissioner Innes, can you update the committee on the progress from your perspective of the implementation of the access to premises standard? It is an area in which I have had a longstanding interest and I am very pleased that we have moved on this matter, given that it was sitting with the previous government for many years.

Mr Innes—The access to premises standards are a disallowable instrument, and they are now before both houses of parliament. I cannot tell you how many days have elapsed in each house; it is either six or nine of the 15 required. Once those days elapse, and sadly the

occurrence of estimates means that the days do not continue to run in the Senate, so it will take longer in the Senate than in the House of Representatives, then the premises standards will become law. On the current parliamentary schedule, subject to any changes, that will occur in August this year.

The standards, as you would be aware, are mirrored in the proposed changes to the Australian Building Code, which should occur in early 2011. The standards would take effect from 1 July 2011. Because of the imminent coming into law, subject of course to any notice of motion of amendment, the commission in conjunction with the Australian Building Codes Board is arranging a comprehensive series of training on the application of the access to premises standards around Australia.

Senator McLUCAS—Could you give the committee an understanding of the training that you are proposing? I understand that this is all predicated on the fact that the standard will be approved by both houses of parliament. But it would be helpful, I think, if we got an understanding of what training you are proposing.

Mr Innes—As I said, the training will be conducted with the Australian Building Codes Board, so it will be training for people working in the area of the application of the access to premises standards—architects, drafters, master builders and other professionals in the building industry, but also access consultants and other professionals in the disability or access area, and anyone else who has a function or interest in the area and wishes to participate. They will take people through the standards and the relevant instruments or documents linked to those standards and explain the practical impact on the changes they will make to the current building code. I am sorry, the important area I did not mention is local government and approvers of new buildings and changes to existing buildings. It is important that they understand how the approval process will be changed by the standards to provide much better access to premises for a range of Australians with disabilities.

Senator McLUCAS—Could you give the committee an understanding of what the commission believes will eventuate for people with disabilities? I recall a conversation with a disability advocate some years ago. He said that a woman with a pram and a toddler is probably more disabled than many people we would formally describe as people with disabilities.

Mr Innes—There is no doubt at all that the access to premises standards will benefit more than people with disabilities. They will benefit parents with prams and people with trolleys delivering, and people with wheelie bags, et cetera. They will provide a greater number of accessible entrances to buildings, better ramp access within buildings and better lift access within buildings. I cannot go through, off the top of my head, line-by-line improvements but they will improve physical access in a range of ways as well as addressing other access issues such as signage and hearing augmentation in public facilities. There have been a number of changes made publicly available. I would be happy to table the full list of those changes that the standards make.

Senator McLUCAS—I think we can read it on the *Notice Paper* in the Senate, but I appreciate that.

Mr Innes—Sure.

Senator McLUCAS—In terms of the consultation around essentially retrofitting of improved access when a major renovation has occurred, do you have any specific advice to the committee about how you will deal with that in your training program?

Mr Innes—That will certainly be a major part of the training program because, when a building is refurbished and if it triggers the standards, then the standards apply in large measure to the areas of the building that are refurbished and to the accessible path of travel to those areas. But there are some nuances and differences for refurbished buildings as opposed to new buildings, and of course the training will need to take people through those nuances.

Senator McLUCAS—If there are disputes about whether or not the standard has been triggered, how is that resolved?

Mr Innes—There are two ways that that could be resolved. This is predicated on the fact that the standards will be mirrored in the Australian Building Code. So if someone wished to challenge the approval that had been granted, which may or may not have triggered the standard or the sections of the building code, then there are processes through the various state tribunals and courts in this area—such as in New South Wales, for instance, the Land and Environment Court, and they have different names in different states. But usually before getting to that point, there would be an independent committee which would assess the appeal. However, if a person is of the view that the access to premises standard has been breached, then they would retain the right to lodge a disability discrimination complaint, if they could demonstrate that they were aggrieved. That process is the standard investigation and conciliation process operated by the commission. If that is unsuccessful, there is a right of appeal to the Federal Court or the Federal Magistrates service.

Senator BARNETT—I have a question for Mr Innes in regard to the freedom of religion and belief project. I think in February you indicated that the report is expected to be delivered before June, according to the *Hansard* from February. Can you advise as to the current status of that report and the timetable for its delivery?

Mr Innes—You are correct; I did indicate that in February. Unfortunately that timetable has slipped and the report will be made available in the second half of 2010 but not before 30 June.

Senator BARNETT—Can you be more specific with the timetable?

Mr Innes—It is difficult to be much more specific than that because we are in the process of finalising that report and four other projects which were covered under the National Action Plan funding that the freedom of religion and belief report was also covered by. That funding runs out on 30 June. We will deliver one of those projects before 30 June, one three days afterwards and another in July.

Senator BARNETT—Which projects are they?

Mr Innes—The project that will be launched on 18 June is the report into the issues faced by African Australians. The project on 3 July is a resource for people participating in community language schools, which is, if you like, a resource which as well as assisting children—

Senator BARNETT—I think we know that one. Thank you, Mr Innes.

Mr Innes—That will be 3 July. There is another one in July, which is a report on community policing projects, drawing them together and looking at an independent assessment of those projects.

Senator BARNETT—So the reason for the slippage is that you have a backlog of work to undertake and you are not able to meet the original timetable by 30 June or by June this year?

Mr Innes—Yes, that is correct, Senator. We probably were slightly ambitious in our planning. We will bring these reports in relatively soon after 30 June, but we will not meet that deadline.

CHAIR—Mr Gooda, I have a few questions I want to ask you. I am conscious of the fact that this is your second estimates, and I would not like to see you run away without some questions. I think you attended your first estimates on almost the first or second day in the job. I want to ask whether or not you have any particular issues that you are seeking to progress, now that you have been in the portfolio for a while, and about your assessment, as the commissioner, of outstanding issues that might be worthy of some research and uptake.

Mr Gooda—I have been in the job just under four months. I think I will make a statement shortly about what I see as being the agenda for the remainder of the five years. I have undertaken some consultations around Australia. I think it is safe to say that a lot of the things driven in Aboriginal and Torres Strait Islander communities these days is coloured by what is happening in the Northern Territory. I think the more quickly the Racial Discrimination Act is reinstated up there, the better it will be for a whole range of issues.

The issue that is right in the forefront of everyone's thinking at the moment is what is happening in the Northern Territory with 73 communities that are not treated the same as the rest of Australia when it comes to issues around the Racial Discrimination Act. That is what my comment would be on the things facing us. Underlying that are some issues around—I can clearly say from feedback I have been getting—the engagement of Aboriginal and Torres Strait Islander communities with government, and following on from that the coordination of services provided to Aboriginal communities.

I sometimes quote Noel Pearson's article earlier this year when he said that in communities in Cape York there are sometimes more service providers than there are residents. There has to be a bit of thinking about how government goes about providing those services in a coordinated fashion to our communities.

CHAIR—So your plan is to lay out a strategy for the next five years in terms of your workload and issues you would look at. Is that the way it happens?

Mr Gooda—Yes, that is right.

CHAIR—Can you also provide us with an update or a report back on the United Nations Permanent Forum on Indigenous Issues?

Mr Gooda—We attended the permanent forum earlier this month. There would have about 35 people from Australia who attended. Again, the issues confronting us that we raised at the permanent forum were around the Northern Territory intervention. The report of the special rapporteur, James Anaya—when he looked at the state of Aboriginal and Torres Strait Islander people with respect to their human rights in Australia—is not due to be tabled until

September. We would hope to engage with the government about addressing the recommendations of that report fairly early in the process.

I go back to my previous comment about proper engagement with the Aboriginal and Torres Strait Islander people and organisations in communities. If we can get to the point where there is that engagement happening before the report is tabled, it would go some way to militate against some of the observations that Professor Anaya made in that report.

Other issues were around bilingual education, particularly with what we are seeing in the Northern Territory. When we look at the rights of the child and the declaration on the rights of Indigenous people around rights to our culture, we think language is a very important part of that. We pursue it not only from that perspective but also from the commonsense approach of kids who have English as a second or third language being taught in their own language initially. That leads to better education outcomes anyway. There is a whole mountain of evidence around the world that the support that view.

The issue raised in the Torres Strait was around the effect of climate change in the Torres Strait. I think they will be first people affected in Australia. Indeed, if you look back to the 1940s, when families were removed from Saibai Island, I tell people that we already have environmental refugees in this country; they are up at Seisia on the tip of Cape York. They were moved. The Torres Strait Regional Authority made an intervention at the permanent forum around the effect of climate change not only on the provision of services but also on their culture. You are now finding places of significance under threat from the rising waters.

I have to note the election of Megan Davis, who is an Indigenous academic in human rights. She was elected to the permanent forum on Indigenous issues. She takes up her position on 1 January. I have known Megan since she was a cadet lawyer. It was great to see a young Indigenous woman take her place at the international level.

CHAIR—She is the first Indigenous woman appointed to that forum, is she not?

Mr Gooda—From Australia, yes. She was nominated by the Australian government for that position.

CHAIR—I see. I hope that my colleagues who asked questions on gender equity earlier have taken note of that, but they are otherwise occupied.

Mr Gooda—Yes.

CHAIR—Thank you, Mr Gooda, for that update. I do not think we have any other questions for the commission. I thank you for making yourselves available today for estimates.

[11.29 am]

Australian Law Reform Commission

CHAIR—Good morning and welcome to the estimates consideration of the current budget. Professor Croucher, do you wish to make an opening statement?

Prof Croucher—Only to say that this is my first Senate estimates appearance, and I welcome the opportunity, in the extent that I may do so in my tenure as president, to assist the committee with its deliberations.

Senator BARNETT—Thank you, Professor Croucher. I am interested to get your views and position with respect to the recent cuts to the commission and the exact nature of those cuts, from your perspective, as to how it will affect the operations of the commission.

Prof. Croucher—The budget cuts are a matter that we have considered closely. We have factored in what we need to do to ensure that the quality of our work maintains its standard, balancing various issues with the department in close consultation. In an ideal world, we would prefer not to have them, but the reality is that we are doing what we can to manage within our budget.

Senator BARNETT—Where will the cuts be made within your commission? How will it affect staff appointments? What programs or projects will be cut?

Prof. Croucher—The issue of staffing is always a flexible one. Apart from members of staff who, like me, hold a commission, the staff are on contracts.

Senator BARNETT—How many staff do you have?

Prof. Croucher—Eighteen full-time equivalents.

Senator BARNETT—And 30 June last year?

Prof. Croucher—Twenty full-time equivalents.

Senator BARNETT—And 30 June next year?

Prof. Croucher—On 30 June next year, we anticipate the same as we have now: 18 full-time equivalents. You asked though in terms of how it would affect us. Our principal area where we anticipate being able to contract a little is with respect to rent. That is about our only movable thing at the moment.

Senator BARNETT—How is rent movable? Did you say rent?

Prof. Croucher—Rent.

Senator BARNETT—You might have to move out of your premises.

Prof. Croucher—Yes.

Senator BARNETT—Where would you go?

Prof. Croucher—That would be explored at the time.

Senator BARNETT—To cheaper premises?

Prof. Croucher—One would anticipate that that is an area where perhaps we may be able to have some savings and retain our staffing levels.

Senator BARNETT—I think I read a report that you might be forced to move. That is what that report is about: you might have to move to cheaper premises.

Prof. Croucher—Well, the consideration of location is something that all commissions keep under watch.

Senator BARNETT—Of course. Was the president of the commission consulted about the planned cuts and the extent and time of them?

Prof. Croucher—We were advised, as all agencies were.

Senator BARNETT—In advance of the budget or after the announcement?

Prof. Croucher—These particular cuts came prior to the budget announcements.

Senator BARNETT—But the budget announcements confirmed the cuts.

Prof. Croucher—Yes. They did not come as a surprise at that time.

Senator BARNETT—Are the figures or cuts that you are referring to in addition to any possible or projected so-called efficiency dividends that you may be subject to?

Prof. Croucher—Yes.

Senator BARNETT—So you have to respond to the cuts as well as provide the efficiency dividend that most agencies are required to follow?

Prof. Croucher—Yes.

Senator BARNETT—I understand a parliamentary committee inquired into the effects of the efficiency dividends on small agencies and recommended that the ALRC be quarantined from any further efficiency dividends. I think there was a Senate committee report into that. Are you aware of that report?

Prof. Croucher—Yes, I am aware of it. I do not recall the specific detail.

Senator BARNETT—So that report's recommendation has been rejected?

Senator Wong—Hang on. The professor has just said she is not aware of it, and then you put another question on the same issue.

Senator BARNETT—I thought you said you were aware of it.

Prof. Croucher—I am aware, but I am not aware of the detail.

Senator BARNETT—I thought she said she was aware of it.

Senator Wong—She has just given the answer. She is not aware of the detail.

Senator BARNETT—She is not aware of the detail, but she said she is aware of the report.

Senator Wong—Concede.

Senator BARNETT—So the report's recommendation was that it be quarantined. Let us move on. The act requires that there be a president, a deputy president and at least four other members. That is at least six commissioners. How many do we have at the moment?

Prof. Croucher—There is me as president, and we have three part-time commissioners.

Senator BARNETT—So that is four out of six.

Prof. Croucher—There are four, that is right. But under the act, while that is the overall statement of the membership, there is also a subsection which expressly indicates that the absence or vacancy in any of those positions does not affect our ability to fulfil our functions.

Senator BARNETT—I am aware of that but I am also aware of the wording of the act. Let us go back a step. For many years the commission operated with three or four full-time commissioners; is that right?

Prof. Croucher—That is correct. In recent years the constitution normally been a president plus two full-time commissioners.

Senator BARNETT—So now we have only one full-time commissioner; is that correct?

Prof. Croucher—That is correct.

Senator BARNETT—And that is you?

Prof. Croucher—That is correct.

Senator BARNETT—Then we have three other part-time commissioners out of the six?

Prof. Croucher—Yes, that is right.

Senator BARNETT—So this would be the first time, would it not, that any government has failed to appoint the sufficient number of commissioners?

Mr Wilkins—Could I intervene at this point? There is no legislative requirement to appoint. You used the word ‘requires’. It is not required at all, actually.

Senator BARNETT—It is in the act, Mr Wilkins.

Mr Wilkins—With due respect, the government has considered this carefully. The commission currently consists of a president and three part-time members. Although under the Australian Law Reform Commission Act the commission consists of a president, a deputy president and at least four other members, section 6 (2) of the act provides that the performance of the commission’s functions and exercise of its powers are not affected merely because of one or more vacancies in its membership.

The deputy president position has been vacant for much of the past 10 years. The government may consider additional appointments to the commission, having regard to the workload and resources. The general philosophy now is that the government intends to make greater use of short-term appointments to enable eminent persons who are experts in the fields of inquiry to contribute to particular references rather than having standing full-time commissioners.

Senator BARNETT—Thank you for the contribution. Commissioner Goldsborough was appointed in conjunction with the family violence inquiry and her term expires in August; is that correct?

Prof. Croucher—That is correct.

Senator BARNETT—Is it anticipated that the commission will, therefore, be down a further commissioner from August?

Prof. Croucher—That is a matter for the department and the Attorney.

Senator BARNETT—Sure. Maybe Mr Wilkins will answer this question.

Mr Wilkins—The appointment of Anne Goldsborough as a part-time member is an exact illustration of the point I just made. The government is looking at specific appointments for specific references and using that approach, and that is an example of that.

Senator BARNETT—I am happy for you to share examples but my question was, will you fill that position from August when she retires?

Mr Wilkins—Can I repeat what I said?

Senator BARNETT—All right.

Mr Wilkins—With references—for example, if we are looking at the issues around discovery, it may well be sensible to appoint somebody specifically to look at that. If we are looking at issues to do with violence and family violence, it may well be a good idea to appoint somebody to look at that. As I have just said, the intended approach is to look at specific appointments, and there may well be more than two or three—it depends on the number of references.

Senator BARNETT—Can you advise how many you are anticipating appointing in the next six months?

Mr Wilkins—No, I cannot, because that is a matter of policy for the Attorney-General.

Senator BARNETT—We have one full-time and then three part-time at the moment, with one retiring in August?

Mr Wilkins—I have just explained the—

Senator Wong—Mr Wilkins has just explained the reasoning behind that. I make the point that I do not recall the opposition proposing neither to remove the efficiency dividend or to fund the Law Reform Commission more greatly in what passed for your budget reply and subsequent responses.

Senator BARNETT—I am asking the questions and I will focus on the questions before me.

Senator Wong—But if you wish to attack and if you wish to criticise—

Senator BARNETT—If you want to make general comment, I will respond accordingly.

CHAIR—Order! Senator Barnett and the Minister!

Senator BARNETT—This is not an inquisition into opposition policy.

CHAIR—Order! Senator Barnett! I have asked for order.

Senator BARNETT—The minister should come to order.

CHAIR—Senator Barnett, I think you need to obey my instructions as chair. When I call you to order I expect you to be called to order.

Senator BARNETT—I will not be lectured by the minister.

CHAIR—I expect you to be called to order. You would not do it in the chamber.

Senator BARNETT—I will not be lectured by the minister.

CHAIR—I do not expect it in my committee hearings. When I call you to order I expect you to be silent. I am asking you to at least wait until the minister has finished what is being said. Minister, if you have finished, you may proceed.

Senator Wong—I was simply making the point that, if the senator wishes to criticise the government for these issues, it seems strange that the opposition has no alternative policy on this front. One calls into question the genuineness of the question.

Senator BARNETT—My next question—through you, Chair, is—

CHAIR—When you get the call you can have the next question, Senator Barnett. Questions? Senator Barnett?

Senator BARNETT—Please do not be pedantic, Chair. I was simply asking a question—

CHAIR—We will have some cooperation.

Senator BARNETT—I asked the question through you. I was being polite and professional.

CHAIR—We will have some cooperation, thank you.

Senator BARNETT—I was trying to ask a question through you.

CHAIR—If you have questions, please proceed. Otherwise, Senator McLucas has questions.

Senator BARNETT—Through you, Chair, my question is: was there any consultation with the current or former president of the ALRC about the intention to substantially reduce the complement of commissioners and the effect that that would have on the quality work of the commission.

Prof. Croucher—Is that a question to me?

Senator BARNETT—Mr Wilkins may be in a better position to answer, but if you have advice that you could share then I would be happy to hear it.

Prof. Croucher—I am not able to answer with respect to my predecessor, obviously. With respect to me, there are discussions about the best way to approach the staffing of references. The current inquiry, if I may use it as an illustration, is a joint inquiry with a state Law Reform Commission. Hence there are two full-time commissioners on that inquiry, plus a part-time commissioner. I am the commissioner in charge, and there is also Hilary Astor, the New South Wales law reform commissioner, together with the part-time commissioner, Magistrate Goldsborough. That gives an illustration of a different approach with respect to this one.

Senator BARNETT—Thank you. How many specific references does the commission have before it?

Prof. Croucher—At the moment we have two.

Senator BARNETT—That is all.

Senator McLUCAS—I refer to the family violence inquiry. Can you give the committee an understanding of the consultation processes that you are undertaking as a part of the inquiry?

Prof. Croucher—Certainly. The consultation process for each inquiry is considered with respect to its subject matter. Given the engagement with a considerable range of state and territory law as well as federal law, it was considered appropriate that we visit each of the major capitals over the course of the reference. Given that we released a consultation document at the end of April, one would time consultations around the document upon which one is seeking to consult.

We had some very focused consultations in Perth in the first week of May. Last week I was in Mackay and I had a team in Tasmania and in Melbourne. Later this week we are going to Darwin and Alice Springs, engaging with key groups that we have lined up in those places.

Senator McLUCAS—I guess that that is in order to cover off the different realities faced by regional, rural and remote people in relation to the question of family violence.

Prof. Croucher—Yes, and also because the terms of reference ask us to consider interaction in practice. Given that the focus is on interaction in practice, one needs to speak to the differences in the jurisdictions.

Senator McLUCAS—Great, thank you. Good luck with that.

Prof. Croucher—Thank you.

Senator LUDLAM—Unless you have covered this—and there is already a whole pile of answers on the transcript—I wonder whether I could ask you a couple of questions about what appear to be substantial funding reductions for the ALRC in the last budget.

Prof. Croucher—I believe I have answered some questions in relation to that.

Senator LUDLAM—Okay. If I am going over old ground, just direct me to the transcript and that will be fine; I will pick it up there. Can you tell us what justification was provided to you for those reductions in funding?

Prof. Croucher—Reductions in funding are a matter for the department; they are not a matter for me.

Senator LUDLAM—So you are not given advice as to why that funding is disappearing? You just need to make do with what you are given?

Prof. Croucher—We were advised of the budget cuts, so we are making our plans in accordance with them.

Senator LUDLAM—Can you tell us what that means for the operations of the commission?

Prof. Croucher—I believe I have given a fairly full answer to that in the transcript.

Senator LUDLAM—Okay, thank you.

Senator Wong—Senator, if I could interrupt just so we are clear, I understand we are talking about some \$240,000 in 2010-11 and some \$495,000 in 2011-12 and 2012-13 out of a budget of \$3.39 million and \$3.15 million respectively.

Senator LUDLAM—That is what I have.

Senator Wong—I do not know whether we can assist. Certainly I do not think the professor can assist much with the reasons, but it is a matter of public record that the government had a very clear approach to the preparation of this budget, which included a cap on real growth in spending. Various portfolios across government looked at expenditure reductions to fund a range of other measures, including a very substantial investment, of which you would be aware, in health. I can only give you the overall budget strategy, which the Treasurer has made clear and which, as you know, has led to the budget coming back into surplus three years early.

Senator LUDLAM—I am presuming that you are not seeking to downplay the impact of a budget reduction of a quarter of a million dollars and then half a million dollars a year in an agency that is receiving only \$3 million in funding. Does that essentially mean that you will be required to reduce the number of annual inquiries from three to two and reduce the number of consultation meetings that you hold?

Prof. Croucher—I assume that that question is for me again.

Senator LUDLAM—Yes.

Prof. Croucher—The number of inquiries, the complexity of inquiries and the timing of inquiries are obviously matters that we have to manage whatever our budget. In order to manage our work to the quality that we are reputed for, we are in regular close discussion with the department to ensure that the nature of the inquiries is balanced and that the timing of them ensures our ability to discharge our functions properly.

Senator LUDLAM—Okay. But in raw numbers—I am taking this from media reports, so correct me if the record is wrong there—you will be required to reduce the number of annual inquiries from three to two as result of these cuts?

Prof. Croucher—Normally we have only two inquiries at any one time. It depends on their complexity. Last year we had two smaller inquiries that we could manage very well within the commission. The bigger inquiry—family violence—is concentrating our attention at the moment. For a while we had only the family violence inquiry—for the first few months of the year. We have just got new terms of reference in relation to discovery, which we look forward to discharging, particularly as the family violence inquiry is completed.

Senator LUDLAM—I know as a member of this committee that I appreciate the submissions that the commission makes quite regularly to Senate committees, or inquiries held by this committee. Will these cuts reduce your ability to make those submissions?

Prof. Croucher—While we have a research manager as part of our staff complement, the research manager undertakes the compilation of those submissions. I am glad that you found them very helpful, as we put a lot of care into them. We consider that, to the extent that that reflects our work and brings our work before parliament, we are happy to continue that through the role of our research manager.

Senator LUDLAM—I hope that you are able to somehow maintain the quality of the work and the output that you produce, because it is valued by this committee. Have you touched so far in your evidence today on the inquiry into secrecy and open government in Australia?

Prof. Croucher—No, we have not.

Senator LUDLAM—Great. I will just ask a couple of questions on that, if I may. Can you tell us how much that inquiry cost overall?

Prof. Croucher—Can I?

Senator LUDLAM—It is going back a little while now.

Prof. Croucher—To give you a specific response on that, I will have to take that question on notice.

Senator LUDLAM—That is fine. If you like, you can also provide us with what that meant in relation to staffing and hours and the contributions that different people made.

Prof. Croucher—I can tell you, for example, that I headed that inquiry as commissioner in charge, and I had three legal officers working on it with me.

Senator LUDLAM—Okay.

Prof. Croucher—For the most of it. It started off with a few more on it, but, when the royal commissions reference was given to us, one team worked on the royal commissions and I had a team on the secrecy reference.

Senator LUDLAM—It is a valuable report. Has the government made a response to any of the recommendations that you are aware of?

Prof. Croucher—Not so far as I am aware.

Senator LUDLAM—In this report you examined the exception in the FOI legislation for cabinet documents. You stated a view that in the context of the general secrecy offence whole categories of information should not be protected. Can you elaborate on the reasons for that view, in the light of legislation that has only recently passed through the Senate?

Prof. Croucher—Briefly, the overall focus of the report was moving away from the very broad terms of the secrecy offence that is in section 70 of the Commonwealth Crimes Act. In order to provide a more principled regime for secrecy offences, it was considered that, for the most part, the general secrecy offence should have a harm focus. But at the same time we made a number of recommendations about specific secrecy offences, sometimes in relation to categories of information where it was considered, on balance, after the consideration of all the submissions and the consultations that we had undertaken, that that was the most appropriate way to keep the balance between open government and the protection of Commonwealth information.

Senator LUDLAM—Similarly, with the security exemption for intelligence agencies we have moved from a regime where some information can be sought through the FOI regime to a situation where nothing will be available through the FOI regime. In this report, it is my understanding that you were persuaded that the exception does have an ongoing role to play. I was just wondering whether you can justify that in light of what you have just said.

Prof. Croucher—Are you speaking specifically about section 38 of the FOI Act and its continued role, or are you speaking about the exemption in the FOI Act in relation to certain information?

Senator LUDLAM—Recently we had amendments to the FOI Act that passed the Senate that effectively cover security and intelligence agencies with blanket exemptions from FOI. That is not the case in countries that we would consider to be our peers. I was just wondering what was your view on that.

Prof. Croucher—I will express the view of the commission insofar as we have considered the matter before. The ALRC undertook a report 15 years ago, many provisions of which are actually captured in the amendments that are going forward at the moment. In that report, I am aware that there was a considerable tussling with this whole issue of agency exemption verses an openness with the conditional framework that is now suggested. At the time, I must

report that we came down on balance in favour of an exemption for those agencies—the security and intelligence agencies. That was our report 15 years ago. That matter would be fully covered. I was not in the commission at that time. The reasons for those conclusions would be fully articulated there.

Senator LUDLAM—Lastly, at the end of the report you speak briefly on parliament and on public interest immunity claims. I am wondering whether you examined the Senate Finance and Public Administration References Committee report on public interest immunity tests and a mechanism within the Senate? Was that something that you evaluated in the course of producing this?

Prof. Croucher—To be honest, I do not precisely recall whether that particular inquiry report that you refer to was considered. I could confirm that for you. Public interest immunity was not a subject of the inquiry. Hence, if we looked at it, it would have been for background research.

Senator LUDLAM—I would appreciate that—whether the ALRC was asked specifically for an opinion on that matter and on matters that were raised by that committee report. I would appreciate it if you could advise us on that.

Prof. Croucher—Our terms of reference are our brief for all our inquiries. It was not an inquiry into public interest immunity. I think there is some discussion about that as part of the background research.

Senator LUDLAM—Thank you very much.

CHAIR—Are there any further questions?

Senator BARNETT—Through you, Chair, just a point of clarification to confirm whether Mr Wilkins's opening remarks this morning are coming. We have not seen them in writing as yet, but I understand that they are on the way.

Mr Wilkins—Yes. I did not state precisely what was written down, so it needs to be checked against delivery.

Senator BARNETT—Thank you.

Senator Wong—Madam Chair, are there any other questions for the commission?

CHAIR—No, it would seem as though we have finished.

Senator Wong—I just wanted to get back to Senator Barnett on the questions on notice issue. I asked for some time to respond to that issue. I am advised that, of the three questions on notice outstanding, two have been filed today. There is one answer to a question on notice that I do not think we will be in a position to file today. There are some more complex issues that have been the subject of some further questions that need to be resolved before that can be filed.

Senator BARNETT—Which two have you filed, Minister?

Senator Wong—I am advised 120 and 129. No. 117 is the outstanding question.

Senator BARNETT—Just remind me—is No. 117 Senator Eggleston's question or my question?

Senator Wong—I do not have that information in front of me.

Senator BARNETT—Do you know the reason why it is outstanding?

Senator Wong—I have just given that.

Mr Wilkins—It is highly complex. There are 120 pages worth of contracts et cetera, some of which may or may not be included.

Senator BARNETT—I know the question now. Thank you.

CHAIR—Professor Croucher, thank you very much for your time this morning and for managing to travel through your first estimates with this committee.

Senator BARNETT—Just through you again, Chair, of the two questions that have been filed, I think I have one of them. Have they been tabled?

Senator Wong—The secretariat is nodding.

Senator BARNETT—Thank you.

[11.57 am]

Australian Transaction Reports and Analysis Centre

CHAIR—Mr Schmidt, good morning and welcome to our estimates consideration. Do you have an opening statement that you want to provide to the committee?

Mr Schmidt—No.

CHAIR—We will go to questions.

Senator TROOD—Mr Schmidt, I begin by asking you something about an item in the Attorney-General's annual report in relation to output 2.1, an administered item, which relates to an anti-money-laundering and counterterrorism-financing information and public awareness campaign which the annual report discloses was something of a budgetary triumph, it would seem. It was supposedly going to cost \$3.2 million, and it ended up costing \$0.6 million. Can you clarify what happened there?

Mr Schmidt—That education program is run out of the Attorney-General's Department; it is not in AUSTRAC.

Senator TROOD—That is not something for which you have any responsibility?

Mr Schmidt—That is correct.

Senator TROOD—We will move on and sort that out a bit later. I assume you can address me on the matter of staffing. I notice from the PBS that there is an increase in AUSTRAC staff to 319. Is that right?

Mr Schmidt—Yes.

Senator TROOD—From 297. Is that correct?

Mr Schmidt—Yes.

Senator TROOD—Has a decision been made about the allocation of those new staff?

Mr Schmidt—We have a general outline. The staffing increases to a large degree arise in respect of the two budget matters that arose in the recent federal budget. We had two major

divisions in the organisation—the supervision division that deals with the upfront regulation of the reporting entities, and the intelligence unit, which is the financial intelligence unit that analyses the material from the reporting entities. So the staff will be split between those two parts of the organisation.

Senator TROOD—More or less evenly?

Mr Mazzitelli—Approximately 12 of those staff will be going to implement the new cost recovery measure, and eight of those staff will be going across to the combating organised crime new funding measure.

Senator TROOD—When will those staff join the organisation?

Mr Mazzitelli—Work is currently underway to commence the recruitment processes.

Senator TROOD—The cost recovery matter does not begin until the financial year beginning 2011; is that right?

Mr Mazzitelli—That is correct.

Senator TROOD—So you need those staff before that date?

Mr Mazzitelli—The first year, the 2010-11 financial year, relates to implementation of the new cost recovery arrangement, so the agency is commencing, through a series of processes, to recruit additional staff and to commence procurement and scoping processes.

Senator TROOD—Is the increase in employee expenses that is disclosed on page 272 of the PBS related to this increase in staff?

Mr Mazzitelli—It is.

Senator TROOD—Exclusively?

Mr Mazzitelli—It is.

Senator TROOD—There is an increase of approximately \$3.9 million?

Mr Mazzitelli—That is correct, yes.

Senator TROOD—At what level will these staff be appointed? Has that been cleared yet?

Mr Mazzitelli—At a range of levels.

Senator TROOD—Will any senior executive service staff be appointed under this arrangement or not?

Mr Mazzitelli—They are not planned to be, no.

Senator TROOD—Is it clear at the moment at which level the appointments will be made, or are you in the process of working that out?

Mr Mazzitelli—We are in the process of working it out. There will be a range of levels between very junior levels through to executive level.

Senator TROOD—Thank you. I want to explore the cost recovery proposal, which is in the budget. I suppose the obvious question is: why are you doing this?

Mr Schmidt—Cost recovery, under the cost recovery guidelines, is an opportunity—or an obligation, in a sense—for organisations which have regulatory functions to consider whether

they fall within the cost recovery guidelines that have been in place now for approximately eight years within the Commonwealth government. Our regulatory functions and the costs associated with them are considered to fall within those guidelines.

Senator TROOD—Mr Schmidt, have you been cost recovering?

Mr Schmidt—Not at this stage.

Senator TROOD—Do I take it from your response that it was always intended that AUSTRAC would engage in cost recovery for its services?

Mr Schmidt—No. This is something which is considered from time to time, as part of any budget an organisation has. Each year we look at opportunities for savings, we look at opportunities where we believe we could do more with particular money and we look at other government obligations or requirements. One framework for looking at our activities is the cost recovery guidelines.

Senator TROOD—You have told me that the cost recovery guidelines have been in place for eight years and that AUSTRAC has not hitherto cost recovered, but now it has decided to do so from 2011. What is not clear is precisely the reason you have now decided to implement this program which hitherto you have not been troubled by.

Mr Wilkins—Maybe I can assist you in that. I do not think you were here right at the beginning, when we were talking about the framework on organised crime. As I adverted to at the beginning, one of the key contributors to that is the work of AUSTRAC in providing data to, particularly, the Australian Crime Commission, the AFP and some of the state agencies, and there is a need to upgrade that, from the point of view of IT and from the point of view of analysis—particularly in light of the GFC. It became apparent at an international level, in talking to foreign jurisdictions, that more was expected and required in following the finances and financial transactions and that it was critical to the integrity of the financial system in Australia.

As APRA takes care of prudential issues and some of the integrity issues around the way in which the financial system works, so it is critical with AUSTRAC. Taking all that into consideration, the government considered that some modest form of cost recovery was important, as it is with APRA, to support the growth in the ongoing work of AUSTRAC, particularly with the new emphasis on the integrity of the financial system, the pursuit of profits of organised crime and the growth of the organised crime framework. It is in that context that it would make sense clearly to look at that as an option.

Senator TROOD—So there has been a significant increase in the demands on AUSTRAC, which has forced this decision; is that right?

Mr Wilkins—There will be and there are. If you look at their counterparts around the world, that is certainly the case. They started off as something over the last couple of decades, but it is obviously growing in importance in terms of, on the one side, the integrity of the financial systems and, on the other side, the importance of supporting law enforcement investigations as well. That is the reason, Senator.

Senator TROOD—Is this a pre-emptive strike, is it? You have not yet got to the point where the agency is under intense pressure in relation to its funding and for the work it is doing?

Mr Wilkins—I would not have said that. It is actually an initiative which allows it to grow. The people who benefit from the work that AUSTRAC does can in a very modest and small way contribute to that, in the same way that they do with the work of APRA in ensuring the prudential position of the financial markets.

Senator TROOD—But it is not beginning until 2011—is that correct?

Mr Wilkins—Correct.

Senator TROOD—Why is that? Do you need some preparatory work to be put in place to undertake this kind of cost recovery?

Mr Schmidt—That is a very good question. The announcement was made only in the budget the week before last. It requires legislation to implement, to begin with. Perhaps more importantly, of course, for the reporting entities themselves, we need to consult with them about the implementation of the proposal. It is not something you can just do instantaneously. You have to put in various mechanisms supporting a cost recovery regime.

The government has announced the broad outline of how the cost recovery regime will be structured with a component based on a flat fee, but a transaction fee as well. I have had some preliminary discussions, as have various of my colleagues, with some of the major financial organisations that we deal with and some of their representative organisations. In conjunction with the Attorney-General's Department we will be having greater consultation in coming months about finetuning that fee split, for example.

The cost recovery guidelines say we can recover no more than what our regulatory costs are, but some of the organisations we have been talking to have suggested that there may be different ways of allocating the costs between, say, a flat fee component and the per transaction fee. In fact, I have already had one submission come in from a particular organisation on that front. We are going to engage in further discussions with those entities to see if there are different ways of structuring it. The legislation will be enabling legislation. We believe this will, on the one side, give us adequate time to get the administrative and operational arrangements in place, but also, with the reporting entities, to get consensus, as far as you can with any measure of this nature, as to how we should finally structure those fees.

Senator TROOD—There wasn't any consultation with industry, was there, prior to this announcement?

Mr Schmidt—It was a budget measure, so the first public announcement, as I understand it, was with the budget.

Senator TROOD—But there was no discussion with any of those who use your services about the possibility of a cost recovery regime coming in, was there?

Mr Schmidt—No.

Senator TROOD—Why was that?

Mr Schmidt—It was a budget matter for the government—a policy decision as to what they would do in this current budget. I cannot comment any further on the background.

Senator TROOD—I know you cannot comment about the mysteries of setting budgets, but you can, I think, illuminate the point for the committee about why, given the fact that you were obviously thinking about a cost-recovery regime being put in place, you did not think it appropriate to discuss the matter with industry and a wide range of clients beforehand. Even if you did not make any decisions about how much it was going to cost, what the budgetary provisions were or anything of that kind, why didn't you talk to them about the structure of the program, for example?

Mr Schmidt—Until the government made a decision, there was nothing to discuss. The government has now made its decision and we have been tasked with implementing it, and a lead time has been given for more detailed discussion.

Senator TROOD—But the industry is pretty mad about it, aren't they?

Mr Schmidt—I have had discussions with senior people in a number of organisations. I think it is very true to say that no-one is happy with additional costs being imposed. But, having said that, I have met very reasoned feedback from the individuals I have spoken to, who are very keen to work with us in structuring the arrangement in the most efficient and effective manner.

Senator TROOD—I suppose that if you confront them with a *fait accompli*, they have few choices. But as a matter of good policy development, it is not a sensible way to proceed really, is it?

Mr Schmidt—I have no further comment on that, Senator.

Senator TROOD—You have actually blindsided, to use an American term, a not insignificant part of industry. You, by your agency's responsibilities, require them to report to you. Suddenly you have told them that you are going to slug them for a rather large amount of money, potentially, for their work.

Senator Wong—I do not think Mr Schmidt can comment on that. You are making a political assertion, and I do not think the officer at the table can comment on that.

Senator TROOD—It is not so much a political assertion as recognising some of the comments that have been in the media about the fact that there has been no warning or consultation about the change. No-one knew about it.

Senator Wong—And the opposition is not proposing to change this policy.

Senator TROOD—This is not about the opposition.

Senator Wong—No, but I am making this point. We can have a political debate about this, or we cannot. Mr Schmidt is not the person to respond to your assertions about how a particular issue has been politically received. He has answered the question insofar as he is able to.

Senator TROOD—All right. But the intention of this arrangement, Mr Schmidt, is that businesses, those that use your agency, will be paying the fees. Is that right?

Mr Schmidt—It is comprised of two components. Again, in accordance with the cost-recovery guidelines, there is a flat fee, which as announced to date is approximately \$500 dollars per reporting entity. That is intended to capture, if you would, the baseline costs for the organisation in administering the legislation in respect of all entities, regardless of size. The challenge in regulatory cost recovery is trying to identify to what extent is there perhaps a greater demand on the regulatory side of operations through particular entities and trying to find a measure for that. In the case of this proposal, the measure for that variable scale, if you like, is the number of transactions reports that we receive from the various entities. In effect, that means that the vast majority of our reporting entities will not be paying more than the \$500. The remainder of those who will be incurring the fee, which at this stage is approximately \$1, will be those who are lodging international funds transfer instruction reports or threshold transaction reports.

Senator TROOD—Is the \$500 a figure that has been now determined, or is that subject to consultation as well?

Mr Schmidt—It is the starting point.

Senator TROOD—So it could go up?

Mr Schmidt—It is a basis for discussion at this point. That is what we are doing with industry—consulting on the actual split between the two.

Senator TROOD—So all agencies, or all clients if you use that term, will be required to pay the \$500?

Mr Schmidt—All reporting entities will be required to pay a flat component, which may be \$500, and then a component per transaction.

Senator TROOD—How many reporting components are there.

Senator Wong—Reporting entities?

Senator TROOD—Entities, I beg your pardon.

Mr Schmidt—Approximately 17,000.

Senator TROOD—That is, to put it colloquially, a nice little earner, isn't it? So, 17,000—

Senator Wong—It is actually cost recovery, Senator.

Senator TROOD—So 17,000 will pay the figure, as determined.

Senator Wong—These are financial entities.

Senator TROOD—I understand that. Thank you, Minister. So that will be a flat fee. There will be a flat fee for those agencies.

Mr Schmidt—Yes.

Senator TROOD—You say that for most of them that will be all that they are required to pay; is that right?

Mr Schmidt—That is correct.

Senator TROOD—When you say 'most of them', does that mean 8,500, 10,000 or 16,000? Have you worked that out?

Mr Schmidt—I believe that approximately 15,000 of the entities will pay only the flat fee. If I can explain why that is, the anti money-laundering regime under the legislation requires as a baseline for organisations to have compliance programs in place. There are a large number of entities who do not send funds overseas, so they would not be subject to a fee, who do not receive cash in excess of \$10,000, which requires a threshold transaction report to be lodged, but they are required to have their anti money-laundering compliance programs in place. That captures that bulk of activity. It is then the individual reporting. To give you a sense of the size of this, based on some calculations we have done, the value of international fund transfers in and out of Australia through reporting entities varies between \$4.1 trillion and \$4.3 trillion per annum. The cost recovery, the \$1.06 we are talking about, represents .00067 per cent of that total. So it is a very small percentage of the dollar value of the transactions that are reported to us—by those entities that do report.

Senator TROOD—That may be the case, but there are all sorts of ways we can talk about that figure. One of the things that troubles me about the fee that will be imposed is that it is a flat fee, whatever it is going to be. It will affect all entities, no matter how much involvement they have with your agency. If they are responsible for a couple of transactions annually, as distinct from one that does 10,000, they will have to pay the same amount. Is that right?

Mr Schmidt—I apologise, Senator, I must not have explained myself adequately in my earlier answer. There are two components. There is the flat \$500 fee, which applies to everybody. But if they are not doing any other reporting to us—if they are not reporting international funds transfers or threshold transaction reports—that is the end for them.

Senator TROOD—I appreciate that. I realise they are not going to pay a transaction fee if they do not transact. But they are going to have to pay the \$500, aren't they?

Mr Schmidt—Or an amount, yes.

Senator TROOD—Presumably the National Australia Bank is one of these organisations, but so might be a relatively small organisation somewhere else of the 17,000. They will have to pay the same figure. They will not have to pay the transaction fees, but it does not matter how big or large you are, you will have to pay the same amount initially. Is that right?

Mr Schmidt—Yes. I think you are alluding to some of the arguments that have been put to us in the limited discussions we have had to date with entities—alternatives that should we look at more an ad valorem sliding scale? Should there be a fee based on the balance sheet of the organisation involved? There are different ways in which the fees might be structured. One of the things I have been saying to the people I have been talking with, of course, is that that is why we would like to engage with them in this period available to strike the appropriate balance—having in mind that ultimately the requirement is to reach a total through some mechanism to meet the cost of our regulatory activities, and no more.

Senator TROOD—So you are thinking about that possibility?

Mr Schmidt—We are certainly open to consideration of discussion on that point.

Senator TROOD—So your mind is not closed on a flat fee, and that is matter under active discussion. Is that right?

Mr Schmidt—It is indeed.

Senator TROOD—When do you expect these consultations to be concluded?

Mr Schmidt—The deadline we are working to at the moment is trying to have the broad parameters of the scheme set out by the end of August. Of course that is in the lead-up to introducing legislation to implement the scheme. There will always be details that fall out from the enabling legislation which will be subject to further discussion, but I would certainly hope to have the fee structure in place by the end of August.

Senator TROOD—So it will require a legislative instrument of some kind, rather than a regulatory instrument?

Mr Schmidt—That is what I am advised—that it does require legislation.

Senator TROOD—All the revenue raised, by whatever means it is done, will be directed towards this regulatory activity. Is that correct?

Mr Schmidt—That is correct.

Senator TROOD—So it will be returned to that figure. What is the amount that you anticipate recovering through this activity?

Mr Mazzitelli—The figure for the three-year period will be \$88.9 million.

Senator TROOD—Does that assume an increasing amount on an annual basis, or is it reasonably even over the three-year period?

Mr Mazzitelli—It assumes that the agency effort in supervising regulated entities will remain static.

Mr Schmidt—There will be a built-in review period, whether it is three years or whatever. There will obviously be a review at a certain point in time to check the accuracy of the levy.

Senator TROOD—Is that intended to be put into the legislation—the provision for review?

Mr Schmidt—I am not sure what the drafting will entail there, I am sorry.

Senator TROOD—But is that your recommendation?

Mr Schmidt—It is a requirement under the cost-recovery guidelines that you do have a review provision. I am not sure how that is manifested in other regulatory regimes at the Commonwealth level.

Senator TROOD—I think you have said that there is a proposed figure for a transaction fee. Is that correct?

Mr Schmidt—The threshold transaction fee.

Senator TROOD—Which is an intriguing \$1.06.

Mr Schmidt—Yes.

Senator TROOD—Perhaps you can explain to me why it is not just \$1 or just 6c? How do you arrive at that figure?

Mr Schmidt—It is again an attempt to strike a balance. Say you have \$100 for the regulatory costs for the year. What component of those costs do you attribute to all reporting entities and the overall regulatory activities that the agency undertakes? Then what

component should be attributed to responding and dealing with individual transaction reports that are lodged by those entities that lodge those reports? At this point in time, the split that we have come up to recover our current regulatory costs is the \$500 flat fee and then \$1.06 per transaction. As part of these discussions with industry, that may vary. The volume of reports coming into the organisation has been increasing without interruption in recent years. As the volume of reports increases, assuming that our regulatory costs do not change dramatically, in theory the cost per transaction fee should drop over time. But that is something that we will have to see as time passes.

Senator TROOD—I do not think I have ever seen that happen, Mr Schmidt. Yours would be first agency in which that might occur, if it were to take place. I will make sure that your remarks on that are noted. I am sure the minister is taking note and is inspired by your example.

Senator Wong—Pass. I was emailing someone else. I apologise, Senator. Would you like me to take notes?

Mr Schmidt—I think I am on my own there, Senator.

Senator TROOD—That is probably true. I assume you recognise that the reporting entities are going to have to pass these costs on to their own customers.

Mr Schmidt—It is a question for the entities themselves as to how they deal with the cost. Because it covers such a wide population with different business activities, there is no standard approach when it comes to charging fees for these sorts of transactions we are talking about. Some entities, for example in the remittance sector, as I understand it do not actually even charge a transaction cost. They make their money through the foreign exchange transactions that are reflected in transferring money overseas. But, yes, ultimately it is a matter for the organisations themselves as to whether they absorb those costs, pass them on completely and transparently, or whether they adjust other systems they have in place, such as their margin on the foreign exchange transactions they deal with.

Senator TROOD—But you are not troubled too much by that, are you, Mr Schmidt?

Mr Schmidt—It is a matter for business, once the decision has been taken to impose it.

Senator TROOD—But, given the number of transactions that take place and the amount of money involved for some of the entities, this could this could be a very significant amount of cost, in additional costs, to their activities, couldn't it?

Mr Schmidt—We did some preliminary estimates across the major banks and, I think, some of the major remitters. I think a transaction fee of about \$30 was the average for the transactions which will be captured. Of course, that will vary depending on what the institutions do, because there might be a transaction of \$10 million or a transaction of \$500. But, if there is a straight pass-through, the percentage impact will vary greatly depending on the fee structure of the individual entity.

Senator TROOD—But it is going to go to every entity's bottom line, isn't it?

Mr Schmidt—I would assume so, of course.

Senator TROOD—The \$500 to begin with and then the \$1.06 et cetera. For some organisations it is going to be a very significant amount of money. Why wouldn't they pass that on to their customers?

Mr Schmidt—It is completely a matter for themselves. It is a matter for the reporting entities what they do with it.

Senator TROOD—It is almost impossible to think that that would not add yet another cost burden to conducting business in this area.

Senator BARNETT—Do you have a view as to exactly how many small businesses are affected by the \$500 fee? You mentioned 17,000 entities. How many of those are small businesses?

Mr Schmidt—It would assist if I had an idea of what you would consider to be a small business, Senator.

Senator BARNETT—The standard ABS statistic of 20 or fewer employees.

Mr Schmidt—I am sorry. I would not have a break-up on that basis.

Senator BARNETT—Do you have any idea of how many small businesses are affected by this new government measure?

Senator Wong—That is the same question.

Senator BARNETT—I am asking if he has any idea. I am not being specific. Do you have any idea of how this will affect small business?

Senator Wong—The assumption in that question is a definition of small business.

Senator BARNETT—I do not mind which definition he wishes to use.

Senator Wong—I think that what he answered is that that is not the basis upon which he has information.

Senator BARNETT—All right. Mr Schmidt, do you agree that the vast bulk of the 17,000 entities disadvantaged by this \$500 new government fee, or levy, will be small businesses?

Mr Schmidt—I cannot say one way or the other. Our reporting entity population is based on the number of transactions that they deal with us. As I said, the vast bulk of them do not engage in international funds transfers or threshold transaction reports. Of course, if they have suspicious transactions, that is a different category. But we do not have a break-up in that sense in our database.

Senator BARNETT—It is extremely disturbing to hear that. How are you going to know how to communicate with these entities if you do not know who they are and the size of these entities?

Senator Wong—What—

Senator BARNETT—Let me finish, please. No doubt you have plans to advise the key stakeholders and the key entities of the so-called planned consultations. It is very worrisome if you do not know who they are.

Senator Wong—I will let Mr Schmidt respond shortly. Chair, I want to flag that I have one thing I want to cover again before the break. I do not think Mr Schmidt's evidence was that he did not know who they were. That is your assertion in your question, which is not predicated on the answer which preceded it. What he indicated was that the data that he has could not enable him to answer a question relating to the 20-employee definition that you had put to him.

Mr Schmidt—Senator Barnett, to continue answering your question: we have very good relations. The vast bulk of our entities are members of industry associations. Obviously there are the banks but there are also smaller financial institutions, financial advisers, gaming bodies, cash carriers, bullion dealers et cetera. Another big component is the remittance sector. The vast bulk of the remittance sector are members of remittance networks, which are run by Travelex, Australia Post or whatever. There are avenues through those associations or through those networks to reach the vast majority. There will always be a small number in any regulated population that are not members of that sort of arrangement. We have their details on our database and we can contact people. So, yes, we are able to put information and proposals out to them and seek their input.

Senator BARNETT—And you will be doing that?

Mr Schmidt—Absolutely.

Senator BARNETT—Every single one of them?

Mr Schmidt—Everybody on our database we will be doing our level best to use the existing information to contact.

CHAIR—Minister, you wanted to clarify something for the record?

Senator Wong—Yes, I want to give a little more detail and also correct the record in relation to one answer I gave. This is in relation to the appointment of women to judicial appointments. I am advised that as at May 2010, the Labor government has made 25 new judicial appointments, and 11 of those were women. I understand that this is 44 per cent. I think I gave an answer with an incorrect percentage. So it is 11 out of 25, which is 44 per cent.

CHAIR—We will now break for lunch.

Senator BARNETT—I thank the minister for correcting the record. I thought you gave a figure across the whole of the government, or was that just for the A-Gs?

Senator Wong—This is judicial appointments.

Senator BARNETT—But did you give a figure before for whole of government?

Senator Wong—I thought you were asking about judicial appointments.

Senator BARNETT—My question was, when we had interchange earlier in the day, did you not respond to say that the appointments across the whole of the government—

Senator Wong—Do you mean non-judicial appointments?

Senator BARNETT—Yes.

Senator Wong—I do not have that figure in front of me, and it would not be in this portfolio.

Senator BARNETT—So you were not referring to that?

Senator Wong—No. The advice I have is the advice I have just read out, Senator.

Proceedings suspended from 12.32 pm to 1.32 pm

Mr Wilkins—Madam Chair, I thought this might be of assistance to the committee. Some questions were given to us this morning where members wanted extra information. We have that for you. I will ask Dr Popple to provide that

CHAIR—Thank you, Dr Popple.

Dr Popple—This morning Senator Barnett asked us about the report of the review of Commonwealth legal services procurement, the Blunn-Krieger report. We have, as promised, a copy of the report to hand up. It has been on our website since it was released in January this year.

Senator Barnett also asked us about the committee's access to justice report and its report on the judicial system and the role of judges. I can confirm that the government's response is being finalised. In relation to the former report, specifically we are taking into account in the finalisation of the government's response the various access to justice initiatives that were announced in the budget and which the secretary covered in his summary this morning.

Senator Barnett also asked if we could provide the year-to-date figures for the Commonwealth legal spend. I apologise for not having had the presence of mind at the time to say that we do not have those, because the way the system works is that the legal services directions require agencies to provide us with their legal spend within 60 days of the end of each financial year. So the figures that the committee already has are the most recent ones we have; they relate to the 2008-09 financial year. We will have the figures on the 2009-10 legal service expenditure by 30 August this year.

Finally, Senator Barnett asked this morning about the current population of Christmas Island. I can advise the committee that the most recent census of Christmas Island has a resident population of 1,347. That was from the 2006 census. As at 21 May, the detention centre on Christmas Island had 2,437 and the estimated number of staff from Serco, NGO staff and DIAC staff on Christmas Island ranges between 400 and 600. We have a total range of between 4,200 and 4,400. The previous peak that we are aware of is 3,000 on Christmas Island. That goes back to 1976.

Senator TROOD—Mr Schmidt, with regard to the second budget measure in relation to national security and the advanced information technology system which is intended to be installed, how much is that going to cost us?

Mr Mazzitelli—The total value is \$24 million over four years.

Senator TROOD—Is that a replacement of an existing system or is it a new capability that you are adding?

Mr Schmidt—It is a combination of matters. It is a replacement of some existing equipment, but more importantly it is an enhancement of our analytical capability. It is new hardware and new software for the organisation.

Senator TROOD—Is that being sourced locally?

Mr Schmidt—The procurement process has not commenced as yet.

Senator TROOD—When do you intend that to begin?

Mr Mazzitelli—The processes are now commencing.

Senator TROOD—Have you gone to tender yet?

Mr Mazzitelli—There will be a number of tender processes. Much of the build occurs in the second year, but much of the scoping and some of the procurement will commence in year 1.

Senator TROOD—This capability will be in place after four years—is that right?

Mr Mazzitelli—Progressively rolled out.

Senator TROOD—Will there be any capability available prior to the end of the four-year period?

Mr Mazzitelli—Yes, there will be.

Senator TROOD—Good. Will this require any additional staffing arrangements or staff to be attributed to this particular capability?

Mr Mazzitelli—As I said earlier, this measure has eight staff attached in year 1. Then it drops down to five staff at the conclusion of year 4.

Senator TROOD—Will they need to be specially recruiting for the staff, or are the staff to be used for this purpose to be deployed from other parts of the organisation?

Ms Atkins—What we intend to do is to use some of our existing staff who already have specialist expertise for making decisions about the sorts of things we will take on, and we will backfill into those positions.

Senator TROOD—How much capability will there be that is compatible with other Commonwealth agencies in this new capability you are acquiring?

Mr Schmidt—There are a range of issues that your question has thrown up. Part of it is that we already have within partner agencies access to our database, so we have people with remote access who will continue to have that. The use they can make of our data will be enhanced. But also we internally generate our own intelligence analysis and reports, which we make available to third-party agencies, and that will also be enhanced. So it will be a combination of improved access for people who use our material and also a greater capacity for us to improve the product which we generate ourselves.

Senator TROOD—But the accessibility is only for AUSTRAC staff—is that right? Individuals in other agencies do not have direct access to your material, do they?

Mr Schmidt—Some agencies have access to our database in respect of the reports we receive, and they can do analysis themselves.

Senator TROOD—We will inspect that a bit further as we go down the track. I want to move to a couple of other issues. On page 272 of the PBS under paragraph 3.2.2, there is analysis of budgeted financial statements and a reference to the overseas development assistance program, which is a program that apparently is now being terminated. Is that right?

Mr Schmidt—Yes, the South-East Asian program terminates in the current financial year.

Senator TROOD—Let me clarify that. Are you saying it has come to an end, or is your evidence that it is being terminated prior to coming to an end?

Mr Schmidt—Funding was terminated this financial year; it ends this financial year. However, there are a number of other programs where we have funding in the region, and also we are seeking further funding in relation to some aspects of the terminating program.

Senator TROOD—So you are not actually terminating the overseas development assistance program?

Mr Schmidt—No. It comprises a number of different elements.

Senator TROOD—I have to say it is slightly misleading

Mr Schmidt—Sorry.

Senator TROOD—From my perspective, it seems that the whole of the overseas development assistance program is being terminated, but you are suggesting that only part of it is. Is that right?

Senator Wong—Senator, can you assist us? Are you reading from the PBS or from another document?

Senator TROOD—No, I am reading from the PBS, page 272.

Senator Wong—Thank you.

Senator TROOD—The last section, 3.2.2.

Mr Mazzitelli—If I can assist. That funding measure terminated on 30 June and that related to direct parliamentary appropriation. However, the agency has sourced funding from alternative means to continue with parts of that program in the region.

Senator TROOD—So that program applies specifically to South-East Asia, does it?

Mr Mazzitelli—That is correct.

Senator TROOD—That is not exactly clear. But part of that program continues; is that correct?

Mr Mazzitelli—That is correct. Funding through other means, such as through AusAID.

Senator TROOD—How much of the program to South-East Asia continues; can you tell us that?

Mr Mazzitelli—I can provide you with a breakdown. We have a program funded from AusAID to assist with the capacity building of Pakistan. We have another program to assist financial intelligence units in the South Asian region.

Senator TROOD—Is that AusAID money too?

Mr Mazzitelli—Yes. They are the primary two programs that are on foot at the moment.

Senator TROOD—That is not South-East Asia; it is more broad. The programs in South-East Asia have been continued. What were those programs?

Senator Wong—Senator, you are asking questions about the program, the closure of which was announced in a previous budget, yes?

Senator TROOD—I am trying to clarify—

Senator Wong—I was not actually trying to make a political point. If there are difficulties with that question, PBS states that the termination of this program, the ending of this program, was announced in the 2008-09 budget.

Senator TROOD—Yes.

Senator Wong—I do not know to what extent the officers have all the details of the 2008-09 budget decision. They may have them here. I want to clarify that that is what you are asking.

Senator TROOD—The detail of 2008-09 is not so much important as is the program we are talking about. That seems to suggest, the way that statement reads, that it is related to the overseas development assistance. But it is not specific to South-East Asia or indeed South Asia. So if I read it literally, it suggests that the whole of your overseas development assistance program has been terminated. But that is not what you are telling me, is it?

Mr Schmidt—No, Senator. If I can give you some more clarity, that program originated in July 2004 and was funded initially for four years at \$10 million. Following the conclusion of that four-year period, an additional two-year program was funded and that two-year extension concludes in June of this year. We are currently seeking additional AusAID funding to continue aspects of that.

The proposed program in respect of that would have included work in the Philippines, Thailand, Indonesia, Malaysia and Vietnam. On top of that we have continuing programs in respect of work in Indonesia, and I think there may be some other work in the region as well, which is continuing to be funded.

Senator TROOD—That is helpful; thank you for that. Has there been provision made in this budget for the money that you are seeking support for from AusAID?

Mr Schmidt—No, we are still seeking it.

Senator TROOD—So that is a matter of negotiation between your agency and AusAID?

Mr Schmidt—Yes.

Senator TROOD—Are they reasonably hopeful that the funds will be available?

Mr Schmidt—I am not sure of the status of the matter at the moment.

Senator TROOD—I take it from what you have said that that particular program does not relate to the work you are doing in Africa; is that right?

Mr Schmidt—That is correct.

Senator TROOD—That is a separate program altogether?

Mr Schmidt—That is correct.

Senator TROOD—I take you to the Australian assistance that was announced in 2009-10, which was subject to inquiries and discussion in relation to previous estimates with Senator Brandis, I think. The African countries that have been given that assistance are Botswana, Kenya, Tanzania and Namibia; is that correct?

Ms Atkins—Perhaps I can assist. Over the last year we have been working to identify which particular countries we should provide assistance to with that funding. There were 18 countries that we considered. The countries that we are working with are Botswana, Lesotho, Malawi, Namibia, Swaziland, Tanzania and Zambia. They have been identified as the priority countries to receive assistance.

Senator TROOD—I see.

Ms Atkins—We are also looking at possibly working with Kenya, Ethiopia, Uganda, Ghana, Mozambique and Nigeria.

Senator TROOD—When this matter was before the committee on the previous occasions and these four countries that I mentioned were identified, they were not countries about which there had been any agreement, or you had not decided that you were necessarily going to send support to them; is that right?

Ms Atkins—That is right.

Senator TROOD—I see. but the number has now expanded. I think you said on the last occasion you were speaking to Senator Brandis about this that Nigeria was among those that were being considered; is that correct?

Ms Atkins—It was among the first 18 that were considered; that is right.

Senator TROOD—And it is still under consideration; is that also right?

Ms Atkins—Yes. It is in the list of second-level priority countries.

Senator TROOD—Perhaps you can explain to me. I think most of us realise that a lot of these financial scams that are infecting us and our computers and emails come from Nigeria, not necessarily from the other places, but they may be from there. Why is it that there has been no decision about the possibility of including Nigeria among these countries?

Ms Atkins—When we look at which countries we will target, as well as their vulnerability and the risk levels, we take into account the willingness and the capacity of the country to participate and what stage they are at.

Senator TROOD—Do I take it from that that the Nigerians are not enthusiastic about receiving our support?

Ms Atkins—In Nigeria their FIU is more developed than some of the other countries, so we are giving some priority to those countries that need greater capacity development.

Senator TROOD—Are you pushing Nigerians to accept our assistance, and they are resisting?

Ms Atkins—No, Senator.

Mr Schmidt—I do not think there is any suggestion of that. It is just that negotiations and consideration are still taking place in a broader range of countries, and Nigeria is one of those. No final decision has been made as yet.

Senator TROOD—What exactly are you doing in these countries?

Ms Atkins—We have started off by participating in the most recent eastern and southern Africa anti-money-laundering group meeting. They are the equivalent of the regional international body. While we were there we discussed with the various countries the sort of capacity building that we could undertake. In late February and early March 2010, we undertook bilateral visits to Botswana, Swaziland, Namibia, Lesotho, Tanzania and Zambia. These visits included initial discussions about FIU priorities and the delivery workshops. Late this month we will be holding a regional workshop for financial intelligence units in Windhoek in Namibia.

Senator TROOD—Is that workshop organised under any multilateral agency?

Ms Atkins—No, that particular one is an AUSTRAC workshop.

Senator TROOD—Are these activities and visits being undertaken by a specific group of people within AUSTRAC?

Ms Atkins—Yes, Senator, we have—

Senator TROOD—Which unit is that?

Ms Atkins—We have a specialised technical assistance and training team.

Senator TROOD—How big is that?

Ms Atkins—It is a team of 17 staff.

Senator TROOD—Is it organised regionally? Are members of that team dedicated to Africa?

Ms Atkins—Yes, there are. Some of our staff would be across the programs. But we do have dedicated staff for each region.

Senator TROOD—I see. How many are ‘Africanists’, if I can use that term?

Ms Atkins—I do not have that at my fingertips.

Mr Schmidt—I think the figure is five.

Senator TROOD—Perhaps you can tell me what has been achieved by this program since it has been in place for a year, at least?

Ms Atkins—I do not think we are at a point where we have done an evaluation yet. But, as I said, we have had annual regional seminars—or we are about to have our first big one. We have done some bilateral training workshops, when we have visited the countries that I mentioned we had already been to visit. We have had study visits to AUSTRAC by staff from the FIUs of some of those countries and we have been doing some information technology needs assessments.

Senator TROOD—So, you have not evaluated it? I will not say that nothing has been done, but you have not evaluated the results of your effort so far?

Ms Atkins—Not at this point; we are only one year into the program.

Mr Schmidt—I think it is true to say that the program has taken a bit longer to get up and running than we anticipated. So, our expenditure to date has not been that great.

Senator TROOD—Why is that, Mr Schmidt?

Mr Schmidt—I think it is partly identifying appropriate countries that we would engage with. Of course, it is a matter of getting people on the ground over there and engaging with the organisations involved in those particular countries. Some of the start-up times can take a bit longer with some of these things.

Senator TROOD—Have they asked you to do this, or have you sort of gone around touting for it?

Mr Schmidt—My understanding is that there is a great deal of reception to our engagement with these countries.

Senator TROOD—AUSTRAC has made an overture to these countries. Is that right?

Ms Atkins—I think it would be true to say that a lot of organisations are increasing their work in Africa, including the Egmont Group, which is the international group of FIUs. I do not think I would describe it as AUSTRAC touting for it by taking part in programs that are being encouraged internationally.

Senator TROOD—I am sure there is a lot more activity there, Ms Atkins. I am sure that is absolutely true. But I am interested to know how it is that the Australian government has become involved in this, whether or not we have been asked to undertake this work in some capacity or whether or not we have volunteered to undertake the work.

Mr Schmidt—We make our services available to a range of people in the Pacific and further afield.

Senator TROOD—I am sure you do, but I am interested to know how your services become available to or come to the notice of countries in Africa. Was it—and correct me if I am wrong—that perhaps DFAT or AusAID said, ‘You might like to consider offering your services in Botswana’, for example?

Mr Schmidt—I must confess that the program was initiated prior to my arrival, but it was the case that the agency has been provided money by the government specifically directed towards providing assistance in the African region. Having been given that money, we are rolling out our programs. I am not quite sure of the basis.

Senator TROOD—Can any of your officers explain that to me?

Ms Atkins—I understand that in fact it was initiated by DFAT. It is part of the official development assistance program.

Senator TROOD—It was somewhere prior to the 2009-10 budget, was it?

Ms Atkins—Yes.

Senator TROOD—Early 2009?

Ms Atkins—Probably in the year before that. I am not aware of the answer to that, but we can take that on notice.

Senator TROOD—Can you take on notice when the agency was first asked to undertake work in Africa and where that request came from? If in fact it was the case that AUSTRAC itself went out to Africa and sought to offer assistance, I would like to know that as well.

Mr Schmidt—I think the best analysis or comparison is the program you have touched on previously, which the South-East Asian program, where government back in 2004 made a decision that that was a priority area for addressing money laundering and other capacity-building arrangements. They put aside money for AUSTRAC to deliver those services. Similarly, in May 2009, the government made a decision that there was a need for capacity building in the African region and tasked us with undertaking a similar range of activities. That was a decision made by the government and we are carrying out that function.

Senator TROOD—Your fame is spreading, Mr Schmidt.

Mr Schmidt—Thank you.

Senator Wong—This is, as I understand it, about capacity building to counter money laundering.

Senator TROOD—I see.

Senator Wong—This is not—

Senator TROOD—It may be the case, but I am trying to understand the provenance of this enterprise, that is all.

Senator Wong—Provenance?

Senator TROOD—The provenance of this engagement with Africa. But I am satisfied at the moment. I have just one more question and I know we have to move on. I refer to the agreement signed with Guatemala, which took place in April this year, as I understand it. I want to clarify whether or not it is the same kind of agreement that you have signed with countries in Latin or South America and whether or not it involves any commitment of funds from the agency?

Mr Schmidt—It is a similar form to the ranging of agreements that we have with a number of countries around the world. It does not require us to commit funds to South America, similar to any other MOUs that we have signed with countries across the globe. It does not involve us to commit funds.

Senator TROOD—So it is a standard form of cooperation; is that right?

Mr Schmidt—Exactly. It is an exchange of information.

Senator TROOD—Does it involve a reciprocal exchange of information?

Mr Schmidt—Absolutely.

Senator TROOD—So you can expect the same kind of support that they can provide you?

Mr Schmidt—Absolutely.

Senator McLUCAS—I understand that there was an announcement in April this year where AUSTRAC made a rule change to allow for the deregistration of remittance dealers. Can you give the committee an understanding of why AUSTRAC wanted those changes and how they are going to work.

Mr Schmidt—The remittance area is an interesting area of activity for the organisation. You may know how these businesses operate. They are particularly present in providing a service to have funds made available from people in Australia to parts of the world where there may not be formal banking arrangements in place.

Having said that, there are large commercial remittance dealers—Travelex and others—who operate this service in a range of countries. Perhaps the primary difference between the remittance sector compared to most of the other businesses we deal with is that there is no other regulatory regime which they fall under. Of course, the banks have their regulatory arrangements, financial advisers, et cetera. We run a register of remitters, and that is the only regulatory regime that applies to their business operations.

It has become apparent over time that it was a very light-handed regulatory approach. It is a criminal offence to provide remittance services without being registered, but the practice is that, if a person presents themselves to AUSTRAC and says, 'I want to be registered,' we are obliged to register them. Once they are on the register there is no explicit provision in the legislation for their removal from the register unless they actually ask for it themselves. With that in mind, as it has become apparent for all the good that the remittance sector does and the excellent services they provide, they have been identified by law enforcement and others as an area of activity which has vulnerability to infiltration by criminal and other activities—drug smuggling, money laundering itself, people smuggling et cetera.

There was a gap in our capacity to respond in an effective manner if people who were doing the wrong thing were identified. With that in mind, a rule was made which now gives me, as the CEO, the power to remove a person from the register of remitters if there is a significant risk of them being engaged in money laundering or counterterrorism financing. That could go only part of the way. That was using the existing rule-making power under the legislation.

In light of that gap in the regulatory armoury, the government announced that it will introduce legislation to give a much broader range of powers in relation to that. The Minister for Home Affairs released a discussion paper a few weeks ago which started off the process of looking at improvements. What we are aiming to introduce is a tighter regulatory regime where a person who wants to be a designated remitter will have to approach the organisation to give information at a high level about their past activity—whether there are criminal convictions or other matters which we will require them to disclose. There will be more explicit powers in future legislation to enable me to put conditions on their operations or in more substantial cases to perhaps suspend or in fact deregister them. There is also consideration given to try to formally recognise in the legislation the unique business relationship that a lot of remitters have with providers of designated remittance services. I touched upon this before lunch,

The vast majority of remitters utilise networks operated by bigger organisations to transmit funds. So they will go through a Western Union or Australia Post or whatever. Those organisations themselves undertake some prudential checking, of course, of agents and others who are using their services. What we are trying to do is find a way which recognises the arrangements that are already in place so as not to create a regulatory burden. We are trying to

build over the existing arrangements, but to give a formal recognition. That is why we are in consultation with industry.

A lot of the details, I suspect, will be worked out as we roll out this arrangement. There is a question, of course, about the people who are already registered as remitters. We have to be sensitive of the fact that we do not want to burden people—the worst-case scenario is not going to happen, of course—by stopping the provision of services until they come through the new doorway that we are establishing. What we will do is grandfather those people in and then, on a rolling basis, we will go—

Senator BARNETT—Point of order, Madam Chair. I raise the issue of whether Senator McLucas wanted to hear the full outline of the response to her question or a more succinct version. There would perhaps be an opportunity for a private briefing on those matters if Mr Schmidt wished to provide them. In light of the time, we have other commitments. I draw that to your attention.

CHAIR—Senator Barnett, we could offer you a private briefing on all your questions if you would like that, but every senator has an obligation and an entitlement to ask questions at Senate estimates. That is exactly what Senator McLucas is doing. If she wants a succinct answer, I am sure she will pull up Mr Schmidt and ask him to be more succinct. Please proceed, Mr Schmidt.

Senator McLUCAS—Can I say, Mr Schmidt, that it is very useful to the committee to have this information, thank you.

Mr Schmidt—Thank you, Senator. With the existing participants who are already on our register we will put in arrangements so that they can be grandfathered over time, and then we will have in place a regime of a rolling revisitation—a renewal of those remittance registrations. Of course, there will be a capacity to have show cause action and other action in respect of people who come to our attention through our law enforcement agencies.

I would like to make one final comment. Sometimes it is not always readily apparent what AUSTRAC does in the field. People see law enforcement action being taken against people, say, in the remittance field, and we are not taking action. Sometimes we know that intelligence gathering is taking place with the law enforcement agency and we do not want to interfere with their investigations and their evidence gathering. Sometimes the appropriate outcome is that criminal action and sanctions are taken against participants. We will now have the capacity, once the legislation is passed, to be able to follow on behind some of that law enforcement action and remove the individuals who have been involved in activities that are not appropriate for remittance services.

Senator McLUCAS—Which partly answers my next question. Under the rule change that I understand happened in April, your power is to be able to remove a person from the register, as you have explained it. My question was going to be what right of appeal do you have if you are removed? I dare say if you have been convicted of money laundering you probably do not need a right of appeal. But could you answer that question relating to appeals?

Mr Schmidt—Yes, Senator. It is an important point. This cannot be an arbitrary exercise of power. There will always be cases where circumstances might arise where it is appropriate to move very quickly to shut down a business. That is partly to protect honest people who are

dealing with that service so that they are not at risk of losing their funds or somehow getting engaged in criminal activity. But, of course, in the general course of events, there will be the normal show cause requirements. We would go to people and say that we are considering taking action of suspension or conditions or deregistration and give them a chance to respond, and appropriate appeal mechanisms will be put in place.

Senator McLUCAS—My final question on this issue is as follows: how long do you expect your consultation process to occur before you come to a decision about what the legislation might look like?

Mr Schmidt—The hope is for the legislation to be introduced this session. The formal consultation process has closed but we have been in discussions on an ad hoc basis with parties who have raised further issues with us. As I outlined earlier, a certain amount of the practical, administrative detail will have to be set out in rules or regulations underneath the legislation when passed. So there will be a further period of discussion in due course.

Senator McLUCAS—Excellent. Thank you very much, Mr Schmidt.

CHAIR—Thank you Mr Schmidt. I do not think we have any other questions for AUSTRAC. I thank you for your time today and for making yourselves available for our estimates process.

Mr Schmidt—Thank you, Senator.

CHAIR—We will now move to the Classification Board and the Classification Review Board.

[2.06 pm]

Classification Review Board

Classification Board

CHAIR—Welcome Mr McDonald, Mr Fenton and Mr Griffin to the Senate Legal and Constitutional Legislation Committee estimates process. Did you want to begin this afternoon with an opening statement?

Mr D McDonald—I would like to, thank you, Madam Chair, for the opportunity. Since we last met, the Classification Board has continued to work efficiently, classifying films, computer games and publications and so fulfilling its statutory duty and its role in the national classification scheme. The board's fundamental role is to make classification decisions. The states and territories are primarily responsible for enforcement. Customs and border protection regulate what can and what cannot be imported into Australia. In the financial year to 30 April 2010, the board received 5,727 applications, including applications to classify 4,091 films, 931 computer games and 254 publications.

These figures are generally consistent with the number of applications that the board has received over the previous two years. One recent classification decision of the board that I know has attracted the attention of some senators is the R18+ classification for a modified 292 minute DVD version of the film *Salo O Le 120 Giornate Di Sodoma Salo*. The film, in a number of different versions, has been variously classified R18+ and RC—that is to say, refused classification.

Before making that decision, the board most recently classified a version of the stand alone feature *Salo* as RC in July 2008. This latest version is a two-disk release, which contains additional documentary material, a trailer and a music clip. The Classification Board, in a majority decision, classified the film R18+, with the consumer advice 'scenes of torture and degradation, sexual violence and nudity'.

At the request of the Minister for Home Affairs, that decision has since been reviewed by the Classification Review Board, which also classified the modified version of the film R18+ and left the consumer advice unchanged. The board readily acknowledges that this is an extremely controversial film with a difficult classification history. Beyond that, the decision of the board speaks for itself and, in any case, has been superseded by the decision of the review board. I can provide a copy of that decision, should senators require it.

To move to enforcement matters, since we last met I have participated in a very valuable classification enforcement contacts forum hosted by the Attorney-General's Department. Participants discussed a range of classification enforcement issues affecting each state and territory and shared intelligence and other information, particularly regarding adult publications and films.

It was the first time that such an event was held and I am advised that positive feedback from participants will probably see it recur. As I have done in recent times, I should update senators about the board's monitoring of classification compliance levels of adult publications and films. I can advise the committee that I have called in for classification 440 adult films and 40 adult magazines since July last year. As I advised last time, none of these notices has been complied with.

Failure to comply with a call-in notice is a breach of classification laws. I can assure senators that these breaches have all been referred to the relevant state and territory law enforcement agencies for appropriate attention and action. As I advised in February, our audit schedule of serial publications has been increased to include an audit of every periodical covered by a serial declaration. Given the recent history of noncompliance by some distributors, the board has also been tending to issue serial declarations for 12 months only rather than the previously-common 24-month period.

On another matter I have spoken at these hearings before of my concerns about consumers sometimes missing or being otherwise unaware of the very important advice the board is obliged to give about films and computer games. In this regard, since we last met, the board have started issuing media releases about classification decisions where we believe there is a public interest in promoting a particular decision. We think this is particularly useful for films that are aimed at children or may incorrectly be perceived as being aimed at children.

Media releases have been issued to date for the PG classified *Alice in Wonderland*, the MA15+ classified *Kick Ass*, the R18+ classification of *Salo* and the M classification *Robin Hood*. The board continue to observe the public discussions about mandatory internet filtering. The role of the board continue to be one of classifying online content upon receipt of a valid application under the Broadcasting Services Act, which we have done now for years. Once classified, the role of the board with regard to online content regulation ends.

Finally, as I advised in February, the board is in a renewal phase. In this regard, the board's recruitment program is well advanced. Interviews for the vacant deputy director and soon to be vacant senior classifier positions were conducted this month and board member interviews will be conducted in June. As committee members would know, board members are appointed by the Governor-General on the recommendation of the Minister for Home Affairs after consultation with state and territory censorship ministers. I look forward to welcoming our new members when they are appointed.

CHAIR—Mr Griffin, do you have an opening statement?

Mr Griffin—Madam Chair, I do not have an opening statement, except to apologise for the absence of Ms Victoria Rubensohn, the convener of the Classification Review Board. I am the deputy convener, but on this occasion I am also the acting convener. She is overseas and wishes to have it recorded that she is apologetic for her absence.

Senator BARNETT—Thank you, Mr McDonald for being here today. I know some serious questions will be asked about the *Salò* classification. However, before we do that could I place on the record confirmation of an update from the February hearings. I want to get the figures that you talked about—the number of adult films and magazines that have been called in but where there has been a failure to respond.

In February we had had more than 800 unclassified pornographic magazines, movies and books called in by your board since 2008. I want to get those figures updated. Those are the magazines that are still on shelves and in bookcases in petrol stations, general stores and even in McDonald's coffee shops. I find that appalling. It confirmed, certainly in my view and in the view of others, that the system is broken. Referring to the numbers, could you confirm for us since the beginning of 2008 the number of unclassified magazines and materials that have been called in where there has been a failure to comply?

Mr D McDonald—I would like to take that question on notice to ensure that I can give you an accurate figure for that.

Senator BARNETT—In February you used a figure of 800, and then today you referred to figures of 440 adult—

Mr D McDonald—The 440 is for this current year.

Senator BARNETT—Yes, from 1 July to now, or until recent days? Then you have an extra 40 magazines that have been called in where there has been a refusal to comply, is that right?

Mr D McDonald—Senator, I understand your question but I do not have that information at my fingertips.

Senator BARNETT—All right. Do you have the call-in notices for the 2008-09 year? Do you have that with you? How many were called in during the past financial year?

Mr D McDonald—The information that I have in front of me today is in respect of this financial year. That information will be available in the department.

Senator BARNETT—I can only advise what you advised us in February this year. I am now assuming that the figures you have given us are an update and additional to those figures that were given in February. Would that be accurate?

Mr D McDonald—Some part of them will be additional—those that are from February until the end of April.

Senator BARNETT—Right. You do not have those figures with you—from February to now?

Mr D McDonald—Not in relation to the start of 2008.

Senator BARNETT—What about from February to now? Do you have those figures for magazines called in from February estimates?

Mr D McDonald—I do not, Senator.

Senator BARNETT—Okay. Could you advise from 8 February this year how many periodicals with a serial declaration have been audited? How many have failed the audit? Have the distributors of these titles been subject to a call-in notice, and how many of them have responded?

Mr D McDonald—We have audited 22. I am sorry, that is not since February; that is in this fiscal year again.

Senator BARNETT—Let us go from fiscal year then. How many failed the audit?

Senator Wong—Of the 22?

Mr D McDonald—We will provide that.

Senator BARNETT—Have the distributors of these titles been subject to a call-in notice?

Mr D McDonald—They would not need to be called in because we have the publications. But breaches would be advised to the relevant authorities in the states and territories.

Senator BARNETT—What about the distributors?

Mr D McDonald—We advise them of the failure of the audit, yes.

Senator BARNETT—And what sanction or what communication do you have with the distributor?

Senator Wong—Sorry, Senator, we seem to have strayed away from the 22 and specific questions about that, which I understood Mr McDonald to have taken on notice, to the broader regime of enforcement. I just want to be clear that that is what we are doing. We are no longer talking about the 22, because Mr McDonald said he did not have all that information. As I understand it, he is taking that question on notice. If that is not the case, and he can provide it, he will provide it. Or are you asking broader questions?

Senator BARNETT—I am asking about the 22 which you have taken on notice. I am also asking about the distributors regarding those 22 and the communication you have with those distributors. What is that communication? What do you say to these people?

Mr D McDonald—When the publication fails an audit then the distributor is advised and the serial declaration lapses.

Senator BARNETT—Do you refer the distributors to the law enforcement officers, or do you impose some sort of discipline yourself, as the Classification Board?

Mr D McDonald—We have no disciplinary powers whatsoever under our legislation. But if a publication fails a serial audit then it is an unclassified publication, and we advise the authorities of that.

Senator BARNETT—My concern is about the number of distributors that are still out there that are acting in breach, and you know this full well from the communications that you have with them. As a general question I would ask: in regard to the distributors that have failed to respond to call-in notices, are these distributors still in business in Australia as far as you are aware?

Mr D McDonald—The pursuit of these matters is the responsibility of the department, and it may well have some information that can be helpful to you.

Senator BARNETT—But, from your advice and understanding, are they still in business so far as you are aware?

Mr D McDonald—Senator, I repeat that that is not my role.

Senator BARNETT—You are not able to answer that question? That is okay; that is fine. I am happy if you are not able to answer it. That is fine. So far as you are aware, have any of them submitted new publications for classification since the call-in notices was issued?

Mr D McDonald—You are now talking about the call-ins not the audits?

Senator BARNETT—Yes.

Mr D McDonald—I will have to take that question on notice. However, I would just like to clarify the question. Can you repeat the question exactly.

Senator BARNETT—Sure. In regard to distributors that have failed to respond to call-in notices, are these distributors still in business in Australia? We have dealt with that question. Have any of them submitted new publications for classification since the call-in notice was issued? Are they repeat offenders?

Mr D McDonald—I will take that question on notice.

Senator BARNETT—I have an answer to question No. 10 in front of me. Thank you for the answer. It related to the distributors who you have advised are troublesome, and the director has called in adult films and/or magazines for classifications from the distributors as set out in the table below. None of these distributors has complied with the notices. There are 17 of them listed there. In total there are 86 publications and 756 films—the total of items called in is 842. Of course, none of them have complied with those notices. I will give you an example: Adult Global. You have communicated with Adult Global, and it had 748 films that were called in. How is it possible that this can happen? Is this not further evidence that the system is in total chaos and is simply not working?

Mr D McDonald—I repeat that in all of these instances the information is given to the police. From there on it is in their hands.

Senator BARNETT—You must get very despondent and disappointed when you keep having these films called in—time and time and time again. We have 748 according to this

list, which is in answer to question on notice No. 10. You must get so despondent when you call in these films or publications and they do not respond. It must be demoralising for the Classification Board, not to mention members of the public who rely on the board to do a job—which you have been doing. Then you advise the law enforcement agencies and nothing ever happens.

Senator Wong—I am sorry. I understand that is your view but I am having difficulty discerning the question.

Senator BARNETT—I am asking Mr McDonald whether he feels despondent and dismayed and demoralised by this.

Senator Wong—While I like Mr McDonald, I am not sure whether his emotional state is really the issue for an estimates hearing.

Senator BARNETT—Thank you for intervening again, Minister. If Mr McDonald does not wish to answer that question, he is entitled to say so.

Senator Wong—Do you really want to ask a public officer whether he is demoralised and depressed, or whatever the question was?

Senator BARNETT—Dismayed.

Senator Wong—Dismayed—sorry. That is the question?

Senator BARNETT—Yes. Mr McDonald?

Mr D McDonald—No, I am none of those things. I am pleased that progress is being made with enforcement. As I mentioned, the classification enforcement contacts forum was held recently. It was well attended by a range of representatives from state and territory police forces and customs officials, and there is clearly a willingness to do a more thorough job here. All these people, who would need to answer for themselves, have priorities.

Senator BARNETT—Okay. Thank you, Mr McDonald. Clearly, if you are satisfied, I appreciate that that is your position. I can assure you that there are many Australians who are very dissatisfied with the current arrangements and the fact that the system is not working, that these call-in notices are failing and that this material is sitting out there in newsagents, petrol stations and even McDonald's coffee shops. It is sitting there in front of, and being made available to, children around this country. That is something that is extremely upsetting for a lot of people.

Mr D McDonald—If I can just interpose, I did not say that I was satisfied. You asked whether I was demoralised or disheartened and I said I was not.

Senator BARNETT—So you are dissatisfied with the way in which the system is working?

Mr D McDonald—I have said—

Senator BARNETT—What are you dissatisfied about, Mr McDonald? You just said you were dissatisfied.

Mr D McDonald—No.

Senator BARNETT—Sorry—what did you say?

Mr D McDonald—You said that I was satisfied, and I said I am not satisfied.

Senator BARNETT—Why are you not satisfied?

Mr D McDonald—It is an incomplete process, and I have been frank and detailed with the information—

Senator BARNETT—You have?

Mr D McDonald—on the work that the Classification Board does. Any shortcomings in the legislation are not the fault of the Classification Board. Powers that belong elsewhere are for people in other places to exercise.

Senator BARNETT—Have you exercised your discretion to express a view to the powers in other places to say that you are not satisfied with the current arrangements?

Mr D McDonald—I think this committee has been informed in the past of communications with state and territory police commissioners et cetera. That is in the hands of others.

Senator BARNETT—Have you advised your minister of your position that you are not satisfied with the current arrangements?

Mr D McDonald—These are matters for the department, and I think they should answer for themselves.

Senator BARNETT—I am sure we can ask the department. I am asking you.

Senator Wong—He has answered the question.

Senator BARNETT—He has not answered the question.

Senator Wong—You are pressing Mr McDonald for a whole range of his opinions. I think he is expressing some resistance to that, which is really quite appropriate.

Senator BARNETT—I am aware of the resistance. He has expressed a view that he is not satisfied with the current arrangements. I am asking him whether he has expressed that view to the minister. Mr McDonald is required to answer that question.

Senator Wong—I think he has indicated that that is a matter for the department to indicate.

Senator BARNETT—And that is a question I can ask the department. I am asking Mr McDonald. Have you expressed that view to the minister, Mr McDonald?

Mr D McDonald—The department and I have full and clear communication on these matters, and the information is available to the minister via the department. I also report in the annual report to the minister, and that information is on the public record. Not only is it available to him; it is available to the whole community.

Senator BARNETT—Mr McDonald, are you aware that this committee has written to the minister and expressed a view about its concern with the classification system? Has that correspondence been passed to you?

Mr D McDonald—I am sorry—who has written?

Senator BARNETT—This committee.

Mr D McDonald—No, I am not aware.

Senator BARNETT—This committee is concerned, following the February estimates, with what I would describe as a systemic failure. I will not read the whole letter, but it refers to the call-in notices that were referred to in the February estimates and our concern about that. That was raised with the minister, Mr O'Connor. I will be seeking a response from the minister to that letter, because that was dated 7 April and we have not received a response as yet. I wonder whether the minister is able to respond to that letter of 7 April from our committee. Do you have an answer?

Senator Wong—Not at this point. I will certainly take some advice.

Senator BARNETT—Thank you—and you will get back to us?

Senator Wong—With whatever advice I can. I would make the point that as I understand it—and I am not a student of the ins and outs of the classification argument—the enforcement classification laws are a matter for the states. I reiterate that. I understand also that the minister has been progressing, through the Standing Committee of Attorneys-General, measures to improve compliance, but obviously those enforcement mechanisms are a state and territory government responsibility.

Senator BARNETT—We have had extensive discussions about the interactions between the federal level of government and the state and territory levels of government, including their law enforcement agencies, at previous estimates. That touches on the work of the SCAG compliance and enforcement working party. I am wondering whether Mr Wilkins or somebody within the department could provide an update with respect to the initiatives to improve compliance with an enforcement of the classification laws flowing from SCAG.

Mr Wilkins—I can give you a little detail. Obviously, this is a work in progress. The minister certainly made it clear to his colleagues at the last meeting of SCAG, which was on 21 April, that he expected greater progress. But the working group has been working on a number of different areas. We are looking at improvements to the current system. Censorship ministers received an update on the work done by this working group in developing options to improve compliance with and enforcement of classification laws and other initiatives. Ministers requested that the working group continue its identification assessment of options. Six issues in particular were identified for further work: reforms to the serial declaration scheme for publications; wrapping requirements for publications, principally adult magazines, and labelling provisions; staged penalties for selling submittable publications depending on how they are later classified; prosecution strategies; alternative penalties; and reviewing the costs and availability of enforcement applications. They are things which the working party is taking forward.

I would expect progress to be made on some of those things at a different rate. In fairness, we are looking at different strategies around prosecution and enforcement. The current processes are too time consuming. It may be one of the reasons why states and territories are reluctant to enforce at the rate we would like to see them doing so. But there are also issues of priorities. Maybe we can find some more summary processes that could be used where there are offences or failure to comply with the law. The working group is looking at that. That is the sort of basis of the outline I can give you.

Senator BARNETT—Thank you. Mr Wilkins, you are no doubt seized of the importance of this matter because you said at the estimates in February that there were ‘shortcomings’ of the classification system that needed to be addressed. Do you believe that adequate attention has been given to address the shortcomings?

Senator Wong—By whom? First, you are asking Mr Wilkins for an opinion. But are you asking does he think he is, or the department is, or the government is, or state governments are—who are you asserting is not paying sufficient attention?

Senator BARNETT—I have asked Mr Wilkins a question. It is based on a quote from a comment he made in February, which I accept and have reminded him of. In February he indicated there were shortcomings with the classification system that needed to be addressed. I am asking if, in Mr Wilkins’s view, he believes that adequate attention has been given to address the shortcomings.

Mr Wilkins—I have just explained the steps that are being taken to change the—

Senator BARNETT—Yes, I do not need you to explain again.

Senator Wong—Senator, he is answering question. When he finishes the answer, if you do not like it, you can ask another question.

CHAIR—Senator Barnett, just let Mr Wilkins complete his answer, please.

Mr Wilkins—I have just explained the areas which are being considered by the working group. It is fair to say that they do cover areas where changes and reforms need to be made. I would just advert to what Mr McDonald has also adverted to—a very useful meeting, a classification enforcement contacts forum in 2010, where we brought together a number of the players in the area. There were law enforcement policy representatives from the Commonwealth, the states and territories as well as the Australian Communications and Media Authority and the Australian Customs and Border Protection Service. They attended this forum, hosted by the department, and once again, discussed a range of classification enforcement issues affecting each jurisdiction and shared intelligence and process information. These are the sorts of areas where we think we can make improvements, and it would improve the operation of the system.

Senator BARNETT—When was that meeting and what were the outcomes? Do you have a document that you can make available to the committee?

Mr Wilkins—No, I do not have a document. The meeting was held on 21 April 2010.

Senator BARNETT—Could you please—

Mr Wilkins—I have just outlined to you, Senator, what was discussed.

Senator BARNETT—Those six areas for further works came under the SCAG working group, did they not, not the 21 April meeting with the relevant stakeholders? What were the outcomes and what were the recommendations of that 21 April meeting of the key stakeholders?

Mr Wilkins—Mr Duggan can say it in general terms. But you will appreciate, Senator, that if we want to get cooperation and have a fairly open and frank discussion with some of the these players, it is very difficult then, and as a matter of Commonwealth-state comity to

simply explain what is in their minds, what their problems are and all those sorts of issues. But Mr Duggan can give you some details on that.

Mr Duggan—As the secretary has indicated, on 21 April a range of players met to discuss issues relating to enforcement. They were all of the key stakeholders in that regard: ACMA, Customs, state police, ourselves, obviously—the board was well was represented and gave a major presentation in that regard—

Senator BARNETT—AFP?

Mr Duggan—No. The AFP were not there; all state police forces were represented. The reason I do not have a list, if you like, of final outcomes from that is that they are still being negotiated with the interested parties. But essentially there was a recognition that we needed to do more to work together to face some of these issues.

We have identified a number of strategies that we would like to pursue with those agencies in relation to how we might provide them with information. We have discussed a range of better sharing of intelligence across various areas. We expect, for example, these forums to be at least annual in the future. We also think that there should be greater training for law enforcement officers in their home jurisdictions, which we would provide. There would be a better cross-border exchange of information so that what happens in South Australia is shared with Victoria. There would be additional provision of board reports to law enforcement officers—these sorts of things. And there would be better education for legal professionals and the judiciary. We do not very often give briefings, for example, in relation—

Senator BARNETT—Did somebody at the meeting take minutes?

Mr Duggan—Yes, Senator.

Senator BARNETT—Could we ask for a copy of the minutes?

Mr Wilkins—I will take that on notice. As I explained to you, we would have to consult with the people who participated.

Senator BARNETT—Thank you.

Mr Duggan—Phil Ling from the Tasmanian force was a particular participant.

Senator BARNETT—Very good. You said you had representatives from every state, and I presume territory.

Mr Duggan—That is right.

Senator BARNETT—I want to finalise before we pass over to others. In February we asked about the law enforcement agencies' response to the minister's letter. I think we had two letters. I am wondering if we can table all the letters in response to the minister requesting action with respect to the law enforcement agencies around the country. Do you have all those letters?

Mr Wilkins—Apparently we received responses from two of the ministers and those responses have been tabled.

Senator BARNETT—We have two. May we have all of them?

Mr Wilkins—If the ministers agree to it. We have written to them.

Senator BARNETT—That is the question I asked in February and I am asking it again. I hope there is no further delay with it.

Mr Wilkins—There is no delay on our part. We have actually written to the jurisdictions. I think in fact the minister wrote to the jurisdiction. We have given you the ones in respect of which we have received a response.

Senator BARNETT—For which I thank you; I truly do. But this has been months. It is now May, that was February. When was the letter sent by the minister—what date? You are telling me we do not have a response from the various state ministers for the relevant law enforcement agencies in that time?

Mr Wilkins—That is correct.

Senator BARNETT—Please name the states and territories that have not responded.

Mr Wilkins—The fact is that we have not received responses. There is not a date on the minister's letter to the ministers, but it was sent quite some time ago.

Senator BARNETT—It was February, was it?

Senator Wong—Can we take this on notice? The information we have at the table is incomplete in terms of the date of the letter. We will take on notice the question, 'What was the date on which the minister sent the letter?' We may be able to provide that earlier. We will also take on notice the question, 'What responses from whom have been received?'

Senator BARNETT—Mr Wilkins will know right now who has responded. Mr Duggan?

Senator Wong—I have just taken it on notice.

Senator BARNETT—No, I would like to know right now.

Senator Wong—No. I am the minister at the table. I have just taken it on notice.

CHAIR—Senator Barnett—

Senator BARNETT—Which states have responded?

CHAIR—Let the minister finish.

Senator Wong—I am the minister at the table and I have just taken the question on notice. If we are able to come back with a full set of answers, we will.

Senator BARNETT—Well—

CHAIR—Let us move on with further questioning.

Senator BARNETT—That is bordering on obfuscation.

CHAIR—It is assistance.

Senator BARNETT—It is hardly assistance. It is what is called blocking a question.

CHAIR—The information is not here.

Senator BARNETT—I would like a copy of the minister's letter, too.

Senator McGAURAN—It was ruled by the clerk that, should the minister or a departmental officer take a question on notice, a reason has to be given for that; otherwise, as my colleagues says, it just becomes a blocker.

CHAIR—I think the reason is that Minister Wong—

Senator McGAURAN—Can she not say what the reason is?

CHAIR—I am speaking.

Senator McGAURAN—This is a standing order.

CHAIR—Senator McGauran, I do not think you have such disrespect for the President of the Senate, and the chair of a committee has the same status. When I am speaking, I expect you to listen. I think Senator Wong is trying to ascertain whether or not they actually have that information in this room. If they do not, she has made an offer that they will seek to get it back to you as soon as possible. We are just waiting for that clarification.

Senator Wong—As I said, we will try to ascertain the date on which the letter was sent. We do not have that information at this point. I have just been advised that, of the ones who have responded to date, letters were tabled in this committee on Friday.

Senator BARNETT—That confirms that those that have not written a letter are considered by you to be a low priority based on the letter going out around February. Thank you very much. We will monitor that and look forward to the response as soon as possible. I know there are some very serious questions about *Salò* and I have completed my earlier part of questioning. I know that other senators, particularly Senator McGauran, have some questions and so do I.

Senator McLUCAS—Senator McGauran indicated earlier that if a minister needed to take a question on notice he or she must give a reason. That is not the standing order. The standing order that I think you are confusing it with, Senator McGauran, is the public interest immunity question.

CHAIR—Correct.

Senator McLUCAS—It is important that the committee and witnesses understand when a reason needs to be given.

CHAIR—Correct—except Senator Wong was assisting with a reason.

CHAIR—Senator McGauran, do you have questions for the Classification Board?

Senator McGAURAN—It is in regard to the movie *Salò*. My colleague Guy Barnett will also follow up with questions. In your introduction you rightly made the point that it is a controversial movie. I give this as background to a question: it is a vile movie and the act of releasing it is a vile act. It was first banned in 1975 and as late as 2008 the ban was upheld. I quite understand the debate about censorship. It has a very wide spectrum between belief and interpretation, but there are two factors. This is my question: Do you agree that there are two factors which are agreed upon as a bedrock community standard? The first is that there is a line in the sand that we do have some form of censorship in this country and it is reflected in the Classification Code? That is the first point. The second point is that paedophilia is out. They are two bedrock community standards. Do you agree with that, Mr D McDonald?

CHAIR—They are in fact against the law.

Mr D McDonald—They seem to be two statements. Could you clarify what you are asking me?

Senator McGAURAN—I am asking you about the premise which the board itself would work off. Is it a bedrock community standard that first of all there is censorship in this country—there is a line to be drawn—and that it is reflected in the Classification Code? Secondly, that paedophilia in films or moves is out; there is no interpretation of it?

Senator Wong—Sorry, I do not understand what the question is. Is the question whether paedophilia is illegal? Yes.

Senator McGAURAN—I want to know what premise the board works off.

Senator Wong—What is the statutory basis of the board?

Senator McGAURAN—No.

Senator Wong—I am genuinely trying to assist here. I do not think Mr McDonald understands what is being asked, and I certainly do not.

Senator McGAURAN—I will try again; I will rephrase it. Is paedophilia on film refused classification?

Mr D McDonald—Paedophilia is a serious social issue that can be dealt with in a film. What cannot be tolerated in a film is actual paedophilia. That is the bedrock. There is a range from actual paedophilia to dealing with a social issue.

Senator BARNETT—What about simulated paedophilia?

Mr D McDonald—Simulated paedophilia could be acceptable in the context of a particular film.

Senator BARNETT—Really?

Senator McGAURAN—The context of this movie, as you would well be aware, deals with the sexual abuse, degradation, torture and humiliation of minors. Now, according to the Classification Code, a minor is under 18. But anyone who views this movie knows the implication of the children on the screen is definitely that they are between 13 and 16 at the max. But we only have to deal with under 18. That would be a viewer's point of view. Just looking at it, you know it is minors. But, more than that, the minority of your board said the same and the majority of the review board said the same—that this movie deals with minors, people under age. Yet, in your own report, you did not even mention that the core objection to this movie, *Salo*, is that it deals with minors. It is not even in your report. Are you reading your own report now?

CHAIR—Senator McGauran, if you want an answer, you need to give the person a chance to answer.

Senator BARNETT—What is the delay? In the majority report of your board you do not mention anything about the core objection against this movie, yet the minority of your board does, the majority of the review board does and the minority of the review board does.

Mr D McDonald—The minority view of our board is part of the board report. They are of a piece.

Senator McGAURAN—So you have grabbed onto that, have you? They say it deals with minors in the minority report. Why have you not gone to justifying that? This deals with under 18s—in fact, younger.

Mr D McDonald—I repeat that the board's report is a total report. It includes the majority and the minority views. I am struggling to understand.

Senator McGAURAN—So we will establish that this movie deals with paedophilia. If the minority report is part of your main report and it states that it clearly deals with minors then this movie is all about the degradation, torture, humiliation and abuse of minors, or they are part of the movie. Yes or no?

Mr D McDonald—You are stating something.

Senator BARNETT—Is that correct?

Senator McGAURAN—Is that correct and does this movie deal with paedophilia?

Mr D McDonald—That is one of the themes in the film, unquestionably.

Senator BARNETT—Can you confirm that the victims of the scenes, the torture and degradation, are depicted as minors in the movie? Can you confirm that?

Mr D McDonald—Yes.

Senator BARNETT—You have just not put it on the record. I am just confirming that. Can you also confirm that in the majority report there is no mention of the fact that these depictions of torture and degradation involve minors? Because the contrast is the minority—

Mr D McDonald—The report uses other language; it talks about young males and females.

Senator BARNETT—The minority report specifically says, 'numerous depictions of realistically simulated sexual activity, sexual violence and torture involving minors throughout, including depictions of coprophagia and urolagnia?' Is it not relevant to advise consumers that minors are depicted in these scenes?

Mr D McDonald—The board report is a totality and I believe that speaks for itself.

Senator McGAURAN—This is foolish.

Senator McLUCAS—I do not know whether this will help, but when we write committee reports from Senate reference committees and there is a majority report and a minority report, our differentiation is that those two reports are written by different parties. By way of assistance, I think Mr McDonald's reports are written in a different way to our mindset. I do not know if that assists.

Senator McGAURAN—It does. I am again in admiration of you. But it is again a slippery answer. The minority report is the objection to the majority in Mr McDonald's report.

Senator McLUCAS—That is not what Mr McDonald is saying.

Senator McGAURAN—The objection is that it deals with minors. There is a certain number on his board that did not want that movie passed.

Senator McLUCAS—I think that is a statement of fact.

Senator Wong—No-one is disagreeing with that.

Senator McGAURAN—But he is trying to say it is just one report.

Senator Wong—No, I do not think that is a correct indication of Mr McDonald's evidence.

Senator McGAURAN—All right.

Senator Wong—I think he has indicated that there was a majority and a minority part of the report, as I understand it.

Senator McGAURAN—Correct, and in the majority side of the report, which justifies the release of this movie, they do not even mention—cowardly so—that this movie deals with minors in the worst form. Is that correct?

Mr D McDonald—No, I could not possibly agree with the use of the word 'cowardly'.

Senator McGAURAN—Why did you not refer to it?

Mr D McDonald—It is completely inappropriate for the processes and the attitude that the board brings to its work.

Senator McGAURAN—Under the Classification Act, it requires you to seek community opinion. It also says the board has to consider the standards of morality, decency and propriety when classifying *Salo*, which means you must use the community standards as a touchstone. That relates to my first question: how did you do that in relation to *Salo*?

Mr D McDonald—I need to ask you to focus that into a question that I can answer.

Senator McGAURAN—What community opinion did you seek?

Mr D McDonald—We do not seek community opinion.

Senator McGAURAN—You do not? You are required to under the act.

Mr D McDonald—I am sorry, that is not the case.

Senator McGAURAN—Yes, you are.

Mr D McDonald—We are obliged from our various backgrounds to seek to reflect community opinion.

Senator McGAURAN—The act says that you are required to protect minors from harmful material; you are to seek standards, morality, decency and propriety generally accepted by reasonable adults. It is referring to a community standard. You are saying that in regard to *Salo*, let alone other movies, there is no community touchstone in your decision making?

Mr D McDonald—The board is the community touchstone. The board is chosen to be as representative of the community as it can be, given the numbers.

Senator McGAURAN—The code also says:

(d) the need to take account of community concerns about:

- (i) depictions that condone or incite violence, particularly sexual violence; and
- (ii) the portrayal of persons in a demeaning manner.

It uses the phrase 'community concerns'. What community investigation did you undertake? Was it all in-house; were you all breathing the same oxygen inside your own cinema? Every

other board I know has used the community as a touchstone. I know this well because I go back to 1993 in relation to this issue. I know that the fundamental change to the board, at least when the coalition was in government, was to have community advisory boards. What happened to them?

Mr D McDonald—I have not the faintest idea. I have been director for—

Senator McGAURAN—You are incompetent.

CHAIR—Senator McGauran, I ask you to withdraw that.

Senator McGAURAN—Why?

CHAIR—I think that is not a reflection on Mr McDonald's expertise and the role he is asked to play.

Senator McGAURAN—If you knew what this movie was about—

CHAIR—I am asking you to withdraw that—

Senator McGAURAN—You would be as horrified as I am.

CHAIR—I am asking you to withdraw that comment. Senator McGauran, I am asking you to withdraw that comment.

Senator McGAURAN—I am reluctant to, Madam Chair.

CHAIR—We will have a private meeting, if that is the case. I am asking you to withdraw that comment.

Senator McGAURAN—I withdraw that comment.

CHAIR—Are there any other questions of Mr McDonald?

Senator McGAURAN—Yes, there certainly are.

CHAIR—Senator McGauran, I am reluctant to call you but, if you have some more questions, keep going.

Senator McGAURAN—I will give a few questions to Senator Barnett while I cool down.

Senator BARNETT—Can I ask about the logic of the board's decision where you say that a screening of a film in a cinema, without the additional material, would constitute a breach of the classification laws. Is that correct? That was in your media release.

Mr D McDonald—Correct.

Senator BARNETT—To me it makes no sense if on the one hand it is prohibited in a movie theatre but allowed at home on a DVD so long as on the DVD it has that extra couple of hours—all that additional background to the movie that puts it into its so-called context, according to the board. It makes no sense because have you got any evidence to say that people will actually look at all those hours of background, bits and pieces to the content, and then watch the movie? Have you got any evidence that people will do that, or is all the evidence before you based on past experience that they will simply watch a movie in their own home, without the extra bits and pieces?

Mr D McDonald—We can have no evidence one way or the other about what people do in their own home.

Senator BARNETT—Then how on earth would you require as a board that on the one hand you prohibit it in a movie theatre but on the other hand it is okay in somebody's home only on the basis that they watch the couple of hours of background screening about the making of the movie, *Salo*?

Senator McGAURAN—You say in your own report—

Senator BARNETT—Can I just hear Mr McDonald's response to that?

Mr D McDonald—I am sorry, I have lost the question.

Senator McGAURAN—Do not get smart, Mr McDonald.

CHAIR—Senator McGauran! You continually interrupt.

Senator Wong—I understand your views about this but you are interrupting your own colleague and frankly being quite rude to Mr McDonald. You may disagree with the position of the board, but it is not appropriate for you to deal with this in this way. If Senator Barnett has a question we would like to hear it and the answer being given without Senator McGauran deciding to jump in.

Senator McGAURAN—I will say to the chair that I will be more respectful. You are right, Senator Wong, except to say that the reason I am so heated is that I have no respect—none at all. That is what is driving me, but I will try to control myself.

CHAIR—Is this for Senator Barnett you are talking about? Who are you referring to here?

Senator McGAURAN—For Mr McDonald.

CHAIR—The least you could do is give him the opportunity to finish answering his questions. Senator Barnett, you might want to reiterate your question to Mr McDonald.

Senator BARNETT—Mr McDonald, I cannot see the logic of the board's decision, where you have one rule for cinemas and what can be seen at a public cinema compared to what can be seen in a home. My question is: what evidence was before the board, or what reasoning led the board to assume, that all or most people who purchased or rented a DVD of *Salo* would view all or even any of the additional material? Was there any evidence before your board to persuade you accordingly?

Mr D McDonald—I can only repeat what I have already said. We can have no evidence of what people do in their own homes, but we classify the product that comes before us as a totality.

Senator BARNETT—Can I just say to you that that confirms in my view why I believe this decision was an appalling decision by the board and why I support an appeal to this decision and why, on behalf of the community, I can understand their concern, their angst and their upset—including people like Senator McGauran, who are so enraged by the fact that this decision has been turned on its head by the board. You do not have to respond to that question, but you are welcome to do so.

Mr D McDonald—I will respond and say that, if the Classification Board was in error, it is the function of the review board process to deal with that.

Senator BARNETT—Yes, indeed. And the minister has a particular opinion, which obviously has been disregarded by the review board and indeed by the Classification Board, because the views of the minister were known to the board.

Mr D McDonald—I beg your pardon; I have no idea what the minister's view of this film is, and it would have been quite inappropriate for him to have indicated such a view. Frankly, I find that an astonishing suggestion.

Senator Wong—I presume, Senator Barnett, that you are referring to the fact that there was a request by the minister for a review of the classification, which went to the Classification Review Board.

Senator BARNETT—That is right.

Senator Wong—And the decision in relation to that application was made, I think, on 18 May. Is that correct, Mr Griffin? The reasons were published on 18 May, I think, from various people saying things around me.

Senator McGAURAN—Asking the same question, what evidence did the review board have with the additional material on the making of *Salo* that people would watch it and therefore that they would mitigate the offences of the main movie?

Mr Griffin—If I go back to the Federal Court decision in *Viva Erotica*, that issue about community standards was raised and the Federal Court did not overrule what the Classification Review Board had done in that case, and that was to assess it from the board's own perspective of its experience within the community. But the review board, in its operation, particularly in contentious matters, tries to engage with bodies such as the New South Wales Council for Civil Liberties, as it did in this case, as well as, in this case, FamilyVoice Australia and the Australian Family Association. It was endeavouring to get two perspectives—possibly different perspectives from opposing points of view—not just on the issue of community standards but also on the issue of acceptance of the particular film, video or publication that is being subject to review.

Senator McGAURAN—In both your report and the report of the Classification Board, the sole reason that differed from any other occasion for the release of this movie was the second DVD in the packet, which would go into the making of *Salo*—behind the scenes, so-called. That is the sole fundamental difference. You have not really answered the question. What evidence is there that people will watch this? This is the first time that this has happened, isn't it?

Mr Griffin—I think there have been other occasions.

Senator McGAURAN—What other occasions?

Mr Griffin—I do not know. So far as the review board is concerned—

Senator McGAURAN—Because there have not been.

Mr Griffin—The review board has a very limited number of applications for review before it each year. This year, so far there have been seven. In the previous year there were 10. Our job is to review a particular decision of the Classification Board and not to get involved in the administrative background to the administration of the classification act by agencies,

state and federal. In respect of this particular movie, as in respect of other reviews, in the press release that goes out there is an indication that submissions will be received from interested parties. There is a conscious effort to endeavour to get differing points of view presented to the review board, and I have indicated the nature of the agencies or bodies that in this instance made submissions.

We rely also on the decision of the Federal Court, as with an administrative review of the decision of the Classification Review Board in the case of *Viva Erotica*, where it indicated that the experience of members of the Classification Review Board itself was a relevant basis upon which it could make a decision about acceptance or otherwise from the perspective of community standards.

Senator McGAURAN—If you do not watch the second disc in the package of this movie, it is a paedophile's treat. I think it is, anyway, given that it is worse to release it on home viewing, ironically, when you think of the fact that people at home have their own privacy, than it is in the arthouse cinemas, when it was first released and then rebanned in 1993. At least in the arthouse cinema you have someone at the door checking, and people have to pay for it. They cannot freeze-frame it as they can at home. They cannot relish it as they can at home. Children may well walk into the room or use the video themselves. So, in fact, you have spread the audience—you have expanded the audience—more than if you released it to arthouse cinemas. Did you take that into account?

Mr Griffin—The majority of the review board took the view that that additional material was a relevant consideration in determining the impact of the initial part of the DVD. The minority, on the other hand, took the view that it would have a bearing. So there are differing points of view which are reflected in the reasons that have been published. The hearing was on 4 and 5 May, not 2 May as previously indicated, and I apologise for that error. The reasons are now publicly available and up on the internet.

Senator McGAURAN—In your report, the minority view, to its absolute credit, whoever the minority is on your board, lays out—in excruciating detail, I should add—exactly how young these people are. You have read the report, which states in absolute detail why they really are, to the viewer, probably aged 13 to 16, maximum. This is a movie about the degradation of children and minors. Both of you never considered the community standard, but did you at least consider, for example, the state laws in Victoria? There are child pornography laws on material that describes or depicts a person who is or appears to be a minor engaging in sexual activity or depicted in an indecent sexual manner or context—section 67A of the Victorian Crimes Act. Did you consider any of that in regard to *Salò*?

Mr Griffin—The majority view of the Classification Review Board was that the young persons were not or did not appear to be under 18 years of age. The minority had the contrary view. So the issue was considered but the decision was divided.

Senator BARNETT—Mr McDonald, you accepted that they were underage. You just said yes to that. Maybe I misunderstood your answer, Mr Griffin, but Mr McDonald certainly accepted that the actors in the film were under 18 at the time the film was made.

Senator McGAURAN—And the minority report was part of his report.

Mr Griffin—And the minority in the review board report concluded that they were or appeared to be under the age of 18, but the majority said at the bottom of paragraph (6) of its reasons—

Senator McGAURAN—No, that is not true.

CHAIR—Mr Griffin, please finish your answer.

Mr Griffin—It states:

In respect of these Guidelines, the Review Board reiterates its comments above relating to the relevant section of the National Classification Code, as to whether an actor is 18 or ‘appears’ to be under 18. It is the view of the Review Board that the film does not contain descriptions (in stories related during the film) or depictions of child sexual abuse which are exploitative or offensive, or any other exploitative or offensive descriptions or depictions involving such a ‘person’ given the context, purpose and cinematic techniques of this modified version of *Salo* in DVD format referred to below in these reasons.

From that, I conclude the majority decision did not conclude that they were or appeared to be under the age of 18.

Senator McGAURAN—This is how I understand it. You spent an unnecessary amount of time saying that the actors were not under 18 in your opinion and, as historically as you could get, were not under 18. That was at one point an accusation too. Then you go on to say that if they are under 18, not the actors but just the depiction of them, and blind Freddy can see they are—

Senator BARNETT—The victims in the scenes?

Senator McGAURAN—Yes, the victims in the scene as depicted, not the actors themselves. You say it will be mitigated by the context of it all. So you are in fact admitting that on the screen they are taken to be under 18—under 16 really—but it is all mitigated by this extra DVD, ‘The making of *Salo*’. You are trying to pull the wool over our eyes by stating that the actors are not under 18.

Mr Griffin—With respect, my view differs from yours. I cannot take it any further. The majority view in the review board’s decision was not saying that the actors or the persons portrayed were, or appeared to be, under the age of 18 years. What they are saying is that, if they were, there was no exploitative or offensive depiction.

Senator BARNETT—Mr Griffin, do you mind me asking you straight out the same question I asked Mr McDonald? Are any of the victims of the scenes of torture and degradation depicted as minors?

Mr Griffin—All that I can do—

Senator BARNETT—It is not a tough question. It is a very simple question.

Mr Griffin—All that I can say is that the majority held the view that was not necessarily the case. The minority held the view that it was. There were five members of the review board and the majority took the view that I have indicated.

Senator BARNETT—What is your view?

Mr Griffin—With respect, I would prefer not to indicate that. The review board has traditionally over the years taken—and prior to that the Film Review Board took—the view

that the identities of those who approve or disapprove of particular matters do not have their identities disclosed for the obvious reasons.

CHAIR—Mr Griffin, we respect that answer.

Mr Griffin—For the obvious reason that they might be picked off and targeted by other groups within the community for reasons other than those which are honourable.

CHAIR—Thank, Mr Griffin. This committee would not be asking your personal view. You are here representing the review board, so that is the position from which we would ask questions.

Mr Griffin—The fact of the matter is that the convenor—in this case the acting convenor—has to defend the decision of the review board. There are occasions when the convenor holds a different view which has to be subjugated to the majority view.

Senator McGAURAN—Can we expect now that we can pick up this movie in Blockbuster or Video Ezy? Is that where it is headed?

Mr Griffin—I would be surprised if that were the case, but I can do no more than speculate. It would be unwise of me to speculate because my job as a member of the review board finishes when a particular review is finished. It is subject to review by the Federal Court. There have been occasions when the Federal Court has reviewed it under the administrative decisions legislation. It may be that it will occur in this case; I do not know. If it does, we can be assured that it will get the same sort of review that *Viva Erotica* got in the Federal Court.

Senator McGAURAN—Is there anything to prevent it from going to Video Ezy or Blockbuster? Is it general release?

Mr Griffin—I would prefer to flick that across to the agency. I am not responsible, and the review board is not responsible, for the day-to-day administration of the act.

Senator McGAURAN—But you should know, when you release a movie or classify a movie, where it is going and to what audience. In fact, not only do I say that as general moral principle but it is in the act. You have to know where it is going and who it is affecting. The act requires you to know that.

Mr Griffin—In classifying films and computer games, one of the matters which have to be taken into account is the class of persons amongst whom it is published or is intended or likely to be published. Of course, that has some sinister connotations as well as creditable connotations. The review board methodically goes through each of the requirements of the act, the Classification Code and the guidelines in endeavouring to reach a conclusion. Because there are people from different backgrounds on the review board, there will from time to time be different conclusions reached.

Senator McGAURAN—But why have you avoided the fundamental question which, as you would well know, would pull down the whole classification of this movie—that is, the age, as depicted, of those on screen? Why, in your own report, have you avoided that?

Mr Griffin—With respect, I do not believe it has been avoided. I believe it has been addressed by both the majority and the minority.

Senator McGAURAN—The minority addressed it very well, including the minority on Mr McDonald's board. They say clearly it is. This is the key. You have both skipped around it, as if you wanted to see the movie up and running and out in Blockbuster.

Mr Griffin—I think that is unfair, with respect.

Senator Wong—Senator, I understand your views about this movie, and there are people in the community who hold that view. Imputing malevolent motives to officers at the table is really not fair. These gentlemen are exercising their obligations under legislation which, to my recollection, existed under your government. People may have a view about the way in which that legislation operates and has operated in relation to this particular film, but that is not an issue which goes to an improper motive by anybody sitting at the table.

Senator McGAURAN—Thank you for constantly checking me, because I am passionate about it and I will try and get through the list of questions. Not to correct you or anything, but for the record: this movie was rebanned under the Howard government. The classification laws were tightened under the Howard government because of this movie. It was released in 1993 and rebanned in 1998. The classification laws were tightened, the board was reshaped and the movie was banned. This is an icon. I am not just being some sort of—

Senator Wong—Sorry, Senator. We might be at odds on this, but I understood that there had been no change by this government to these laws.

Senator McGAURAN—No. I will tell you where the changes came in. In 2008 this movie was refused classification yet again. In 2009 half the board—half of both the review board and the Classification Board—were turned over and reappointed by the minister and the cabinet. I think that says it all.

Mr Griffin—I do not think—

Senator Wong—So you are impugning the appointments. That is the political tack, is it?

Senator McGAURAN—Yes, basically I am. They have reinterpreted the laws. In fact, they have not even reinterpreted them; they have just walked over the top of them. It is so blatant. I could excruciatingly go through each point of the grounds for refusing classification, and *Salò* would match every single one of them. You have not even acknowledged that. You found this new concept called 'context' in the making of *Salò*, put it in the DVD cover and pushed it out. One of the reasons you gave—I will not say it is a reason why you released it, but it was part of your report—was the age of the movie. It was first filmed in 1975 and was never released. Where is the statute of limitations on paedophilia, on rape or on torture? The fact that it was filmed in 1975 does not make it any more correct. Mr McDonald, where is the statute of limitations?

Mr D McDonald—I am taking that as a rhetorical question.

Senator McGAURAN—No. The issue is that, in your report, you mention that the age of the movie was a mitigating factor against the horror and the degradation. I am saying to you that in the movie there is degradation, rape and so on. I will not go through each point, but what does age have to do with it, just because it was filmed in 1975?

Mr D McDonald—Let me first repeat, that this film does not contain actual paedophilia. These are depictions of paedophilia, which is part of the theme of the anti-fascist intent of the

film. The age is relevant because the documentary material, if I could just correct your impression, is not solely about the making of the film. There is documentary material about the political background to it and the context in which the film was made. Its age is relevant because of the time in which it was made in Italian history and what it was seeking to critique. Its age is also relevant in that it is available in every developed country in the world. Anybody who was a student of this film could have bought it in New Zealand on holidays any time in the last 10 years. For instance, they could have bought it in Ireland any time in the last 15 years. To watch it now is as though one is looking at some sort of archaeological artefact. It is not a film of current notoriety in the minds of the public and its likely audience will be people who are seriously interested in film history.

Senator McGAURAN—I beg to differ, and I have police expertise to back up my statement from many years ago—and currently too. When it was first released in 1993, it was described rightly by a Victorian police profiler as a handbook for the Mr Cruels of this world. This is not an artistic movie. Is that what you are trying to sell it as—some sort of art piece?

Mr D McDonald—I have not used that word at all.

Senator McGAURAN—That is the implication I take. But anyway, you said it is not real paedophilia. Of course it is not; it is implied and it is depicted to be so. Again, coming back to the classification and the law, if it is implied, that is a ground for refusal of classification. It only has to be implied or acted or depicted. Of course you will never get actual paedophilia: that is a ridiculous statement to make.

What was the other thing I was going to mention? Again, you have rewritten the rules and just walked over the top of them. When you classify movies—and this has always been the case—you classify scenes. Some scenes stay in and some scenes stay out. If you pull out a scene or two, an R becomes an MA and an MA becomes an M. That is how movies are usually classified—according to the scenes. Therefore, every one of these scenes—but enough of them—warrants an RC classification. You are talking about the context of the whole movie. You are trying to sell us the whole movie along with the second DVD. You call that all ‘in context’. But you have a responsibility to classify as much as that, scene by scene, don’t you?

Mr D McDonald—That is your interpretation, Senator. We are required to look at the whole product and to deal with the context of the complete film.

Senator McGAURAN—Do you ever recommend that a scene come out?

Mr D McDonald—I am sorry, Senator; you are mistaken. We do not censor films. We do not say, ‘This film will be passed if you take out that scene.’ We simply make a decision about the film as it is. Perhaps under the old legislation—

Senator McGAURAN—But you do classify—

Mr D McDonald—What you are suggesting applied, but it does not apply now.

Senator McGAURAN—But you do classify having regard to the impact of classifiable elements or scenes. You do classify according to the scenes and the impact of certain scenes?

Mr D McDonald—As part of the total film.

Senator McGAURAN—Would you say that within *Salò* there are certain scenes with a high degree of impact?

Mr D McDonald—It is to state the obvious that there are. That is why it is classified for adults only, and that is why it is given the consumer advice that it has.

Senator McGAURAN—No, it is an R-rated movie if there is high impact. Did I say very high impact? If it has very high impact it is rated RC. If it has high impact it is rated R. Are there very high-impact scenes?

Mr D McDonald—No. It is high.

Senator McGAURAN—Again I come back to the classification.

Mr D McDonald—The board's view was that it was high impact.

Senator McGAURAN—High impact? It was not very high? There were no very high scenes within that movie?

Mr D McDonald—I have answered the question.

Senator McGAURAN—No very high-impact scenes? You are going to force me to describe every scene. We do not have the time. There are very high-impact scenes. I will probably be asked to withdraw this but for you to say that there are no very high-impact scenes in that movie is a disgrace.

CHAIR—We are at afternoon tea time. Senator Barnett and Senator McGauran, have you finished your questioning of Mr McDonald and Mr Griffin, or will we ask them to come back after afternoon tea?

Senator BARNETT—No, I just needed to respond to the minister, so I do not have further questions for the Classification Board.

Senator McGAURAN—I would like—

CHAIR—Do you, Senator McGauran? Just a yes or no answer, as we need to go to afternoon tea.

Senator Wong—They can come back. We are just trying to clarify whether or not you have finished.

Senator McGAURAN—Yes, I would like them to come back.

Proceedings suspended from 3.30 pm to 3.46 pm

CHAIR—We are continuing with questions of the Classification Board and the review board.

Senator McGAURAN—I am still reeling, even after the break, from your comments, Mr D McDonald, that *Salò* is a movie that does not have high-impact scenes. I am compelled, actually, to mention such scenes. The refused classification—

Mr D McDonald—Chair, Senator McGauran, as I understood him, said that I said there was no high impact. There is high impact, which is why it was classified R18+.

Senator McGAURAN—Very high impact.

Mr D McDonald—Sorry.

Senator McGAURAN—I left out the ‘very’, which is key, ironically, to R or RC.

Mr D McDonald—Indeed.

Senator McGAURAN—For this movie or any movie to be refused classification, let us go to the violent scenes. I regret that I have to do this, but this is the gravity of the release of this movie. I will ask two questions, one relating to its violence and the other relating to its fetishes. The classification system says this about RC:

... gratuitous, exploitive or offensive depictions of:

(e) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed...

But the key there is ‘very high degree of impact’. In your own report you say: ‘At 110 minutes a young man has his penis explicitly burnt with a candle. Another young man has his tongue explicitly sliced. At 111 minutes a young man’s eye is explicitly gouged out with a short blade. At 113 minutes, a young woman is explicitly scalped, with blood and gore depicted.’ The word ‘explicit’ in your own report would have to confirm ‘very high degree of impact violence’, would it not?

Mr D McDonald—The view of majority of the board was that it was high impact. Your view that it was very high impact is a view that is reflected in the minority view. It is a perfectly valid view; it is just a different view.

Senator McGAURAN—That was with regard to violence. The refused classification category says about sex:

... gratuitous, exploitive or offensive depictions of:

(h) sexual activity accompanied by fetishes or practices which are offensive or abhorrent.

In your own report, in regard to fetishes, at the 65-minute mark it relates to—I cannot even read it out, but I am sure you know what it relates to. It may have to be read out to make the point publicly: ‘At the 65-minute mark, obscured by a table, a male squats and implicitly defecates what appear to be faeces. The male hands a nude young female a spoon. He tells her to eat it. She retches and cries.’ It goes on, but I will leave it at that. Would that not then fall into the refused classification category of activity accompanied by fetishes offensive and abhorrent?

Mr D McDonald—That is a view that some would have. Indeed, the minority of the board probably had that in mind, in part, when forming their minority view. Others, perfectly validly, had a view that this was high-impact material, not very high impact. One perhaps does not need to repeat that none of this is actual. This is a fictional construct which is a critique of fascism in Italy. It is not an actual sex film.

Senator McGAURAN—Correct. But the classification code does not define the difference between ‘actual’ and ‘acting’. It just says if it is at all implied. That is what you must be guided by. I do not think that is any ‘out clause’ at all.

Mr D McDonald—Senator, I am not looking for an ‘out clause’. The board formed a view and it did so seriously and honestly, and no inappropriate motives should be attributed to the board. If the board was in error in its majority view then that was a matter to be addressed by the review board.

Senator McGAURAN—I could ask the review board the same questions that I just asked Mr McDonald. In fact, I will get that on the record. Do you want me to repeat them or do you recall them? The first one is in regard to the violence, which is very high impact. I described several screens that were explicitly very high impact.

Mr Griffin—I am not prepared to enter into a debate about each particular scene. The reasons of the majority and the reasons of the minority in the review board have to stand or fall as a whole. The matter may go to the Federal Court under the administrative decisions review legislation.

I think it would be quite unfortunate if I were to express views in respect of particular scenes referred to in the reasons for either the majority or the minority. That may be regarded as a cop-out, but I do not think it is fair that I should now be asked to analyse again the various scenes which are referred to in the reasons.

Senator McGAURAN—That is absolute rubbish. You are here to answer questions, fair or not fair. You are paid to do a job and we are paid to ask you questions here.

Mr Griffin—You can ask the questions—

Senator McGAURAN—If you do not answer them then I would consider that a breach.

Mr Griffin—You can take me up before the full Senate.

Senator McGAURAN—You are threatening me, are you? You are a real smart Alec.

CHAIR—Senator!

Senator McGAURAN—Minister, pull him into line.

Senator Wong—I think that was actually the other way round.

Senator McGAURAN—You do not have to defend him.

CHAIR—Do you have another question? If you listened to Mr Griffin, he was not talking about and did not provide a view about not answering questions. You asked him about his opinion. We have already said that it is not appropriate for these people to provide their personal opinion. If you have a question of Mr Griffin, please ask it.

Senator McGAURAN—I will finish on this point. In relation to your nonanswer, it is obvious now that you cannot answer about the details of the movie, scene by scene. You have become a coward on this issue.

Senator Wong—Senator! There is really a difference between having a difference of views about the decision of the board or the review board and that kind of personal accusation about people sitting at the table.

Senator McGAURAN—It is a personal movie.

Senator Wong—Then, there are a whole range of way in which you can deal with that. But we are in an estimates hearing and it is not appropriate for you to be impugning personally officers at the table. You have a view about the decision, and you are entitled to that view.

CHAIR—Senator McGauran, I will ask you to withdraw that comment about Mr Griffin, thank you. It is not appropriate and you know it is not appropriate.

Senator McGAURAN—He gave as good as he got.

CHAIR—I am asking you to withdraw that reflection on Mr Griffin.

Senator McGAURAN—I withdraw the reflection and I have finished my questioning.

Senator Wong—I do not think that ‘he did it, too’ is quite what we should aspire to.

Mr Griffin—The difficulty is that the reasons, whether of the majority or the minority, are combined representations of the views, in this instance, of a majority and a minority. Each member will have different reasons for making a judgement about particular scenes. I think the issue about the administrative decisions review legislation being applied to this in the Federal Court are very real. If they are, I do not think it is appropriate to be answering questions which anticipate what may or may not have been the basis for what those members of the review board had in their minds when they made these decisions. We may like it or not, but I think that is the fairest way of dealing with it. If we are wrong, either in majority or minority, the Federal Court will tell us.

Senator McLUCAS—I think it would be speculative for Mr Griffin to answer that question. I am not sure that he actually knows the answer to that question and it would be speculating.

CHAIR—Do members have any further questions.

Senator BARNETT—First, with respect to the letters from the Minister for Home Affairs to the law enforcement agencies of every state and territory. The letter was dated 4 February. We have had two responses, both from Victoria. The first from the Minister for Police and Emergency Services dated 4 June and then from the Victoria Police Chief Commissioner, Simon Overland. They say similar things, but they confirm that in Victoria, at least, Bob Cameron MP Minister for Police and Emergency Services says, ‘Although I am cognisant of the matters raised in your letter, I can appreciate the chief commissioner’s view that increasing policing effort should not be directed at the enforcement of classification laws at this point.’

That is part of the letter and that is on the public record. Please have a look at it. That disappoints me greatly in terms of the Victorian response. But what disappoints me even more is the fact that we have received no response from any other state or territory to that letter of 4 February. That confirms in my mind, and I think in the minds of many others, that the views of the state and territory governments around this country with respect to this being a priority and something of a serious matter are very poor indeed.

So we have an issue here where there is a system failure where there is advice that goes to the law enforcement agencies and they do nothing about it in the states and territories or they consider it as a very low level of priority. They received a letter from the federal minister and here we are in May, some three odd months later, and there is still no response. I appreciate, Mr Wilkins, your officer, Kim Duggan’s work. Thank you for that. You have written back to our committee dated 22 May where you say that you will follow up to see if any further responses can be obtained. Thank you very much. But you should not have to do that.

It is a deplorable lack of a response. It confirms in my mind that the system is broken and it needs fixing. So, my second point in conclusion is that we have a lack of response to the call-

in notices; the prevalence of publications that contain material that should be refused classification, including child pornography, for sale in petrol stations and general stores; the issues raised by Senator McGauran, which I entirely agree with, regarding *Salo*; we have the display and sale of restricted publications in areas accessible to children and we have a lack of follow-up information following referrals to the state and territory law enforcement agencies by the Classification Board. We have a system breakdown and it needs fixing. All I can do is put on notice this disturbing evidence that is now confirmed, yet again, at this Senate estimate committee regarding these matters. I am happy to have a response; otherwise I am happy to move on.

CHAIR—Mr McDonald, do you want to respond to that?

Mr D McDonald—No, it was a statement by the Senator.

CHAIR—I thank all the officers.

Mr D McDonald—I have not had the occasion in this hearing to introduce my companion on my left, the acting deputy director, Jeremy Fenton. I would like to record the fact that his term with the Classification Board finishes this Thursday. He will have completed seven years' service, which as you probably know is the statutory maximum that can be served. I and the board have been extraordinarily well served by Mr Fenton and I am very grateful for that.

CHAIR—Thank you for that, Mr McDonald. Mr Fenton, all the best in your next endeavours.

Mr Fenton—Thank you.

CHAIR—I thank you very much for your time and your patience this afternoon.

[4.01 pm]

High Court of Australia

CHAIR—I welcome Mr Phelan and officers from the High Court of Australia. Mr Phelan, do you wish to make an opening statement?

Mr Phelan—No, thank you.

CHAIR—Thank you very much. We will go to questions.

Senator BARNETT—Are you aware of the Judicial Conference of Australia decision with regard to the complaints mechanism, the need for improvement and their recommendation that every jurisdiction in Australia should take on a similar arrangement for dealing with complaints similar that of to the New South Wales Judicial Commission. Are you aware of that decision?

Mr Phelan—I must confess I am not aware of the decision of the Judicial Conference.

Senator BARNETT—I draw it to your attention. It was tabled today at the beginning of the hearing, so it is now a public document. It is a letter which Mr Justice McColl wrote to me as chair of the committee which held the inquiry last year called 'Who Judges the Judges?', which you will recall. The letter responded to the evidence given at that inquiry. It was very encouraging, because it supported in large part the recommendations of that report, which was

delivered around December last year. It still has not been responded to by the government some six months later. It is very encouraging and I draw it to your attention. It was from some 10 chief justices, chief magistrates and representatives of the different courts. I cannot recall if the High Court was represented; presumably it was not.

Mr Phelan—I cannot recall.

Senator BARNETT—Would you be kind enough to provide, on notice, the view of the High Court as to whether you agree or disagree with the views of the Judicial Conference of Australia?

Mr Phelan—I do not know that I am in a position to ask the High Court for its views on the views of another organisation like that.

Senator BARNETT—Perhaps you could take it on notice and do the best you can in terms of what you believe is appropriate in responding to such a document. It has obviously been to the other jurisdictions and the other courts have been represented on that body. I would be very interested to hear the views of the High Court with respect to the complaint-handling system and ways to improve it. It is all set out in the document.

Mr Phelan—Yes. I do not think the High Court would express a view, because of the potential for any complaints-handling legislation or complaints-handling procedure to be the subject of constitutional litigation.

Senator BARNETT—Okay. I alert you to those that did sign that letter: Chief Magistrate Ron Cahill; Justice Richard Chesterman; Justice Alan Blow; Chief Magistrate Ian Gray; Justice David Harper, who was the chair; Chief Justice Wayne Martin; Justice Peter McClellan; Judge Geoff Muecke; Chief Federal Magistrate John Pascoe; and Justice Trevor Riley. So it is a pretty heavyweight report. I will now revisit the February estimates for a moment and some of the evidence that you gave in terms of your concerns regarding the leaky roof, asbestos and the forecourt. You also referred to the fact that there was a public safety risk. Obviously that is an issue that needs to be dealt with fully and frankly. Could you put your views on the record today?

Mr Phelan—The court received \$4.5 million in funding in this budget to address what have been described as significant occupational health and safety and structural issues in the High Court building forecourt, surrounding precinct and cascade waterfall. We have received funding in this budget to remedy all of the public safety issues in our forecourt. We intend to hit the ground running. We have been doing a lot of consultancy work—engineering reports have been obtained and so on—in the hope that we can put it out to tender in the next couple of months and have it completed in the next 12 months.

Senator BARNETT—In your answer to question No. 117 you said:

The Court has a detailed management plan to rectify public safety and structural issues ...

You went on to say:

Temporary fencing is being used to restrict access to areas in the High Court building forecourt and

Can you advise whether there are still significant public safety risks in and around the High Court, or have they been rectified?

Mr Phelan—At this point in time, there are significant safety risks. That is what the \$4.5 million is intended to address. For example, there are very uneven paving stones between the High Court building and the National Portrait Gallery. There are steps that have fallen in, leaving huge gaps behind them, and there are some other problems of that nature. The water feature itself is not working at the present time because of its leaks.

Senator BARNETT—Are you still losing 7,000 litres per week?

Mr Phelan—We are not anymore, because it is not running. But, whilst it is not running, the sharp edges around the fountain are a very significant risk to the public. So that is fenced off as well at this point in time. We hope to make an early start on the water feature by securing some recyclable water capability and getting the engineering works completed over the next six to 12 months.

Senator BARNETT—It will take up to 12 months to fix?

Mr Phelan—It could, yes.

Senator BARNETT—Are the funds that you have been granted adequate?

Mr Phelan—We believe so.

Senator BARNETT—You have undertaken a number of consultancies or have some underway. I am just looking at those. I see you have one at 17.08 to develop heritage strategy and conservation management plans for the High Court of Australia. There is some \$82,500 for that direct source tender. Does that relate to similar issues, or is that a different matter?

Mr Phelan—It is a broader issue. A couple of years ago the High Court and the adjacent National Gallery precinct were entered on the highest heritage register in Australia. An element of that is a responsibility—although it is not a formal legal responsibility in the case of the High Court—to develop a heritage management plan to inform any future improvements and developments that might occur in and adjacent to the precinct. We have been consulting with the public. The cost you are referring to is the cost of consultants who have been developing that plan, and it is just about finished.

Senator BARNETT—There is another consultancy for documentation for cascade waterfall rectification, \$101,000. That is regarding the water issue.

Mr Phelan—Engineering and water, yes.

Senator BARNETT—The final area regarding the consultancy is the Australian Valuation Office valuation of the building on 1 February this year at \$15,500. How did that go? What is the valuation of a high court?

Mr Phelan—I think it is a formal requirement for our accounting purposes, but I will pass that to Mr Smart, Manager, Corporate Services.

Mr Smart—Under the accounting standards as required by the Australian National Audit Office, we are required to independently value the building every couple of years, and this year is one of those years.

Senator BARNETT—What does it say?

Mr Smart—The value has gone up slightly, in line with the increase to building products.

Senator BARNETT—That is good news. What is the value?

Mr Smart—I do not have it here. It is around the \$200 million mark.

Senator BARNETT—Thank you for that. Perhaps you can just take that question on notice and confirm that in due course?

Mr Smart—It will be in the audited financial statements in this year's annual report. If you would like it, Senator, we can provide it.

Senator BARNETT—Thank you. That is all I have, Madam Chair.

CHAIR—Senator McLucas or Senator Brandis, do you have questions?

Senator McLUCAS—No.

CHAIR—Mr Phelan, thank you. I call on representatives of the Family Court of Australia.

[4.12 pm]

Family Court of Australia

CHAIR—Mr Foster, good afternoon and welcome again to estimates. Do you have an opening statement that you want to provide to the committee before we start?

Mr Foster—No, I do not, Madam Chair.

CHAIR—Senator Brandis, do you have some questions?

Senator BRANDIS—Mr Foster, are you also the acting CEO of the Federal Magistrates Court?

Mr Foster—Yes, I am, Senator.

Senator BRANDIS—I suppose I am asking you this question technically in your other capacity, but perhaps you would indulge me. I take it that no steps have been taken to fill permanently the position of chief executive officer of the Federal Magistrates Court?

Mr Foster—Not at this stage, Senator, no.

Senator BRANDIS—There have been none since last we raised this matter in estimates, have there?

Mr Foster—I have been appointed acting CEO since November 2008. So I have been acting since that time in that other role.

Senator BRANDIS—I thought that was the case. I might pursue that with you more fully when you appear in your other capacity shortly.

Mr Foster—Certainly.

Senator BRANDIS—Mr Foster, I ask you to take up the portfolio budget statement and to turn to page 311. I direct you to the item under the subheading 'Federal courts restructure', and you will see that the commentary there records:

In the 2009-10 Budget, the Australian government agreed to a restructure of the federal courts. This resulted in the reallocation of funding from the Federal Magistrates Court to the Family Court and the Federal Court from 1 January 2010.

The restructure has been delayed. The government is considering the implications of the High Court's decision in *Lane v Morrison* for the proposed restructure of the federal courts, and the formulation of proposals for an appropriate jurisdiction to determine military justice matters, including the involvement of Chapter III courts.

I want to ask you a series of questions relating to those several observations. I begin, Mr Foster, by asking you a general question. Can you bring us up to date on where the delayed structure of the federal courts sits as of today, at least so far as you can speak from the Family Court's point of view?

Mr Foster—I think that is probably a question that should be answered by the department, quite frankly, Senator.

Senator BRANDIS—I am happy to ask Mr Wilkins. This is the issue I want to pursue with you with more particularity. But if you think the general question is appropriately directed to Mr Wilkins that is fine.

Mr Wilkins—Do you want me to answer that question?

Senator BRANDIS—Yes. Where are we up to with the delayed restructure of the federal courts?

Mr Wilkins—There was a press release that went out today that explains that, now that the issue in relation to the Military Court of Australia has been resolved, under the new arrangements a lower tier of the Family Court will be established and commissions offered to federal magistrates who undertake mainly family law work. The new structure will achieve a more integrated and efficient system in order to effectively deliver legal and justice services both to the civilian and defence community. There is a fact sheet, and I am happy to go through the main issues. Essentially, that is where the structural changes are up to. They will now proceed.

Senator BRANDIS—When you said a moment ago, Mr Wilkins, that the issue of the Military Court has been resolved, I suppose what you meant was that the cabinet has made a decision and would ask the parliament to legislate in accordance with that decision?

Mr Wilkins—More accurately that is what I mean, Senator, yes.

Senator BRANDIS—Thank you. Senator Faulkner was good enough to brief Senator Johnston and me in relation to that matter at lunchtime today, so I was aware of what you are saying. May we take it then, Mr Wilkins, that from the department's point of view the resolution in the government's mind of the military justice matter removes any further impediment in the path of now implementing the recommendations of the Semple review of the restructure of the Federal Magistrates Court and the Family Court?

Mr Wilkins—That is partly accurate, Senator. It is not replicating exactly what Semple said, but I can go through the actual features which were announced today by the Attorney-General.

Senator BRANDIS—I might just read that press release for myself, thank you, Mr Wilkins. Dwelling for the moment on the government's observation in the portfolio budget statement that the restructure has been delayed, may we take it that, as a result of the decision announced today there is no further delay anticipated?

Mr Wilkins—That is right.

Senator BRANDIS—This might be a question that is better directed to the minister. What steps does the government now propose to take in relation to that restructure, and can you give me some indication as to when the government proposes to take those steps?

Senator Wong—Senator, as you know, the announcement as to the establishment of the Military Court of Australia—

Senator BRANDIS—Yes.

Senator Wong—If I could finish?

Senator BRANDIS—I am sorry, I am just saying yes.

Senator Wong—is less than an hour old, so I am not in a position to advise you about the implications for the remainder of the issues associated with that paragraph of the PBS. I am happy to take that on notice, or to take some advice and to come back to you.

Senator BRANDIS—Would you please do that. The reason, Minister, that in a peculiar way the military justice issue has impinged upon the restructure of the family law jurisdiction is because of the broader implications of the High Court's decision in *Lane v Morrison*, a matter acknowledged in the PBS.

Senator Wong—Yes, I recall the very lengthy discussion we had at the last estimates about it, some of the detail of which I remember and some of which I do not, so you are probably in a better position than I am on the niceties of the decision.

Senator BRANDIS—My point, Minister, is that, as Mr Wilkins has told us, the circumstances that created the delay have now gone as a result of the government's decision announced this afternoon in relation to the military justice system. I am inquiring what steps the government now proposes in relation to the Semple review. We know from Mr Wilkins that there are no further impediments, at least from his point of view. So what will happen now, Minister?

Senator Wong—Senator, I have in front of me the fact sheet that I understand was released as part of the establishment of the Military Court of Australia release, which was released at 3.45 pm or embargoed until then. Attached to that fact sheet is a document that states:

The Federal Magistrates Court will be retained to hear general federal law matters and will continue to exercise general federal law jurisdiction.

The Court will provide an appropriate pool of judicial officers (with the requisite military background or familiarity) who may be offered dual commissions to the lower Division of the new military court.

The Federal Court will be responsible for the administration of the Federal Magistrates Court.

It goes on to talk about the Family Court, which will be the single court dealing with all family law matters and states:

The restructured court will have two divisions.

The Appellate and Superior Division will hear complex first instance family law and child support cases as well as appeals. It will comprise the existing Family Court judges.

The General Division will hear all but the most complex family law cases (as the Federal Magistrates Court does now). It will comprise those Federal magistrates who undertake mainly family law work and accept commissions.

Matters will be able to be transferred between the two Divisions where appropriate.

Under the heading 'Federal Court' it states:

The Federal Court will continue to exercise its jurisdiction in its current form.

Judges of the Federal Court with the requisite military background or familiarity may be offered dual commissions to the upper Division of the new Military Court.

If you want further advice on any of the detail of that I will have to turn to officers, Senator.

Senator BRANDIS—Minister, I am interested in exploring the extent to which the resolution of the problem, or the conundrum thrown up by *Lane v Morrison*, has implications for what the government now proposes to do concerning the Semple review. I go back to you, perhaps Mr Foster. Are you aware, or are you in a position to tell this committee, about any differences or variations from the government's original intentions concerning the implementation of the Semple review and the position as it now stands in consequence of this decision announced today? I have not seen the document from which the minister just read, but it does very much sound to me as if the restructure in the form that is now foreshadowed is different in important respects from what Mr Semple recommended a couple of years ago.

Senator Wong—I think Ms Playford or Mr Wilkins might be able to answer that question. I understand that you do not have the document from which I was just reading.

Senator BRANDIS—The document released 35 minutes ago?

Senator Wong—Yes.

Senator BRANDIS—No, I do not.

Senator Wong—I am sorry, I thought you were briefed earlier today.

Senator BRANDIS—I was briefed by Senator Faulkner, who was very helpful, but we were talking about the Australian Military Court.

Senator Wong—It might be helpful—and that is why I think Mr Wilkins was seeking to read from the document—if we table the media release and fact sheet that I understand are public.

Senator BRANDIS—Ms Playford or Mr Wilkins, whoever is the appropriate officer, I want to know what difference there is between the restructure of the federal courts as it is now envisaged to take place in consequence of this decision, lately announced, and the shape that it was originally expected to take.

Mr Wilkins—The key difference is the retention of the federal magistrates to hear general federal law matters.

Senator BRANDIS—Yes, that is what I thought.

Mr Wilkins—That is the key difference.

Senator BRANDIS—I do not want to be overly political about this, but that was the position the opposition, as you know, contended for all along, so I am delighted that the government has decided to resolve the matter along those lines.

Senator Wong—You should congratulate us, Senator Brandis.

Senator BRANDIS—Mr Foster, were you in your capacity either as the CEO of the Family Court or as the acting CEO of the Federal Magistrates Court consulted in relation to the decision that has been announced today?

Mr Foster—Yes, there were a number of meetings in relation to this decision between me and officers of the department.

Senator BRANDIS—Officers of the Attorney-General's Department?

Mr Foster—Sorry, yes, officers of the Attorney-General's Department.

Senator BRANDIS—What was the position that the Family Court took in relation to the matter?

Mr Foster—Basically the Family Court's position was—and wearing my hat as the CEO of the Family Court—that it felt that it was more than desirable, it was highly desirable to have family law in one jurisdiction for a whole lot of sound reasons in terms of appointments of specialist practitioners to the bench and a range of other matters—easier transfer of matters between the right courts and greater flexibility in listings et cetera. That has really been the position of the Family Court since the presentation of the Semple report. Nothing much has changed in that regard.

Senator BRANDIS—Indeed. If I may use this expression, Mr Foster, that is the purist Semple report approach, isn't it?

Mr Foster—Excluding the fact that the Semple report, as was reported by the department, recommended that the Federal Magistrates Court be abolished.

Senator BRANDIS—Sure, but I will follow the steps I propose to lead you through, Mr Foster. The Family Court is consulted and it puts the Semple position to the government's review of the restructure of the federal judiciary which had been complicated by the *Lane v Morrison* decision. Is that right?

Mr Foster—Yes.

Senator BRANDIS—Was the Federal Magistrates Court also consulted in relation to this review?

Mr Foster—Yes, it was.

Senator BRANDIS—And were you the person consulted or the principal person consulted on behalf of the Federal Magistrates Court?

Mr Foster—Yes, I was.

Senator BRANDIS—What position did you put to the review, Mr Foster, on behalf of the Federal Magistrates Court?

Mr Foster—The Federal Magistrates Court did not change its position from its position when the Semple review was first announced, in that it wanted to retain the Federal Magistrates Court in its existing jurisdiction and format.

Senator BRANDIS—Mr Foster, I asked you what position you put and you told me what the Federal Magistrates Court's position was. I want to know what position you put, Mr Foster, to that review.

Mr Foster—I put the Federal Magistrate Court's position, which was as I stated.

Senator BRANDIS—Those two positions—that is, the Family Court's position and the Federal Magistrates Court's position—were in a very important respect at variance from one another, were they not?

Mr Foster—Yes, I agree that they were.

Senator BRANDIS—This is a point I have been trying to put to you in more than one estimates round, Mr Foster, and why the opposition has always felt somewhat uncomfortable with the idea of you being the acting CEO but, de facto, the CEO for an indeterminate period of one court and the CEO of a different court, because the two courts in relation to this process had different views. You have just told us that you were consulted in your capacity as the CEO of the Family Court, and you have just told us that you were consulted in your capacity as the acting CEO of the Federal Magistrates Court. Presumably, in those two different capacities, you put opposite or materially significantly different views to the government. Is that right?

Mr Foster—I put the views as expressed by the chief justice and the chief federal magistrate. It was their view that I fed back to the department, and they had a different view.

Senator BRANDIS—Mr Foster, doesn't it strike you as curious, to say the least, that you as the administrative head of two courts with opposite views on a vital matter—that is, whether or not one of those courts should continue to exist or should be absorbed, in effect, into the other—should be putting the conflicting views on behalf of both of those courts to the government? There is a plain conflict, isn't there?

Mr Foster—I personally did not feel uncomfortable about that or thought there was a conflict of interest because I was representing and putting forward the views of, firstly, the chief justice and, secondly, the chief federal magistrate, and their views were quite clear.

Senator BRANDIS—But you were more than just an automaton, or reciting views, were you not? You were engaged in this process, Mr Foster, were you not? And yet speaking with one hat on you are saying one thing, speaking with the other hat on you are saying the opposite thing.

Mr Foster—That is a view that you might take, Senator. I did not feel uncomfortable about representing the views of the jurisdictional heads.

Senator BRANDIS—What is your view, Mr Foster?

Senator Wong—That is not relevant, Senator, and I think you know that.

Senator BRANDIS—With respect, Minister, I do not know that. I think it is relevant.

Senator Wong—It is not appropriate for you to be asking the officer what his opinion is. He has indicated that his job in this context was to represent the views of the chief justice and the chief federal magistrate. That is what he did.

Senator BRANDIS—I press the question. The fact is that this gentleman, because of decisions of government which, it would seem on any fair view, have put him in an almost impossible position of being in the same review process the advocate on behalf of different courts of opposite points of view. Given that that is the position the government put Mr Foster in, I think I am entitled to know what his view is. What is your view, Mr Foster?

Mr Foster—I do not know that my view is particularly relevant to the discussion.

Senator BRANDIS—It is relevant.

Mr Foster—I put the views of the jurisdictional heads. That was the view that I put forward when representing the court. Whether I have the same views or different views in some senses is not relevant to it. I did not express a different view wearing my acting CEO's cap in charge of the Federal Magistrates Court administration; I expressed the views of the court that I got instructions from the Chief Federal Magistrate to express. Similarly, with the Chief Justice, I expressed the views of the Chief Justice, and those views had not changed since the Semple review report came down.

Senator BRANDIS—With all due respect, Mr Foster—and I am not criticising you personally; I think you have been put in a position that you ought never to have been put in, so please do not take this as a personal criticism—you are more than just a cipher or an automaton in this process. You are the CEO of both of these conflicting courts and you are engaged by the department actively in a process of review in which your views are sought. Surely it must be the case that in putting a position to government you were influenced by, or mindful of, your own view as to what was the appropriate outcome here.

Senator Wong—Madam Chair, I invite your consideration of this matter. The witness has given evidence that he did not put his own view; that he put the view of the jurisdictions that he was representing. Senator Brandis has made comment, and he is entitled to make comment if he wishes, about the fact that he is representing two jurisdictions. That is a matter of record. But, particularly in the circumstances, where Mr Foster has said that he did not put his own view because he was representing the views of the two jurisdictions, I again say that it is not appropriate to badger this witness as to what his personal views are.

Senator BRANDIS—I am not badgering the witness.

Senator Wong—They were neither put nor are they relevant.

Senator BRANDIS—With respect, Minister, through you, Madam Chair, I have heard Mr Foster's evidence that he put the views—the conflicting views—of the two courts of which he was simultaneously the CEO. Given that there was the plainest conflict here, which the government foolishly imposed upon Mr Foster, I think it is relevant for the parliament to know what his own view was—

Senator Wong—Why is that relevant?

Senator BRANDIS—May I may speak without interruption please, Minister. We all know—you know and everyone at the table knows—that a person who is asked to advocate

two conflicting views is in an impossible position and is bound to be influenced, therefore, by their own private view unless they are merely an automaton reciting or reading from a script. I make bold to say that Mr Foster was certainly more than that. Mr Foster, what view did you favour? In these discussions in which the Family Court said one thing, and you conveyed that view on behalf of the Family Court, and the Federal Magistrates Court said another thing, and you conveyed that view on behalf of the Federal Magistrates Court, where did you end up? What was the ultimate position in the discussions in which you were engaged at which you arrived?

Mr Foster—I do not think I can add any more to what I have already said. Whether I have a private view about a matter in terms of this is not relevant to the discussion because I did support the views of the jurisdictional heads. They were the views and the information that I fed back through to the department. I do not recall anyone in any official capacity asking me what my personal view was. I think, in some sense, it is not relevant.

CHAIR—Before we proceed any further, Mr Foster, I just want to remind all people in the room, particularly senators, of the Senate standing orders. We reiterate this at the start of every committee hearing that we have, and today is no different:

An officer of the 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 that officer to superior officers or of the minister.

As chair, I am taking that also to mean a personal opinion in relation to your representation, Mr Foster, of the two courts with which you are currently involved.

Senator BRANDIS—Madam Chair—

CHAIR—You can dissent from my ruling, Senator Brandis, but that is what my ruling is.

Senator BRANDIS—Madam Chair, given the impossibly conflicting position into which the government had put Mr Foster, I am entitled to ask what position he ultimately put in this review. We have heard from Mr Wilkins, from the press release issued only 55 minutes ago, that the government decided, in the end, to keep the Federal Magistrates Court as a court of general federal jurisdiction. We know from your earlier answer, both in this process and in plenty of earlier estimates committees over the last couple of years, that the Family Court's view was what we call the pure Semple view, which did not contemplate the separate existence of the Federal Magistrates Court. The question of whether a chapter III court should continue to exist or be abolished is a profound constitutional question. It is a matter of the greatest importance, yet you have told us, Mr Foster, that you were arguing both sides of the case on behalf of the respective courts of which you were the CEO in the course of this review. What I am asking you now, mindful of the Chair's ruling, is not your personal opinion but where you ended up in this process. What view did you ultimately put?

Senator Wong—Senator, that is the same question.

Senator BRANDIS—It is not the same question.

Senator Wong—It is the same question; it goes to the same issue. There really is a fundamental flaw in your argument, a very substantial non sequitur, which appears to be along these lines: because Mr Foster was representing two courts, or two jurisdictions, that had

different views, you therefore are entitled, in an estimates hearing, to ask him what personal view he has.

Senator BRANDIS—I am not asking him what personal view he has.

Senator Wong—That is an illogical sequence of argument. I say to you that you have pressed the point, he has given his answer and the Chair has ruled. You are asking essentially the same question. You are asking what view he came to. The evidence Mr Foster has given is that he put not his personal view, whatever that may be, but the views of the two jurisdictions he was representing. He has given that evidence on a number of occasions.

Senator BRANDIS—Senator Wong, it is not often that an Australian government decides to abolish a chapter III court.

Senator Wong—That is fine.

Senator BRANDIS—It must be the first—

Senator Wong—You can have that political argument but—

Senator BRANDIS—May I finish, please? It must be the first time in Australian history—

Senator Wong—it is not Mr Foster who is in the middle of that.

Senator BRANDIS—It must be the first time in Australian history that an Australian government, having decided and announced as a matter of policy to abolish a chapter III court, then reverses itself and decides not to abolish a chapter III court. This is a very important event, Senator Wong.

Senator Wong—This is—

Senator BRANDIS—Mindful of the Chair's ruling, I am not asking Mr Foster for his personal view. I acknowledge that I did that earlier, but that question was ruled out of order. So I am now asking a different question. Mr Foster, in your contribution to this review, what view did you ultimately put? Whether it was your personal view or not, did you ultimately argue for the Family Court position or did you ultimately argue for the Federal Magistrates Court position?

Mr Foster—I think I can best answer that by saying that I am not quite sure that I would say that I argued or was an advocate for one position or another. The courts were asked for their views. The Federal Magistrates Court's view had not changed. The Federal Magistrates Court's view was the same as it was when the Semple report was released. All I did was say, 'That is the view of the court supported by the Chief Federal Magistrate and the court.' The view of the Family Court was basically that it preferred to have family law jurisdiction under the umbrella of the Family Court and that the court had two divisions or two tiers. That was basically the extent of what was put to the department when we were consulted. It was really nothing different from the Semple report, except that—

Senator BRANDIS—Except whether the Federal Magistrates Court, of which you are the acting CEO, should continue to exist or not.

Mr Foster—Whether the Federal Magistrates Court should be retained.

Senator BRANDIS—It is a very big difference. What I want to know is what view you ultimately put. Because when you came along to the last couple of rounds of estimates committees, Mr Foster—and, again, this is not a personal criticism of you; you are merely reflecting the state of the government policy as it then was before this latest U-turn—the Semple review was treated as a *fait accompli*. We were in the process of giving effect to the Semple review and winding down the Federal Magistrates Court and absorbing it into the Family Court.

Those lines from the PBS that I have just read, which could have been written only a few weeks ago, do not make sense unless that was the attitude of the government as recently as a few weeks ago. If I can take you to the 2009-10 portfolio budget statement, page 329, table 1.2, under the heading ‘Budget measures: Family Court of Australia’, there are savings shown premised on the assumption that the Federal Magistrates Court will cease to exist and be absorbed largely into the Family Court, with a few other recalcitrant federal magistrates becoming in effect special masters of the Federal Court.

However you like to phrase this, there has been a fundamental change of government policy as a result of a cabinet decision this morning from abolishing the Federal Magistrates Court to retaining it. You, in your capacity as the CEO of both courts, which you have acknowledged to me have different views, were involved in that process, as you have told me. What I want you to tell the parliament is what position you ultimately recommended in the course of that review.

Mr Foster—I chose my words very carefully—

Senator BRANDIS—You did.

Mr Foster—about the family law jurisdiction. The court’s view in relation to whether the Federal Magistrates Court would be abolished or not was purely left as a matter of a government decision. It was not a matter that the Family Court thought it had any view to put in any way. It was a decision that once family law was put into the Family Court, that was what the Family Court thought was the best thing for the litigants of family law in this country.

The question about whether the Federal Magistrates Court was to become a division of the Federal Court or not was really a question on which I certainly did not put a view on behalf of the Family Court because the Chief Justice had not expressed a strong view about that in any event. It was really a matter that was subsequent to getting family law into the one court—that is, having one court exercising that highly specialised jurisdiction. That is what was trying to be achieved.

Senator BRANDIS—That is not the point, Mr Foster. The point is that from the time the government made its announcement that it was going to give effect to the recommendations of the Semple review, which was roughly at the time at which you were appointed the acting CEO of the Federal Magistrates Court, your brief was to give effect to the Semple report, wind down the Federal Magistrates Court, facilitate the absorption of most of the federal magistrates into the restructured Family Court and cater for the handful of federal magistrates who would be assigned to the Federal Court. You were, in effect, Mr Foster, appointed CEO of the Federal Magistrates Court to wind it up, were you not?

Mr Foster—With great respect, Senator, that is a pretty big overstatement of my role.

Senator BRANDIS—That is what you were doing, was it not—giving effect to government policy?

Senator Wong—Senator Brandis, he is in the middle of his answer.

Mr Foster—If I can finish, my brief from the Chief Justice and the Chief Federal Magistrate was to merge the administration of the courts in effect to save money and reduce waste. That is what I did and I finished that task in September last year. The courts' administration has largely been merged. It was not my role to restructure the federal court system at all. My brief from the two jurisdictional heads was to merge the administration, and I did that. That was my brief.

Senator BRANDIS—Mr Foster, I am not criticising you one iota—

Mr Foster—I understand that.

Senator BRANDIS—for undertaking the task that the government gave you to undertake as a result of this catastrophic policy failure. But the fact is that that is what you were doing. That is what the budget figures show—that costs were going to be saved in the budget of the Federal Magistrates Court by the absorption of that court—in anticipation of the Semple review—into the Family Court. The administrative functions, as you have just told us, were consolidated. The administrative personnel, and you yourself, were consolidated into the one person so that both courts had the same CEO. I have been saying at estimates round after estimates round after estimates round that unless it could be assumed as a certainty that the Semple report would be implemented, for as long as those two courts had different positions in relation to the continuity of the Federal Magistrates Court, which we know they did, your position was impossibly conflicted.

Now, an hour ago, there has been announced as a result of a cabinet decision as recently as this morning that the most important single element of the Semple report—namely, the abolition of the Federal Magistrates Court—will not proceed. Mr Foster, do you anticipate, now that the Federal Magistrates Court is not going to be abolished and the government has reversed itself on this important issue, that a new CEO of the Federal Magistrates Court is going to have to be appointed? Do you anticipate that as a matter of ordinary administrative practice?

Mr Foster—The fact sheet says that the Federal Magistrates Court, in whatever format it takes in the future, will be administered by the Federal Court.

Senator BRANDIS—The Federal Court of Australia?

Mr Foster—Yes, the Federal Court of Australia.

Senator BRANDIS—Not by the Family Court?

Mr Foster—Not by the Family Court.

Senator BRANDIS—So the Federal Magistrates Court has gone from being an independent court established under chapter III of the Constitution to a court that was going to be absorbed into the Family Court and administered by the CEO of the Family Court, and now you are advising us that it is going to be administered by the Federal Court.

Mr Foster—I am only repeating what the press statement said.

Senator BRANDIS—I understand that; I am not blaming you for that.

Mr Foster—So it is really a question for the other side of the table, not for me. It is a policy issue.

Senator BRANDIS—Mr Foster, you are the one at the coalface here and I feel very sorry for the position you have been placed in. But it seems to me that the one message that comes out loud and clear from this very embarrassing policy failure is that due respect is not being paid to the Federal Magistrates Court as a separate judicial organ established under chapter III of the Constitution. As you sit here today as the CEO of the Federal Magistrates Court, what do you have to say about that?

Senator Wong—Senator, you are making an assertion. You can make that in a press release, in a speech—

Senator BRANDIS—No, I am asking a question.

Senator Wong—I have not finished. You are making lengthy sermons from the mount up there which are very interesting—

Senator BRANDIS—It is the gospel truth.

Senator Wong—and would, I am sure, be part of a very interesting speech at some point. But this is not a question for Mr Foster. You are asking him to disagree or agree with a whole range of political assertions that you are making.

Senator BRANDIS—I am merely quoting your own press release back to you, Senator Wong.

Senator Wong—I am making the point that it is not appropriate for you to be demanding that officers of the court agree or disagree with the particular political perspective you put.

Senator BRANDIS—I am quoting back to Mr Foster your own government's press release, Senator Wong, and reminding him of his evidence—that there was a difference—

Senator Wong—I do not think that was what your question was, Senator.

Senator BRANDIS—May I finish without interruption please, Senator Wong.

Senator Wong—You are not being accurate in what you are saying. What you asked him about was not a quote from the press release. You made a whole range of other assertions, which you should at least have the honesty to repeat, if that is what you want to do.

Senator BRANDIS—Are you questioning my honesty, Senator Wong?

Senator Wong—I am saying that that is not what you were asking.

Senator BRANDIS—Are you questioning my honesty?

Senator Wong—Yes. I am saying that that is not what you were asking.

Senator BRANDIS—Madam Chair—

Senator Wong—In terms of what I was being critical of, you did not quote from the press release.

Senator BRANDIS—Madam Chair, I require that remark to be withdrawn.

CHAIR—Senator Brandis, let the minister finish please. We will let the minister finish.

Senator BARNETT—That is way out of line.

Senator Wong—Senator Brandis, you said, in response to my intervention, that you were quoting from the press release. That is not what I was referring to. What I was referring to is your declaration of political embarrassment et cetera, which clearly is not a quote from the Attorney-General's press release. That is what I am taking issue with.

Senator BRANDIS—Madam Chair, I require that reflection on my integrity to be withdrawn by the minister.

Senator Wong—Which reflection? That I do not think you were quoting from the press release?

Senator BRANDIS—When you accused me of being dishonest.

Senator Wong—Senator, if you are sensitive enough on that issue, I will withdraw.

Senator BRANDIS—Thank you. I am just a bit of a stickler for propriety, actually.

Senator Wong—But the record will show you were not only talking about the press release. What you were doing was making a range of political assertions, which you are entitled to make, but not in relation to asking this witness to agree or disagree.

Senator BRANDIS—Mr Wilkins, as you or one of the officers told us at the last estimates round, from the time at which the High Court handed down the Lane v Morrison decision, the government decided to relook at the issue of the restructure of the federal judiciary. I would like you to describe the process by which the decision to adopt the recommendations of the Semple report was reviewed. Going from the time of Lane v Morrison, which if my memory serves me correctly was in September last year, up to this morning's cabinet decision—

Senator Wong—Senator—

Senator BRANDIS—I have not finished my question.

CHAIR—Senator Brandis, I think there needs to be a correction.

Senator Wong—This is the second occasion on which you have asserted that, Senator Brandis. I do not know what the basis of that assertion is.

Senator BRANDIS—If you listen to the end of the question you might find out. I understand the government is hugely embarrassed by this.

Senator Wong—That is the second occasion on which you have made an assertion about a cabinet decision. I do not want my silence to be seen as agreement with that assertion.

Senator BRANDIS—You will find that in the press release from which you have read there is a reference to a decision by the government.

Senator Wong—That is a different thing.

Senator BRANDIS—I happen to know the decision was made by the cabinet this morning.

Senator Wong—Is that right!

Senator BRANDIS—I do not think it is a state secret; it certainly is not now. Mr Wilkins, from the time of the *Lane v Morrison* decision, when the government was forced to revisit its decision to adopt the Semple report, to the announcement of this decision—if I can use slightly more neutral language—at 3.45 this afternoon, could you tell me please, or if you are not aware of it perhaps one of your officers can tell me, by what process involving meetings and discussions was this decision announced this afternoon ultimately arrived at? What I am particularly concerned to know are the dates of meetings involving officers of the department and representatives of the various affected courts and agencies, most particularly the Federal Magistrates Court, the Family Court, the Federal Court and, to the extent this was precipitated by the striking down of the Australian Military Court, officers, particularly legal officers, of the Department of Defence?

Senator Wong—Whilst the officers are considering that—and I anticipate they may have to take some or all of that on notice—I would be obliged if you could refer me to the paragraph in the press release to which you say you were referring in relation to a discussion of cabinet decisions. In your question you actually said that, so I am interested to know where you got that.

Senator BRANDIS—I referred to the decision announced in the press release.

Senator Wong—I do not think there is any discussion of a cabinet decision or the timing of it in the press release.

Senator BRANDIS—Mr Foster has told us that the matter was resolved as referred to in the press release.

Senator Wong—I am responding to your articulation and the inaccuracy of it.

Senator BRANDIS—It is not inaccurate.

Senator Wong—Could you please tell me how is it accurate?

Senator BRANDIS—I am asserting that the decision announced in the press release—

Senator Wong—You are very loose with your questions sometimes. How is it accurate for you to assert that the press release refers to the cabinet decision?

Senator BRANDIS—You should listen more carefully. What I am saying is that the decision announced by the press release issued at 3.45 this afternoon was a decision made by cabinet this morning. I am not saying the press release says that. I am asserting that to be the truth.

Senator Wong—I will be interested to see the *Hansard* on that.

Senator BRANDIS—But we are not in dispute that the press release does announce a decision of the government.

Senator Wong—No. In fact, I alluded to it previously.

Senator BRANDIS—Indeed. Mr Wilkins, back to you.

Mr Wilkins—I will take that on notice.

Senator BRANDIS—I expected you would have to. When you take that on notice, can you also please provide me with details of this information: the persons present at each of the meetings—

Senator Wong—If it goes to cabinet deliberations, that will not be will not be provided.

Senator BRANDIS—I was not asking about cabinet deliberations. If you listened carefully you would have understood that.

Senator Wong—Your question extended beyond departmental meetings alone, unless you want to clarify the ambit of the question.

Senator BRANDIS—What I would like to know, Mr Wilkins, are the names of the persons present on behalf of each of the agencies at these meetings. I would like to know the dates of the meetings. I would like to know if the meetings were minuted and, in respect of all of the meetings that were minuted, I would like copies of the minutes to be produced to the committee. It may be that you consider that there may be some elements of the minutes of the meetings that are not in accordance with the practice of these committees appropriate for production, so you will no doubt redact from those minutes any inappropriate material. Will you take that on notice for me please, Mr Wilkins?

Mr Wilkins—Yes.

Senator BRANDIS—Thank you very much. I want to turn to another matter entirely. In your Family Court CEO capacity, Mr Foster, I take you to Budget Paper No. 2, page 102—that is, the budget measures in the Attorney-General's portfolio. I am interested in the second and third items on page 102, first of all, 'Family Court of Australia—increased efficiencies', which over the forward estimates indicates that the decision not to proceed with filling four vacancies for judicial officers within the Family Court and the Federal Magistrates Court—the two courts being assumed to have been fused for the purposes of the budget papers—will deliver savings of \$10.5 million over four years. Can you tell us please, Mr Foster, with a little more particularity, where those savings are going to come from and, in view of the decision announced earlier this afternoon, whether you consider that will still be case?

Mr R Foster—Certainly. The Family Court of Australia appropriations revenue for 2010-11 has decreased by \$6.567 million. That decrease will be met by the savings of two judge positions in the Family Court and two Federal Magistrates Court positions, with savings of approximately \$2.638 million.

Senator BRANDIS—Just pause there for a moment. With the exception of matters dealt with by registrars, it is the case now, is it not, that all family law matters that are dealt with by Commonwealth courts, other than appellate matters to the High Court, are dealt with in either the Federal Magistrates Court or the Federal Court? So if there is a reduction in the funding of both of those courts then there is a reduction in the overall number of judicial officers available to deal with family law matters.

Mr R Foster—I will come to that. I am not sure. In some places—for instance, in some areas of New South Wales—there might still be some family law work done in local courts, as an access issue. That is small bickies probably. But largely, yes, you are right: work is done for family law in the Family Court of Australia or the Federal Magistrates Court.

Senator BRANDIS—The point I am getting to is that, if we are talking about reducing the number of judicial officers of the Family Court by two and of the Federal Magistrates Court by two, it is not as if there is a transfer or an uptake by one jurisdiction of work as a result of the reduction of court time available in the other jurisdiction. This is an aggregate of reduction of court time across all jurisdictions, or both jurisdictions.

Senator Wong—I just indicate that I have to leave briefly—probably until the dinner period—which I am sure Senator Brandis will be very pleased about.

Senator BRANDIS—No, I find you a lot of fun, Senator Wong.

Senator Wong—I wish I could reciprocate, but I am not that gracious. Senator Stephens will be taking over.

Senator BRANDIS—Do you see my point, Mr Foster? If you reduce the number of Family Court judges then you might say that that is because the federal magistrates are going to do this work, or if you reduce the number of federal magistrates then you might say this work can be done in the Family Court. But if you reduce the aggregate number of judges of both, you are reducing the total amount of court time available to deal with family law matters, aren't you?

Mr R Foster—I can answer that in a number of ways. It is true that the Family Court of Australia will reduce its judicial numbers by two judges who are going to retire next year and not be replaced. The two in the Federal Magistrates Court were actually positions that were funded in anticipation of a massive increase in work due to the de facto legislation being transferred to the Commonwealth from the states.

Senator BRANDIS—That has all happened now, hasn't it?

Mr R Foster—Yes, it has, but the work has not been as significant as was first thought. Those two positions, whilst funded, have never been filled. That is one point. The second point I would like to make is that we should look at it as a system. In the year 2000, when the Federal Magistrates Court was established to also provide services in family law, there were 12 federal magistrates doing family law and 48 judges in the Family Court, for a total of 60 judicial decision makers—judges and federal magistrates.

Senator BRANDIS—Allowing for the fact that some of those would be on leave or—

Mr R Foster—Of course, but the FTE was 60. As at 15 May, there are actually 78 judicial decision makers in the system.

Senator BRANDIS—And, as a result of the decisions foreshadowed in the latest budget bill, there will be four fewer.

Mr R Foster—No. If I can finish, there are 78 as at today. That includes 31 judges in the Family Court and 45 federal magistrates exercising family law. But there have been an additional three appointments to the Federal Magistrates Court, two of which will be in family law. In effect, in a few weeks time, there will be nearly 80 'judges' exercising family law jurisdiction. That is a significant increase from the 60 that existed a decade ago. The second point I would like to make—

Senator BRANDIS—I am more interested in the forward estimates. I know that the number of judicial officers has increased over the last decade, but that is not the point of my inquiry. The point of my inquiry is that over the forward estimates you are anticipating, as I read it—and explain to me, if I am wrong, why I am wrong—that the non-replacement of retiring Family Court judges and federal magistrates will produce savings because four of them are not going to be replaced.

Mr R Foster—Because I believe that the number of judicial decision makers in the system has increased significantly—that is point 1. Secondly, the number of filings in final orders in family law since 2000 has reduced now by a margin of some 12 per cent. So there has been a significant reduction in the number of filings and a significant increase in the number of judicial decision makers. No court likes to have its resources taken away from it, and I am not saying for one minute that the courts are particularly happy about it, but there is a logic behind the courts managing their work effectively. Of course, if the courts decide that they cannot manage the workload effectively then we will have to make representations to government to increase those resources. But, based on the data that exists at the moment, the courts believe that, whilst they are not particularly happy about it, they will have to learn to cope with it at least in the short to medium term through the budget estimates process.

Senator BRANDIS—I would imagine that both courts are not particularly happy about it, although I suspect that this afternoon there might be champagne corks popping at the Federal Magistrates Court as a result of their stay of execution announced this afternoon.

CHAIR—We take it you will not be joining them, Senator Brandis.

Senator BRANDIS—I have always been of the view that the Federal Magistrates Court ought to have been retained, so I am very happy about it. I am very happy about the Rudd government's latest U-turn.

CHAIR—We will not quote you on that.

Senator BRANDIS—My point is that the figures foreshadowed at page 102 of budget statement No. 2 depend, do they not, either on an assumption that, compared with the current financial year, over the forward estimates demand would fall away by the equivalent of the need for four judicial officers or, alternatively, an expectation of greater demand made upon the remaining judicial officers net of the four places that will not be filled if the work remains constant or increases? Those are the two possible assumptions.

Mr R Foster—Absolutely. I think the courts and the jurisdictional heads will wake up to the fact that if the work becomes unmanageable in the two courts then we will have to make representations to government about increased resources. At the moment, I think the judgment of the courts is that we can dispose of the work we have. The increased workload in relation to de facto in the Federal Magistrates Court has not been as great as first anticipated. Sure, the workload of the Federal Magistrates Court is significant and high; in fact, they are doing 82 per cent of the work in family law. But, basically, every organisation has to manage within its resources. We will do the best we can. If we decide that we cannot in either court then we will obviously bring it to the attention of the government.

Senator BRANDIS—Indeed you would, but can you tell us whether from the point of view of the court—and here you can speak from the point of view of both courts of which you

are the CEO—you anticipate a reduction in the volume or case load over the next four years? Do you expect it to remain constant or to increase in accordance with historical trend?

Mr R Foster—The trends over the last decade have been a reduction. I reported at estimates—I think two years ago—that there had been a reduction in the workload in family law of some 20 per cent. That has changed. From 2000 the workload has reduced by 12 per cent in applications for final orders. It is probably a bit early to say whether that is a trend that will continue upwards or downwards, but certainly the workload that is coming in at the moment is one that I think we can manage. The courts are improving their disposal rates.

Senator BRANDIS—Give us the figures over the last five years.

Mr R Foster—From 2006-07?

Senator BRANDIS—Yes.

Mr R Foster—I can table a graph as well if that would help.

Senator BRANDIS—Why don't you do both of those things? Read them out, and I will write them down with my pencil.

Mr R Foster—These are applications for final orders. In 2006-07 in the Family Court of Australia, 7,854 and in the Federal Magistrates Court, 15,816 for a total of 20,539; in 2007-08 in the Family Court, 4,457 and in the Federal Magistrates Court, 14,899 for a total of 17,3506; in 2008-09, 3,834 and 15,549 for a total of 17,969; and we are projecting for 2009-10 a total of around about 19,200 and have not got a split over the two courts.

Senator BRANDIS—On the actuals figures for 2007-08 and 2008-09, the number of final disposals increased slightly by 963 cases. If you compare the estimates for the current year, 2009-10—and I interpolate to say that those would be pretty accurate estimates since we are nearly at the end of the financial year—with the actuals for the last year for which we have real figures, 2008-09, you have an increase of approximately 1,231 cases. So in each of the last two years there has been an increase in demand and in the most recent period for comparative purposes there has been an accelerating increase in demand. As you have said, this tracks the period when the Family Court took over the de facto jurisdiction, which, although not as greatly as you had anticipated, nevertheless increased the case flow.

Mr R Foster—Yes, I agree. There also seemed to be an increase in the number of federal magistrates into the system.

Senator BRANDIS—Yes. My point is that we sit here in May 2010 looking over the last two years, and there has been an increase in both years and that increase has accelerated with a greater workload. That scarcely suggests a trend to require fewer judicial officers; it tells us that there is more demand on the time of both courts and that the nonreplacement of two Family Court judges and two federal magistrates to produce what are euphemistically called efficiencies across the forward estimates is not something justified by a reduction of the flow of cases through those two courts. That is right, isn't it?

Mr R Foster—I respond to that by saying that the numbers have either trended down—I do not know that that increase is going to be sustained—but the significant factor is that there are more judicial decision makers in the system than there ever have been before.

Senator BRANDIS—More judicial?

Mr R Foster—We have more judges and federal magistrates exercising family law jurisdiction.

Senator BRANDIS—And you have more cases.

Mr R Foster—We also have more judges, and we are disposing of the work now. In the FMC, for example, they are disposing of the work in general federal law faster than it comes in. So the disposal rates and the delays in the Federal Magistrates Court are not unreasonable.

Senator BRANDIS—That is not my point; I am making a much more simple point. That is, although over a decade the trend was down, as you say, in the most recent period—over the last two years—the trend is up again. Yet the forward estimates are premised on the assumption that demand will fall rather than grow. Now that is not right. So the only explanation can be that the workload on the existing judges as a result of the nonreplacement of the four judicial officers referred to at page 102 is going to increase. That must be right. The trend is that the number of judges available is factored to fall.

Mr R Foster—It depends on your benchmark. The percentage reduction in a final application file is still significant from what it was a decade ago.

Senator BRANDIS—But here is your graph: it is going up. Over the last two years it is going up.

Mr R Foster—I do not know whether it is going up or whether it is plateauing. I think it is a bit hard to make that call.

Senator BRANDIS—There you are, you can see it. It is going up. It is your own graph.

Mr R Foster—Those are the numbers. I am not arguing your case at all against it. I am just saying that the numbers of judges and federal magistrates in the system have increased significantly. So we have a greater number of judges and federal magistrates in the system.

Senator BRANDIS—To today, and now the government proposes not to replace four of them over the forward estimates for these so-called efficiencies.

Mr R Foster—I said at the outset, ‘Are the courts happy about losing their resources? Of course they’re not.’ But we have to manage with what we have got. What I am trying to demonstrate is that there is a chance we can do that.

Senator BRANDIS—The next item, on page 102, is the so-called increased efficiencies in family relationship services, which is a reduction over the forward estimates of \$4.5 million. This is simply a cut-back in the resources available to the Family Relationship Centres, isn’t it?

Mr R Foster—Yes, you are right.

Senator BRANDIS—In fact, there is a story you would have seen in the *Australian* newspaper by Patricia Karvelas the week before last, in which it was asserted that, in fact, the reduction in the resources available to Family Relationship Centres was \$46.9 million. Do you remember that newspaper story?

Mr R Foster—Yes, I do. I think it was \$43.9 million.

Senator BRANDIS—I am sorry, \$43.9 million. Can I ask one of my staff to give you a copy of the newspaper story—you have it there. Is it the case that in fact the true figure for the reduction or cutbacks in Family Relationship Centres is \$43.9 million?

Mr R Foster—That is not really a question that it would be appropriate for me to answer; it is a matter for—

Senator BRANDIS—Mr Wilkins?

Mr Wilkins—I answered that this morning, but I am happy to go back and repeat it.

Senator BRANDIS—Please.

Mr Wilkins—I will just get the form of words. Essentially, this is not money that is being drawn from services to people; this is money that goes to issues around, if I can put it this way, research and other issues. We are talking about this \$48.4 million over four years. Of that, \$6.4 million is for forums and development of resources, \$6.5 million is for research and evaluation activities, and \$16.8 million is to provide free legal assistance services in Family Relationship Centres. This leaves our component of it—that is, the Attorney-General's Department component—at \$164 million. The majority of these savings have been found by reducing internal government spending. As I said, there is a reduction of \$6.4 million over four years for forums and the development of resources. These activities were primarily held to establish new services. The sector is now well established and operating many of its own forums, which the government uses to actively engage with the sector. There will be a reduction of \$6.5 million over four years for research and evaluation activities. Six major research proposals, as you know, were concluded this financial year, including the Australian Institute of Financial Studies evaluation, which was the largest empirical examination of the family law system ever. The research has provided a huge evidence base in this area, which has reduced the need for funding of this type of activity over the next four years. A transfer of \$16.8 million to provide free legal assistance services in family law relationship centres is actually money being reinvested in the family law system through the community legal sector. Providing early and targeted legal assistance contributes to better outcomes which will increase the likelihood of parents—

Senator BRANDIS—The figures will do, thanks.

Mr Wilkins—being able to resolve their disputes without going to courts. I think it is important to understand the context by having a better understanding of their legal position. The limited impacts on direct service delivery are these—

Senator BRANDIS—Sorry, that is not a question I asked you. I asked you to verify the story of Patricia Karvelas.

Mr Wilkins—What story is that, Senator?

Senator BRANDIS—The one I referred to which refers to these cuts. Can you explain to me what each of the cuts was. It is for the government to justify these cutbacks to Family Relationship Services when related programs are justified. What I want to ask you though, just pausing where you are, is where in either budget paper No. 2 or in the portfolio budget statement I can find those changes or cutbacks accounted for? I do not see it in budget paper

No. 2 as a budget measure. It may be buried in one of the tables in the portfolio budget statement, but I have not been able to locate it. Can you direct me to it in the budget papers.

Mr Wilkins—Which particular item?

Senator BRANDIS—Each of the items that you just recited, please.

Mr Wilkins—Okay. Certainly under ‘Improving Access to Justice’ on page 103 there are some matters there.

Senator BRANDIS—Which ones are they, please?

Mr Wilkins—The related revenue.

Senator BRANDIS—Which ones, please?

Mr Wilkins—I will get Ms Leon to explain, if you do not mind.

Ms Leon—Senator Brandis, on page 102, as you are aware, there is the direct reference to Family Relationship Services.

Senator BRANDIS—There is the full \$25 million, yes.

Ms Leon—There is a direct reference to the Family Relationship Services Program. On page 103, under the heading ‘Improving Access to Justice’, there are a number of entries, one of which is for the Attorney-General’s Department and it says figures of minus 1.9, minus 1.5, minus 1.2 and minus 1.2 across the forward estimates. That figure is a net amount that reflects additions to some programs and reductions to others in the department.

Senator BRANDIS—Just pausing there, Ms Leon, why is this not disaggregated? To what document must we look to find the disaggregation of these figures so that, what is in rather chillingly Orwellian terms described as ‘Improving Access to Justice’, cutbacks to the Family Relationship Centres are in fact revealed?

Ms Leon—I am happy to provide you with all the detail on that.

Senator BRANDIS—No, I asked you: where do we go in the budget papers for the disaggregation of those figures?

Mr Wilkins—I am not sure exactly what you mean by ‘disaggregation’ but I have given that in the statement I gave earlier this morning. That was one of the reasons for that.

Senator BRANDIS—Mr Wilkins, with all due respect, I do not think you should be put in the position, nor should the Parliament be put in the position, of relying upon the chance of a question being directed to an officer to find out what the cutbacks are in the budget, particularly when they are incorrectly described as improvements to access to justice. Ms Leon, within that line item for the Attorney-General’s Department, there are some cutbacks which include cutbacks to programs referred to by Mr Wilkins. Before we get into the detail of them, I want to know where we look to find what those cutbacks are.

Ms Leon—Budget paper No. 2 is prepared by the department of finance. If you wish to take up with that department the manner in which it lays it out, you would probably need to take that up in a different committee.

Senator BRANDIS—I asked you a simple question. Where do we go to find out the information that you are now providing to us? Where is that in the budget?

Ms Leon—I am happy to provide it to you at this time.

Senator BRANDIS—Where is it in the budget papers?

Mr Wilkins—Senator, we just explained that I have made it available to the committee precisely because it is not disaggregated as you put it here.

Senator BRANDIS—Well, where is it?

Mr Wilkins—In my statement.

Senator BRANDIS—Is that all? Come on, Mr Wilkins. Are you seriously saying that we have to rely upon the evidence of Public Service officers to find out what the cutbacks are in the budget which are incorrectly described as ‘improvements to access to justice’? Heavens above.

Ms Leon—If you wish to find them in the budget papers—

CHAIR—You used to find them quite a few times under the previous government.

Ms Leon—If you wish to find them in the budget papers I think you will find it more intricate than having us lay it out for you. You can go to the PBS for the Attorney-General’s Department, which lists the program expenditure.

Senator BRANDIS—That is what I have. Take me to it please.

Ms Leon—It lists the program expenditure—

Senator BRANDIS—Whereabouts?

Ms Leon—for every program on page 33. You will be able, by comparing that to the program expenditure for the same programs in the previous financial year to see where there have been increases and where there have been decreases. But I am happy to provide you with the figures as to the net increases and decreases in all the programs that are relevant to access to justice.

Senator BRANDIS—This is program 1.3 on page 33 of the PBS that you are referring to?

Ms Leon—That is correct.

Senator BRANDIS—Those are the annual administrative expenses.

Ms Leon—That is correct.

Senator BRANDIS—Most of which have nothing to do with the family law service.

Ms Leon—If you would allow me to spell out for you what is comprised in the programs listed under the Attorney-General’s Department, you would see that it includes increases to a number of programs that are listed in 1.3, one of which is the family relationships program.

Senator BRANDIS—Can you take me to that, please? Where is the item that describes that please?

Ms Leon—If you turn to page 34, because these are across several programs, you will see the Family Relationship Services Program is listed for the current budget as \$164,205,000. The figure in budget paper No. 2 is a net figure showing all the programs across the Attorney-General’s Department—

Senator BRANDIS—Yes, you have told us that.

Ms Leon—Those have been increased or decreased, the net effect of which are those figures that appear in budget paper No. 2.

Senator BRANDIS—But the entry in the table for 1.4 on page 34 of the PBS indicates a reduction between the current budget and this budget of \$4,213,000—is that right?

Ms Leon—I have not added it up.

Senator BRANDIS—It is \$168,418,000 minus \$164,205,000. That is a reduction of \$4,213,000.

Mr Wilkins—That is a statement, yes.

Senator BRANDIS—Well, that is the case, isn't it?

Mr Wilkins—If you take the third column away from the first column, is that what you are saying?

Senator BRANDIS—That is right. Ms Leon, where else do we look?

Ms Leon—I think what I said at the beginning of my statement was that the way in which you would ascertain the change in the budget is by looking at the figure in the previous financial year's PBS, as opposed to the figure in this year's PBS. The figure in the 2009-10 PBS for the family relationship program—

Senator BRANDIS—As it happens I have the 2009-10 PBS right in front of me.

Ms Leon—It is on page 29 and the budget there was \$173,018,000.

Senator BRANDIS—I am sorry, did you say page 29?

Ms Leon—Page 29 of the 2009-10 PBS under what was then called 'Program 1.1.'

Senator BRANDIS—Yes, I see that. So between 2008-09 and last year's budget there was an increase in about \$10½ million for the Family Relationship Centres. According to the table to which you have directed my attention, in this year's budget there is a reduction of about \$4 million dollars. I am sorry but I do not see how that advances the argument.

Ms Leon—You asked me where in the budget papers you could see the movement of expenditure, and I have drawn your attention to the relevant lines.

Senator BRANDIS—I did not actually ask you for the movement of expenditure. I asked you where in the budget papers we could identify those cutbacks which Mr Wilkins, in response to my earlier question, listed. You have taken me to one line item which indicates a reduction of \$4 million or so in Family Relationship Services, but we are talking about a figure of \$43.9 million, which is the aggregate of all of the related programs that Mr Wilkins referred to. Where else do we go, Ms Leon, to find these cutbacks to Family Relationship Services and related programs?

Mr Wilkins—We can go through each one. We will go through the budget papers now. There are a whole range of cuts, so it will require us to do a little bit of forensic accounting here to explain where it turns up in each case.

Senator BRANDIS—I am conscious that other colleagues have questions and I do not want to drag this on forever.

Mr Wilkins—We would need to do that.

Senator BRANDIS—Might I ask you to take that on notice—

Mr Wilkins—No, I cannot take it on notice, because I have already explained it this morning. But apparently that was not good enough.

Senator BRANDIS—I was not here this morning.

Mr Wilkins—We can brief you privately on it if you would prefer.

Senator BRANDIS—What I would like you to identify for me is where in the budget we find the aggregate of the \$43.9 million in cutbacks for Family Relationship Services and related programs to which you have referred.

Mr Wilkins—I explained that in this morning's statement. All I can say is, as Ms Leon said, we have the documents provided by the department of finance and the Treasury as the budget papers. To mine out of those the information that I provided to the committee this morning—for obvious reasons I aggregated it—would require us to take some time to sit down and take you through the papers.

Senator BRANDIS—It will be sufficient for my purposes, Mr Wilkins, if the work has already been done, for it to be tabulated and tabled.

Mr Wilkins—I tabled it this morning. I tabled the statement that I made for the benefit of—

Senator BRANDIS—You tabled the statement?

Mr Wilkins—Yes.

Senator BRANDIS—What I would like is a table which actually sets out, by reference to the budget papers, where these cuts may be located.

Ms Leon—I have pointed to the lines in the budget where they are referenced. But, if you would like an explanation of what those figures are, I am happy to provide it.

Senator BRANDIS—You pointed to the forward estimates' efficiency savings at page 102 of Budget Paper No. 2. That is \$4½ million over the forward estimates. You then pointed me to a line item under the misleading title 'Improving Access to Justice' which you have told me is the net of changes to programs within the Attorney-General's Department, which includes these. When I have further pursued it, you have taken me to the table on page 34 of the current PBS which shows a change of some \$4 million. The \$4.5 million over the forward estimates on page 102 of Budget Paper No. 2 and the material in program 1.4 on page 34 of the PBS do not get you anywhere near the \$43.9 million of which we have been speaking. It gets you to about \$9 million.

Ms Leon—Over four years. The figures per year are \$9.2 million, \$11.656 million, \$11.511 million and \$11.578 million. The \$43 million figure to which you are referring is a four-year figure which comprises approximately \$11 million a year. It is \$9.2 million in the first year and then approximately \$11.5 million in each of the forward years.

Senator BRANDIS—The problem with that is that, in the table to which you have directed me on page 34 of the PBS, there is a reduction of \$1 million in the first year of the forward estimates and then an increase of respectively \$3 million and \$6 million in the subsequent out years.

Ms Leon—I wonder if you are looking at a different line to what I am.

Senator BRANDIS—I am merely looking at the table to which you have directed me.

Ms Leon—The line I thought to draw your attention to, and which is where you will find the \$11 million per year difference, is the difference between the administered expenses for the Family Relationship Services program, which appears on page 29 of last year's PBS, as opposed to the administered expenses for the same program, which appears on page 34 of this year's PBS. You will see, with some slight difference due to the different indexation that is applied each year, that there is about an \$11 million difference for each of the forward years between what the budget was in the 2009-10 PBS and what the budget is in the 2010-11 PBS. That is the net effect of the reductions to the Family Relationship Services program from this year's budget.

Senator BRANDIS—Which is \$43.9 million over the forward estimates.

Ms Leon—Over four years.

Senator BRANDIS—I know you do not design the structure of the portfolio budget statements, Ms Leon—nor do you, Mr Wilkins—but it is hardly the most transparent way of revealing a significant cutback, is it, in the funding of Family Relationship Services?

Mr Wilkins—Which is why, as I said, I tried to make that clearer this morning.

Senator BRANDIS—Thank you.

CHAIR—I thank the officers from the Family Court.

[5.37 pm]

Federal Magistrates Court

CHAIR—Mr Foster, is there an opening statement from the Federal Magistrates Court that you wish to provide for us?

Mr Foster—No, thank you.

CHAIR—Thank you. We will proceed to questions.

Senator BRANDIS—I should just say for the record, Madam Chair, that any of the issues I wanted to canvas with Mr Foster in his capacity as acting CEO of the Federal Magistrates Court have been canvassed in his answers to questions put to him in his capacity as CEO of the Family Court.

CHAIR—We thought you would not miss the opportunity to remind us of that, Senator Brandis. There being no questions court, you get the record today of being the quickest, fastest and most efficient. Mr Foster, on behalf of the committee, I thank you once again for your time today.

Mr Foster—Thank you, Chair.

[5.39 pm]

Federal Court of Australia

CHAIR—Mr Soden and colleagues, good evening and welcome to our estimates process. Do you have an opening statement?

Mr Soden—No, thank you, Madam Chair.

CHAIR—Thank you. We will proceed to questions.

Senator ABETZ—Mr Soden, I refer to question No. 19 that was put on notice on 8 February 2010. I asked:

Regarding the recruitment of the Hobart district registrar:

a. Was the position advertised in national newspapers, such as the *Sydney Morning Herald* or *The Australian*?

We got the very helpful answer:

The ... position ... was not advertised nationally in *The Australian* or the *Sydney Morning Herald*.

Those two newspapers were, clearly, to provide an example of what I was referring to as nationally advertised. I do not know if the court provided this as a draft answer or some smart alec in the minister's office provided the answer. But, whoever did, it is singularly unhelpful—sort of schoolboy tactics—and not indicative of a legal mind that is desirous of getting answers. I now have to ask again—and I did on 29 March, and I still do not seem to have an answer to that, and I cannot see what the difficulty is in answering—was the position advertised in national newspapers. What is the answer?

Mr Soden—No.

Senator ABETZ—Why have I not been told no when I asked the question rather than limiting it to the two little examples that I gave of the *Australian* and the *Sydney Morning Herald*?

Mr Soden—I am sorry, Senator. I cannot answer that.

Senator ABETZ—So chances are it was in the minister's office, as I suspected. Can I ask the minister's office—

Senator Stephens—I do not think that you can suggest that that is the case.

Senator ABETZ—I trust the answer did not emanate out of the bureaucracy.

CHAIR—Senator Abetz, you are going to let Senator Stephens complete her comment first before you make a rebuttal.

Senator ABETZ—It is a fair comment.

Senator Stephens—I was going to say that the process of questions on notice is to try and get the answer to the question that was asked.

Senator ABETZ—That is right, and the question on notice was: 'Was the position advertised in national newspapers such as—?' If we get smart alec answers like that, we will be back here again, as we are now, with a question on notice that I asked on 29 March 2010 to get a specific answer. We now get the answer courtesy of Mr Soden—and I thank him for

that—but the minister has not, according to the table office at least and my office, been able to provide that two letter answer, ‘No,’ to the question from 29 March 2010. That is six weeks. It is an overdue answer in any event and we could not be provided with a no. I am just astounded.

Mr Soden—I cannot say what happened and I would hesitate to lay blame anywhere in particular. With such a routine thing, I was not sure of the answer last time I was here. I hesitated to answer it and took it on notice.

Senator ABETZ—Yes. Where was the position then advertised—

CHAIR—Senator, I think we have an update on your question.

Senator Stephens—Can I advise that the answer was tabled this morning. The answer is that the district registrar’s position for the Tasmania registry was not advertised in a national newspaper; it was advertised in the Hobart *Mercury*, the Launceston *Examiner*, the Burnie *Advocate* and the APS employment gazette.

Senator ABETZ—Thank you. Can I ask when the draft answer from the Federal Court was provided to the Attorney’s office? I do not need to know what your draft answer was, but I am entitled to know when the draft answer was provided to the Attorney’s office.

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

Senator ABETZ—Tabling these sorts of answers on the day of estimates is one of the stunts that unfortunately has become part of this government’s Operation Sunlight activities. I say that tongue in cheek. I note you are frowning, Parliamentary Secretary. Operation Sunlight was the openness and transparency that the Rudd government was going to provide in relation to all matters of this nature. Why a one-word, two-letter answer took six weeks or more to be provided—and I am sure that was not Mr Soden’s fault—

Senator Stephens—No, I am sure it was not Mr Soden’s fault.

Senator ABETZ—Could you take on notice when that draft answer was provided by the Federal Court to the Attorney’s office. I now move on to the appointment, and I understand that has been made public.

Mr Soden—Yes, it has.

Senator ABETZ—I assume it is a very well qualified appointment of one Ms Catherine Scott.

Mr Soden—That is so.

Senator ABETZ—I understand this position was advertised at the EL1 level.

Mr Soden—Yes, it was.

Senator ABETZ—I understand that an applicant could negotiate a pay increase under section 24 of the Public Service Act. That is a possibility?

Mr Soden—When a person is offered employment, yes, there is an option for them to express an interest in negotiating. There is also an opportunity as an employer to negotiate a starting salary.

Senator ABETZ—Did that occur in this case?

Mr Soden—Yes, it did.

Senator ABETZ—Was it to a higher level than the EL1 level?

Mr Soden—Yes, it was, but I am sorry—I cannot recall the precise difference. There was a small increase. I think it was intended to match the remuneration that she was on.

Senator ABETZ—Did the advertisement highlight the remuneration that would be available?

Mr Soden—I cannot remember the precise text of the advertisement, I am sorry. So I will have to take that on notice. I would be surprised if it did not, but I cannot remember seeing it, so I will have to take that on notice.

Senator ABETZ—I might have this wrong because I have not seen advertisement, but I am advised that it was advertised as an EL1 level job. So somebody who would look up that pay scale may well say, ‘Oops, that’s not enough for me; I won’t bother applying,’ only to find that somebody else applied and then negotiated a deal that was better and above and beyond the EL1 level. I am wondering whether, as a matter of course in your advertisements, you advise that these jobs might be remunerated subject to negotiation depending on experience et cetera rather than saying at what level. It just seems potentially unfair to other applicants.

Mr Soden—I understand the point you make. I have not had a close look at advertisements for a long time, but I know in the past that we have used that term or just put the word ‘negotiable’ in after a salary.

Senator ABETZ—Hopefully it will not take us six weeks to find out. Possibly a copy of the advertisement could be provided on notice.

Mr Soden—Absolutely, no problem.

Senator ABETZ—That should then answer my inquiry here. I do not need to know the details in respect of both the previous registrar and the current one. I assume the current registrar is being paid more than the previous registrar. Is that a correct assumption or not?

Mr Soden—I hesitate because I have not looked at the figures. But my understanding is that the new registrar is paid less.

Senator ABETZ—Thank you for that. Could you take that on notice and confirm that for me, please? But I am willing to take that at face value. Is the Administrative Appeals Tribunal making its fair share of a contribution to the district registrars’ remuneration?

Mr Soden—Yes, it is.

Senator ABETZ—Good. Thank you very much.

ACTING CHAIR (Senator Barnett)—I have one follow-up question regarding a question I asked in February about the e-lodgement system. At that time I got an answer to a question on notice, No. 21, that it was subject to and remained a limited release and it would be in full production by April 2010. Is it now in full production?

Mr Soden—It is. It actually went fully live in its first phase today.

ACTING CHAIR—Really? I was about to ask how it was going.

Mr Soden—I can tell you that it is going—

ACTING CHAIR—Well so far?

Mr Soden—It has been going very well since last September. Many firms and the registries have been piloting it. Phase 2 will enable all of the documents that are attachments to be seen by everyone who is entitled to see them. Phase 1 is just the lodgement of the documents. We were a bit hesitant to commence phase 1 until we had the phase 2 facilities, so we delayed somewhat. Interestingly, we were pressed to implement by the firms that have been using it because it was so good for them.

ACTING CHAIR—That is good news. I notice in your consultancies that you have here a consultant Azure in regard to e-services, governance and protocol services at a sum of \$77,000 which is due for completion on 1 June 2010. Does that relate to the e-lodgement systems? If not, what is it about?

Mr Soden—It is broader than just the lodgement; it is the whole e-service strategy. There is e-lodgement, the e-courtroom and a documented management facility. That is, companies are giving us advice importantly about how to integrate all those and advice about the employment governance arrangements in relation to managing e-services.

ACTING CHAIR—Is that going to have an impact now that the decision has been made today regarding the Military Court?

Mr Soden—No, I do not think so. In the period of time when the prospect of the Military Court being possibly administered by us and in the context of the Federal Magistrates Court possibly being administered by us, we have given thought to that possibility. Particularly with the general magistrates work, we have designed an e-lodgement facility to be able to facilitate the magistrates' jurisdiction. I know I have people working on how it might facilitate the military jurisdiction.

ACTING CHAIR—That decision has just been made today—a few hours ago. I have only just perused the media release and heard the interchange between Senator Brandis and the minister. When did you first become aware of it?

Mr Soden—I think it is fair to say that I became aware of the decision today. But I was aware that there work was being done in relation to options, particularly in relation to the Military Court. I think it is fair to say that we had been involved in some meetings in relation to those options, how they would work and what funding we might require for those options. But the decision announced today is the first time we have heard of it.

ACTING CHAIR—Just tell me in terms of your advocacy for the position. I presume it was supportive. Can you advise the committee what position you had on behalf of the Federal Court with respect to the establishment of such a court?

Mr Soden—It is fair to say in relation to the possibility of the Federal Court providing administrative support for the new Military Court of Australia that we supported that from our perspective in terms of how it could be done.

ACTING CHAIR—What is the cost? You indicated in your answer earlier that you looked at the cost of the different options. What is the cost to the court?

Mr Soden—I do not have the details with me or at the forefront of my mind. I had others working on those possibilities. They are only possibilities.

ACTING CHAIR—You referred to others within your court. When you say ‘others’, do you mean officers of the Federal Court?

Mr Soden—Yes. They have been working on some options. I think the problem is that there are too many questions still to be answered to refine the full costings. The costings that have been done are very tentative and I would not be relying on them at all at this stage.

ACTING CHAIR—I presume they are significant. I do not know what the figures are and I presume you do not know the precise figures. But we are talking about the establishment of a new court system, so the costs would be substantial, I assume.

Mr Soden—I am not so sure. I am hesitating because it is hard to define what is substantial.

ACTING CHAIR—Significant.

Mr Soden—It will cost a significant amount of money.

ACTING CHAIR—Of course, over a period of time, and it does not start until the end of 2012.

Mr Soden—But in essence it will not be new money. From our perspective it will be a transfer of funds from Defence to the court.

ACTING CHAIR—That remains to be seen, because we do not know what will diminish on the Defence side.

Mr Soden—That is an example of some of the issues that are yet to be sorted out.

ACTING CHAIR—I did not see in the papers released today any costings or any comments on costings. Are you aware of any government position on costings?

Mr Soden—No. As I said, I do not think those final decisions have yet been made. I think there is a fair bit yet to be worked out in the details.

Ms Leon—The costings are being worked out between the relevant ministers. They have not been finalised as yet, but they will be finalised before the court comes into operation.

ACTING CHAIR—But we are looking at legislation this session.

Ms Leon—We are planning to introduce the legislation this year, yes.

ACTING CHAIR—This year or this winter session?

Ms Leon—We hoped to have it passed by the end of the year.

ACTING CHAIR—But introduced in the winter session?

Ms Leon—That is the plan.

ACTING CHAIR—Thank you very much. I think we have concluded, from our perspective. Senator Ludlam?

Senator LUDLAM—I have a question that relates to hearing and filing costs. Can you give us a sense of increases, if any, in hearing and filing costs in the Federal Court?

Mr Soden—There have been some announcements connected with the budget. I have not seen all the details. That would be a matter for regulation by the government for any hearing fee increases.

Senator LUDLAM—That is not something in your domain? That is not something that you are directly aware of?

Mr Soden—We do not set filing fees or hearing fees, no.

Senator LUDLAM—Do you have any role at all in informing government of the impacts of fees and charges on people's ability to access those courts, or is that not within your purview at all?

Mr Soden—If we are asked for a view on the potential impact, we will give it. It does not necessarily follow that we are asked about the impact.

Senator LUDLAM—I presume you mean asked by the minister rather than asked in an estimates hearing?

Mr Soden—The minister or the officers of the minister's department, yes. Traditionally it has been a matter for the government to determine the reasons and amounts of filing fees and hearing fees.

Senator LUDLAM—Can you give us some idea of the case load of the Federal Court in the past 12 months and whether it has gone up, down, or stayed more or less the same?

Mr Soden—Over the past 12 months it is fair to say that it has declined a little bit. The decline is primarily in the area of migration appeals. The full court jurisdiction is where one judge of the court exercises the full court jurisdiction. As there has been a decline in the magistrates disposing of migration appeals, there has been a consequential decline in the appeals to our court from magistrates' decisions. The other proportional decline has been in the Corporations Law area. That has predominantly been a decline in corporations winding-up applications. They are the two main areas. Others are about the same—some going up and some going down.

Senator LUDLAM—There has been a reduction in judicial officers in the Federal Court, in my understanding, from four to two. Will that impact on the ability of the court to function effectively?

Mr Soden—No. The proposed reduction in judicial officers will not impact the court functioning effectively.

Senator LUDLAM—Can you sketch for us why or how that could be, given that the capacity will halve. Unless I am reading the figures wrong, how could that not impact on the performance of the court?

Mr Soden—On current figures we have 49 Federal Court judges across Australia. In this budget there is a reduction of one judge.

Senator LUDLAM—No, judicial officers.

Mr Soden—Same thing. One judicial officer. There is a reduction from 49 judicial officers of one judicial officer. That is an impact that we will managed.

Senator LUDLAM—So there will be no material impact. Thank you very much.

CHAIR—As there are no further questions for the Federal Court of Australia, Mr Soden, I thank you and your colleagues for your time this evening.

[6.01 pm]

National Native Title Tribunal

CHAIR—Welcome to the estimates hearing. Ms Fryer-Smith, do you wish to start with an opening statement?

Ms Fryer-Smith—No, thank you, I do not have an opening remark.

Senator BOSWELL—I am not sure whether this is the space to ask these questions—it may be the other bit—but I will try my arm. Are you satisfied that Queensland wild rivers declarations are consistent with the Native Title Act?

Ms Fryer-Smith—Thank you for that question, but I do not know that it is appropriate for me to answer it. That is a policy question.

Senator BOSWELL—Maybe I have to ask that in Indigenous law and justice.

Senator BARNETT—There may be a possibility of Ms Leon, on behalf of the department, expressing a view with respect to that. If not, she could indicate the best person within the department to answer the question, because it is a very good question.

CHAIR—It might be a good question, but I am not entirely sure it is related to the budget estimates.

Senator BOSWELL—There might be some dollars involved.

Senator BARNETT—There are certainly some dollars involved.

Ms Jones—In terms of the wild rivers legislation—the Queensland Wild Rivers Act 2005—it is our view that it does not affect native title rights and interests. The act itself specifically provides that wild river declarations, as given effect under other Queensland acts, cannot directly or indirectly limit a person's native title rights or interests.

CHAIR—I have just been given advice from the clerk assisting me that this is currently a bill that is before the Senate and the subject of a current inquiry through the Senate. Therefore, questions should be directed through that Senate inquiry process.

Senator BOSWELL—This is a bill that will be coming up—you are correct in that—but it is one about which we are not going to get a chance to ask questions of the Attorney-General's Department through the committee.

CHAIR—If the committee wishes to hear from the Attorney-General's Department, that is a matter that can be raised at a committee meeting. Senators seeking to have the Attorney-General's Department as a witness can request that. If there are to be further public hearings, that could well happen. But at this stage we are not due to report on that bill until 30 June.

Senator BOSWELL—I am sure there are other precedents being created where you can ask questions in the estimates committee of various departments.

Senator BARNETT—If Senator Boswell confined his questions, for example, to the impacts or otherwise of the Queensland legislation without making any reference to the bills before the parliament—in the House of Representatives and the Senate, as in those private member's bills—then I think that would assist to ensure that we met standing orders so that there was not a crossover.

Senator Stephens—I think that the advice from the secretary is very wise and represents the advice from the Clerk.

Senator BOSWELL—I will ask about the Queensland legislation.

CHAIR—You can try, Senator Boswell, but the officers before us are representing the federal Attorney-General's Department and they have the current budget and portfolio budget statements before them. Give us one of your questions, and we can only facilitate as best we can.

Senator BOSWELL—Has the Attorney-General's Department checked the Queensland wild rivers legislation to find out whether it is consistent with native title?

CHAIR—I think Ms Jones just answered that and I have given my view as the chair.

Ms Leon—I think Ms Jones has already answered that question to the extent that the Attorney-General's Department can comment on the Queensland legislation.

Senator BOSWELL—Ms Jones from the Attorney-General's Department—I assume it is the same Ms Jones—told the legal and constitutional affairs committee on 30 March that you have had cause to look at the legislation.

Ms Leon—Yes, and Ms Jones, who is sitting here now, has just answered the question about the relationship between the Native Title Act and the Queensland legislation.

Senator BOSWELL—Ms Jones, do you think that everything is in order?

Ms Jones—As I answered before, in our view the Queensland Wild Rivers Act 2005 does not affect a person's native title rights or interests. There is a provision in that act—section 44(2)—that explicitly indicates that it cannot directly or indirectly limit a person's native title rights or interests. I would further add that section 13A of Queensland's Acts Interpretation Act provides that future legislation only affects native title if it expressly provides. The Wild Rivers Act does not make this express provision. That leads to our view that it does not affect native title rights and interests.

CHAIR—Have you got questions about the PBS and the budget, Senator Boswell?

Senator BOSWELL—Have you looked at the declaration—not the act—to determine whether or not they are future acts under the Commonwealth native title legislation? What work has been done on that and what conclusions were reached?

CHAIR—Perhaps that is a matter that your colleagues may want to put on notice to the department through our inquiry process.

Senator BOSWELL—No, I am asking about the Queensland act, not the federal act.

CHAIR—But the act we are currently inquiring into is related to the Queensland act—very much related to the Queensland act.

Senator BOSWELL—It may be, but I am not asking about a federal act. I am asking about the Queensland act.

Ms Jones—Because we are of the view that the Wild Rivers Act does not affect native title rights and interests, the future act regime of the Native Title Act is not enlivened by determinations made under the Wild Rivers Act.

Senator BARNETT—Meaning it is not abrogated?

Ms Jones—It is not necessary to comply with the future act regime, because native title rights and interests are not affected.

CHAIR—We have the National Native Title Tribunal before us. I am going to ask for questions on that.

Senator BOSWELL—Before that, I ask: is there any money being spent to investigate this Queensland act?

Ms Jones—In terms of departmental resources?

Senator BOSWELL—Yes.

Ms Jones—To the effect that we have spent time preparing for our appearance before the Senate committee inquiry, we spent time on that.

Senator BARNETT—How many officers have expended time undertaking that research, and who?

Ms Jones—I have, due to my appearance, and so has the assistant secretary for the National Title Unit, Tamsyn Harvey. In terms of other people within her team, I would have to take that on notice.

CHAIR—Ms Jones, it is not necessary to provide who.

Senator BOSWELL—That was the question.

CHAIR—It might well be the question, but it is not in order. We do not specifically identify single public servants, and Senator Barnett well knows that, when it comes to work that has been undertaken.

Senator BARNETT—You do not have to identify them by name.

CHAIR—Perhaps you could tell us the number of people who were involved in preparing that submission for our inquiry.

Ms Jones—I will provide on notice the precise number of people who contributed.

Senator BARNETT—And their position. We are being a little particular.

Ms Jones—I will take that on notice.

Senator McLUCAS—It is not usual, Senator Barnett, for a question to identify a particular public servant by name. I think it would be appropriate for Ms Jones to provide us with the number of people who worked on that submission to the inquiry and also in general the level at which they work within the Public Service. I think that is a legitimate question. It has been a matter of form for all the time that I have attended Senate estimates that we do not ever try to identify a public servant by name.

CHAIR—That is right. We do not identify names. Could I also say, as chair, that this committee substantially validates the work that it does only through the appearances before it of officers from the Attorney-General's Department time after time—in fact, there were 42 reports in 2009, if I am correct. It is most unusual for senators to ask how many people, the time and the resources. I have not known that to occur over the past 2½ years. However, if that is the information that is required, you will need to take that question on notice.

Senator Stephens—I remind senators that Ms Jones gave the evidence to this committee in March, when the committee was inquiring into the private member's bill from the House of Representatives. As she said today, her evidence has not changed; all her evidence is on the public record. Senator Boswell can go to the *Hansard* record and see what is there. It is Queensland legislation.

CHAIR—We have a current inquiry in front of us. We have asked the view of the Clerk about whether this questioning should proceed. I remind senators of and draw their attention to the estimates process and questions relating to the portfolio budget statements. We have officers of the National Native Title Tribunal here waiting to answer your questions.

Senator BOSWELL—There is one question that I want to ask: what would trigger an investigation in to state instruments that were suspected of being inconsistent with the Commonwealth Native Title Act—and I refer to the Attorney-General's public concern? What would make you look in this act?

CHAIR—With all due respect, Senator Boswell, I think they have looked at this act, and they have provided us with evidence from our inquiry. Unless the officers have any other information they might need that clarified.

Senator BOSWELL—You seem to be terribly worried about this. I know it is a particular worry to members of the Labor Party.

CHAIR—It is not a worry to the Labor Party, Senator Boswell. We have a process at estimates. That process does not go to questions about a piece of legislation that is currently before this committee and that is being inquired into. Secondly, the Attorney-General's Department has already provided evidence to the committee. If you want to ask the Attorney-General's Department to come back and reappear before the committee in relation to that inquiry, let us do that. However, we have other areas that need questioning tonight, and we have other people waiting here to be asked questions.

Senator PARRY—Senator Boswell has asked a question about what it would take to trigger an action from the department. I am sure his supplementary question to that question, once it is answered, would be, at what cost it would be to the department if that action was triggered, which fits completely within the realm of budget estimates.

Senator McLUCAS—Can I suggest that Senator Boswell's question is speculation? It is a general question about what might happen if there were an act in a state or a territory somewhere that would make the Attorney-General's Department have a look at it. It is totally speculative, and I do not think it is appropriate for the officers to even go there.

CHAIR—Thank you, Senator McLucas. I will call for order now and read a resolution passed by the Senate in 1999 and adopted in a report by the Procedure Committee:

... the Senate delineated the scope of questions at estimates hearings as “any questions going to the operations or financial positions of departments and agencies”. While this is a very wide ambit ...

the previous Clerk of the Senate, Mr Evans, ruled that he did

... not think that it extends to questions about provisions of bills, for example, questions about the meaning, purpose, intention or effect of clauses in bills.

I will say again that if you have questions to do with estimates and the current documents before us, please ask those questions or we will move on.

Senator BOSWELL—Let me ask my question this way: what would it cost to trigger an investigation into a state instrument that was suspected of being inconsistent with the Commonwealth Native Title Act? I refer to your previous concerns.

Senator McLUCAS—Can I rephrase that question for Senator Boswell?

Senator BOSWELL—No.

Senator McLUCAS—The question in fact is: how long is a piece of string? It is totally speculative.

CHAIR—Senator McLucas! Ms Leon, do you have an answer to this question?

Ms Leon—I do not believe I would be able to answer that in the abstract because the question of how much an investigation by the department would cost would depend on the complexity of the matters into which we were inquiring, the nature of the legislation, and the number of people that would be involved. It is not a question I think we could answer in the abstract.

Senator BOSWELL—But what would trigger it?

Ms Leon—If you are asking a question in the specific rather than in the abstract about whether we have looked at this particular piece of Queensland legislation, I think Ms Jones has already answered that to the effect that we have. We have provided this committee, both tonight and in its inquiry into the private member’s bill, with the department’s views about the relationship between the Queensland legislation and the Native Title Act.

Senator BOSWELL—Mr Noel Pearson—

CHAIR—Senator Boswell, as chair, I am going to rule—

Senator BOSWELL—Then I will have to call for the Senior Clerk. We will have to get the Senior Clerk up here to interpret it.

CHAIR—Order! I am the chair here.

Senator McLUCAS—You do not even know what—

CHAIR—Order! If I need to stand I will stand. Order, Senator Boswell! You can take this matter further if you want, and we will have a private meeting. I am going to rule that there is a bill before the Senate committee, which means that the Senate has given this committee the task of conducting an inquiry specifically into that bill. My view is that this indicates an intention that any inquiry into the provisions of the bill will be conducted at hearings specifically designed to hear on the bill at meetings of the committee specifically designated for that inquiry and will not be pursued at estimates hearings which interested Senators might

not be able to attend and for which there is usually no notification of such subject matters for the inquiries. If you have further questions about wild rivers legislation then I am directing you—

Senator BOSWELL—You are absolutely terrified of this—

CHAIR—I am directing you—

Senator BOSWELL—because Noel Pearson has got your number.

CHAIR— to put your questions through that committee process. Do we have questions of the National Native Title Tribunal?

Senator LUDLAM—I do, Madam Chair.

CHAIR—Thank you, Senator Ludlam.

Senator LUDLAM—I have just a couple that probably will not take too long. I was wondering whether you could confirm for us whether there has been a proposed reduction in the last budget in the number of registries from four to two at the Native Title Tribunal—is that correct?

Ms Fryer-Smith—Sorry,; that has not been proposed?

Senator LUDLAM—Has it happened or is it about to happen?

Ms Fryer-Smith—It is proposed, yes, as a result of the reductions in funding which the tribunal will be receiving next financial year and in the out years of the current budget cycle.

Senator LUDLAM—I do not think that this has been canvassed so far in this session. Can you sketch for us with a broad brush what those reductions in funding mean to the tribunal?

Ms Fryer-Smith—What they mean to the tribunal?

Senator LUDLAM—Yes.

Ms Fryer-Smith—Perhaps I can tell you to begin with what the quantum of the reductions is—and these figures related to the projected appropriation in last year's PBS. In the next financial year it will be \$3.5 million; in 2011-12 it will be \$4 million; in 2012-13 it will be \$4.5 million; in 2013-14 it will be \$5 million. The amount that we will receive next year in revenue will be adjusted so that the impact of the \$3.5 million cut will be ameliorated somewhat. But we have made decisions in relation to a number of measures that we trust will enable us to deal with those reductions. Unfortunately, it will mean at this point closing our Darwin registry and amalgamating it or, more correctly, transferring the functions to that of the South Australian registry.

Senator LUDLAM—That is extraordinary. What are those cuts as a proportion of the overall budget of the tribunal?

Ms Fryer-Smith—Next year it is 7.7 per cent, I think. I am sorry—

Senator LUDLAM—No, that is okay. Allow the officers to look that up if you like. Has that been reflected or is it reflective of a reduction in the case load or the amount of work that is being performed by the tribunal?

Ms Fryer-Smith—Not to my knowledge, no. You would probably best address that question to the department. In fact the workload of the tribunal has maintained a steady rate, so I really think that question is best addressed to the department.

Senator LUDLAM—I will do that. As I am doing that, can you tell us what kind of metrics we use to ascertain the workload of something like the Native Title Tribunal?

Ms Fryer-Smith—We have a range of outputs, and I can tell you what they are if you like.

Senator LUDLAM—Yes. I guess what I am looking for—I will then be happy to turn some of those questions over to the department—is whether there is any sign of whether the workload has been going up or down and how you measure that. They are really quite significant cuts for an agency such as this.

Ms Fryer-Smith—In our view, and according to our records, the work has remained steady in a number of areas. We have mandatory functions under the Native Title Act, which relate to the registration of claimant applications and the registration of Indigenous land use agreements. The work in relation to the registration of claimant applications has remained fairly steady, although claims are disposed of at varying rates every year through a variety of court orders. New claimant applications continue to be lodged, and so the registration function, which is a very technical and complex one, continues at a fairly steady rate. In relation to the Indigenous land use agreements, again there are quite complex and technical processes and procedures relating to the registration of those agreements, and that has been building steadily, particularly in the states where there is most native title related activity. In a volume sense that is Queensland and Western Australia, and there is significant work in South Australia as well.

Senator LUDLAM—Do you have to hand, or can you table for us, the proportion of the casework state by state, or through a state and territory breakdown?

Ms Fryer-Smith—We publish a national report.

Senator LUDLAM—Is that just in your annual report?

Ms Fryer-Smith—Yes, it is our own report.

Senator LUDLAM—Sorry—is that an annual report?

Ms Fryer-Smith—It is in our annual report, yes.

Senator LUDLAM—So it is fairly easy to get hold of. The mining industry frequently cites delays in native title processes as noisy complaints and reasons for things not proceeding. I must admit that I am a bit perplexed as to why cuts to the tribunal have been so severe. Were you consulted—presumably by government—in the process of these shifts to your funding?

Ms Fryer-Smith—Yes, we were. We had discussions in late September and early October last year and a number of scenarios were put to us in relation to possible funding reductions. Ultimately, the reductions are in the quantum that I outlined a few moments ago.

Senator LUDLAM—From a Western Australian perspective I think this is—it used to be and it probably still is—the only Commonwealth agency that has its headquarters in Perth.

Ms Fryer-Smith—There is one other, actually.

Senator LUDLAM—What is that?

Ms Fryer-Smith—The National Offshore Petroleum Safety Authority.

Senator LUDLAM—I trust that we are not cutting its budget. What will this mean for native title processing of claims in Western Australia? What does it look like for the agency?

Ms Fryer-Smith—The scheme is a national one. We do have our principal registry located in Perth, as you just indicated. But, of course, it will have implications for us. For a start, we will no longer have a local presence in the Northern Territory, which clearly is a decision we were reluctant to make. We like to be able to provide services at a local level. So the impact will be felt nationally. It is imperative, of course, for us to carry out our mandatory statutory functions—the ones that I just outlined relating to registration, for example—and also our arbitration function under the future act regime, mediation for future act applications and so on. Where the impact will be felt most, apart from the closure of the Darwin registry, is around what we call our assistance function. We provide a wide range of assistance to parties and persons who are involved in the native title system by way of getting back to the registration function, by way of preliminary assessments and by helping potential applicants to look at the claim and to assess it. By having inevitably to cut down on the assistance function and also our capacity-building function, the tribunal is very concerned that there will be displaced costs, in the sense that other parts of the system will bear the brunt.

Senator LUDLAM—Presumably you put these arguments to government in the course of the negotiations that you are describing to us?

Ms Fryer-Smith—Yes, we did.

Senator LUDLAM—And we have seen the result. Also, presumably, these claims will not go away, the system will not stop working and people will not stop applying and making claims. Is the most important consequence, apart from the closure of the Darwin office, just that things will slow down?

Ms Fryer-Smith—It is hard to predict exactly. I might add that the budget cuts that we will receive next year and in the out years come on top of budget reductions that we had in the current financial year. So we have already put in place a number of measures and mechanisms to cope with a reducing appropriation. I am happy to tell you what they are if you wish. We are trying to optimise our work force. At the moment we are having a structural review of the organisation, which is almost completed, and we hope that that will enable us to have a structure that is more flexible than the current one and better able to deal with a very dynamic native title environment. As you may be aware—I am sure that you are aware, Senator—there were significant changes to the Native Title Act last year, which had the potential to dramatically affect our function. So we have been taking a range of measures to reduce our staffing—preferably, of course, and up to date through natural attrition—and to strategically reposition ourselves to deal with the challenges that we are facing both from a budgetary perspective and also from the perspective of changes to the legislation.

Senator LUDLAM—So there is quite important law reform going on at the same time as your budget is being cut. Without asking you to justify the cuts—obviously that is not appropriate and it would not be your role—what reasons have you been given for the cuts to the tribunal being so severe? They are certainly not workload related as far as I can tell.

Ms Fryer-Smith—I understand that the PBS indicates that a significant proportion of the reductions will be going to the government's Access to Justice initiative.

Senator LUDLAM—Which we strongly support and for which I have been arguing for several years. So we have taken land titles out of the Native Title Tribunal and we have given it to Access to Justice, which I think most commentators would support. But that reason does not go at all to your functions or to the performance of your role. Why has the Native Title Tribunal been picked on? Why not something else?

Ms Leon—It might be more appropriate for the department to help you with that question.

Senator LUDLAM—I would appreciate that.

Ms Leon—I should say that, in order to fund the Access to Justice package, there was not an arbitrary selection of the Native Title Tribunal as part of the participation in funding that package. Funding was reduced to the native title tribunal in recognition of its decreased role under the amendments that the tribunal has just referred to. There was a reasonable basis for reducing funding to the tribunal in anticipation of its reduced function under the new amendments.

Senator LUDLAM—So the reduced function, as you say, is anticipated, because we just heard that the workload of the tribunal has not reduced. So it will be shedding staff in anticipation of the workload reducing. What happens if that turns out not to be the case?

Ms Jones—The reform to the system went through the parliament last year. It has been a process over the last three to four months of the Federal Court working with both the tribunal and the broader native title sector to determine prioritisation of particular claims with a view to trying to accelerate the disposition of a range of claims in the system. That work has been underway over the last three to four months and I think the Federal Court in the very near future will be in a position to set out a program of how it will prioritise all these claims and it will be able to indicate that publicly. That will give a clearer indication of how we see the workload changing in light of the Federal Court processes and the impact on the Native Title Tribunal.

CHAIR—Senator Ludlam, do you have more questions of the Native Title Tribunal after dinner?

Senator BARNETT—Yes, I do.

CHAIR—Senator Ludlam, do you have questions after dinner?

Senator LUDLAM—I could go a little further, but I might have to be somewhere else.

CHAIR—Senator Barnett, you do have questions?

Senator BARNETT—Yes.

CHAIR—We will ask you to come back.

Proceedings suspended from 6.31 pm to 8.00 pm

CHAIR—We will reconvene. We have officers from the National Native Title Tribunal before us so we will continue with questioning there. I think Senator Ludlam said he would

try and get back, but he also has another committee has to get to, so we might go to Senator Barnett for questions.

Senator BARNETT—Thanks very much. Ms Fryer-Smith, it is good to see you again; thanks for being here. Senator Ludlam has asked a number of questions that I want to cover, so that is advantageous and helpful in terms of the budget cuts and how it is impacting on your operations and your different offices around Australia, including in Darwin. The other part to this is: how is this going to affect your determined approach, as you have expressed in previous estimates committees, to dealing with the backlog for native title claims? In previous committees you have expressed concern, as have I and others, about the backlog. I am wondering if you can share how it is going to impact on this because the government has expressed a view in the past that this is a priority area that needs to be addressed. Now suddenly you are getting cut I think \$17.1 million over four years.

Ms Fryer-Smith—That is right.

Senator BARNETT—Is that correct?

Ms Fryer-Smith—Yes. That is correct, Senator.

Senator BARNETT—Can you just give us a feel of the impact in terms of addressing the backlog?

Ms Fryer-Smith—That may be a question that is better addressed either to the department or the Federal Court, because with the changes to the act last year the tribunal no longer has the central role in mediating native title claims. Therefore, the government and the tribunal, and all participants in the native title system, are committed to resolving native title matters by agreement rather than by litigation. But the tribunal no longer has the central role in mediating claims. In fact, fewer than half of the claims are currently with the tribunal for mediation in any event.

Senator BARNETT—Where are they? Do they go to the Federal Court now?

Ms Fryer-Smith—They are with the Federal Court, yes. Either mediation has ceased or they have not been referred to mediation. But we have, I think, 47 per cent, or 203, of the claims which have been filed in the Federal Court with us for mediation.

Senator BARNETT—All right. Would you say that the plans that were put in place last year, and the legislation that was passed to move those mediation efforts through to the Federal Court, have ensured that the tribunal can save \$17.1 million over four years, or is that only part of the picture and you are saving money in other parts of your operations?

Ms Fryer-Smith—Yes, Senator. We have introduced a range of measures, which I am happy to explain to you, in order to deal with the funding reductions. These measures that we are in the process of introducing now for the coming financial year and the remaining years of the current cycle will be put in place over the next few months. They build on the measures that we put in place last year when we faced reductions in approximately the same quantum.

Senator BARNETT—Can I be reasonably specific with you?

Ms Fryer-Smith—Sure.

Senator BARNETT—In terms of the mediation which has gone to the Federal Court, what proportion of the cuts will that cater for? Is it about half, is it most of or a limited proportion?

Ms Fryer-Smith—I am sorry if I am not answering in exactly the way that you are wanting me to, Senator, but it is a bit complicated. When you say the mediation has gone to the Federal Court, the changes that the act put in place last year gave the Federal Court complete discretion to refer mediation to parties external to the court or to the tribunal—or, indeed, for matters to be mediated within the court itself. Prior to that, pursuant to the 2007 amendments, the tribunal was vested with the responsibility for mediating native title claims. The 2009 amendments turned that around. In fact, there has been a small reduction in the matters which are with us for mediation in the last eight months since the amendments were operationalised. So, in effect, we are still carrying almost the total mediation load that we had before. Naturally, it is a mandatory responsibility under the act, so it is one that we will put our full resources into as much as we can. But, yes, we are making other cuts in other areas.

Senator BARNETT—Well, in light of the time, can you reasonably precisely indicate where the cuts will occur and specifically advise in terms of staffing levels how that will be impacted?

Ms Fryer-Smith—Yes. I will let you know now, Senator, that our guiding principle has been to apply our resources to carry out our statutory functions and to finance a high level of service delivery. We want to maintain a presence in as many areas as we can. I have already flagged that we will be closing the Northern Territory registry in Darwin as soon as practicable and merging that with the South Australian registry to become a central Australian registry. We are going to give up additional lease space in one of our buildings in Perth and transfer employees to our principal registry.

In terms of staffing, I mentioned before that we are having a structural review to enable us to have a more flexible and appropriate structure to deal with the new environment in which we find ourselves. We have suspended all current advertised vacancies pending the implementation of the restructure. We are only filling business critical vacancies at this time. We have a relatively high proportion of non-ongoing contracts, which is a policy position that we adopted some time ago. So undoubtedly we will be letting all non business critical, non-ongoing contracts expire. We are also putting in place measures to call for voluntary redundancies. We hope to call for expressions of interest in up to 20 voluntary redundancies in the next little while. We are also rationalising—

Senator BARNETT—What does a ‘little while’ mean? Six months, 12 months?

Ms Fryer-Smith—Within a month or two.

Senator BARNETT—So this has caused considerable angst or grief or certainly urgent action at your level to make these cuts work?

Ms Fryer-Smith—Certainly. We are mindful of the need to keep the morale of our staff and members as high as possible, so we are keeping them fully informed. We are talking with the union and generally. But we have really been on an expenditure constraint or restraint operating basis for over a year now.

Senator BARNETT—Okay.

Ms Fryer-Smith—I might add, Senator, that we will have to go into deficit to fund some of these.

Senator BARNETT—Really? What level of deficit are we heading into?

Ms Fryer-Smith—We are going to have to have resort to our accumulated surpluses; probably in the region of about \$5 million.

Senator BARNETT—When would that kick in?

Ms Fryer-Smith—That will be in this financial year, or 2010-11.

Senator BARNETT—So this coming financial year, obviously?

Ms Fryer-Smith—Yes.

Senator BARNETT—So where is this money coming from?

Ms Fryer-Smith—From our accumulated surpluses, Senator.

Senator BARNETT—How much is in your accumulated surpluses?

Ms Fryer-Smith—About \$17.1 million, Senator.

Senator BARNETT—And did the government know this when the decision was made that that requirement was—

Ms Fryer-Smith—You would have to address that question to the department, Senator.

Senator BARNETT—Sure. When these cuts were envisaged and announced, was it envisaged that you would go into deficit or is this a decision that you have made subsequent to the cuts?

Ms Fryer-Smith—We have informed the department at all times that that would be required.

Senator BARNETT—Right. So you kept them fully informed?

Ms Fryer-Smith—Yes.

Senator BARNETT—Mr Wilkins, were you aware that the tribunal would go into deficit to facilitate the cuts of \$17.1 million over four years?

Mr Wilkins—No, I was not. But I will let Katherine Jones answer that question, Senator.

Ms Jones—Senator, in terms of the specifics of the actions that the tribunal would need to take in terms of managing the reduced funding in the forward years, there have been some conversations, obviously, between the registrar of the tribunal and myself in relation to how the tribunal might do that. I suppose the significant point to make is that the tribunal had accumulated a significant surplus over a period of time. There was a period of four or five years where it operated with a surplus. It was not required to return that surplus to consolidated revenue, but it was retained within the tribunal.

Senator BARNETT—Does the department perhaps intend to return that accumulated surplus to the department rather than leave it within the tribunal? Is that a plan for the department?

Ms Jones—Senator, there was a review of funding in the native title system in 2008. There was consideration of funding pressures across the system as a whole. The outcome of that review was that a decision was taken in the previous budget to reallocate some money from the tribunal to other areas of the native title system that was seen as having a greater need for additional funding, given that the tribunal had not been expending its full appropriation. That was accompanied by additional funding in the 2009-10 budget of \$50 million. An amount of \$46 million went to native title representative bodies and \$4 million came to this department to enable it to fund strategies to increase the number of anthropologists in the native title system.

Senator BARNETT—Of your so-called savings, which are cuts, of \$17.1 million over four years, where will that money now be expended? Is it going to the Federal Court for their mediation services, is it going to somewhere else or is it just simply an efficiency measure to address the blow-out in the government debt?

Senator Wong—Actually, Senator, you would probably want to rephrase that. The budget actually delivers a reduction in debt and returns the budget to surplus within three years. I do not think it is a blow-out.

Senator BARNETT—Minister, we know how big the deficit is. It is the second largest since World War II. But thanks anyway for your contribution.

Senator Wong—And the lowest of any advanced economy of the world, Senator, so we can have that discussion if you would like.

Senator BARNETT—We could.

Senator Wong—I do not particularly want to have it, but I think if you are going to put something to a witness, it should at least be accurate.

Senator BARNETT—It is accurate, thank you.

CHAIR—Is that a question, Senator Barnett?

Senator BARNETT—I am waiting on Ms Jones's response. She is just checking her papers.

Ms Jones—In terms of the savings in relation to the NNTT, at this stage there is no decision in terms of reallocating to the Federal Court. They were just savings and efficiencies that contributed overall to the portfolio budget.

Senator BARNETT—Thank you. I want to move to another area. Ms Jones, in evidence earlier you indicated with respect to the Queensland Wild Rivers Act that your advice to this committee was that it did not affect native title rights. Are you aware that some people—in fact, some experts, some lawyers—would say that that is a narrow view of native title rights? Are you aware that other people have a different opinion to your own on that matter?

Mr Wilkins—What is the wider concept, Senator?

Senator BARNETT—Ms Jones gave evidence, I think before the break, in terms of native title rights. We were discussing that earlier. The evidence was that the Wild Rivers Act in Queensland did not affect native title rights. I am responding to that comment and asking a further question about that advice that Ms Jones provided.

Mr Wilkins—I regret that I was not here. But I find it difficult to see how a state act could override a Commonwealth act.

Senator BARNETT—This is relating to native title rights. I am asking Ms Jones for her opinion.

Mr Wilkins—Native title rights are enconced by deed of a Commonwealth statute, so I am just wondering how a state statute would override that.

Senator BARNETT—Well, this is the question.

Senator Wong—Senator, I was not here before the break. I understand evidence was given. I also understand Ms Jones has appeared before another committee of the Senate in relation to the Leader of the Opposition's private member's bill. I think the question you are asking her is to engage in an argument about whether her advice is correct. She has given her evidence on that. There are others, you say, who have a different view. I am not aware of that but I am not sure how this witness can respond to this other asserted set of views in the abstract.

Senator BARNETT—Well, I think it is a legitimate question. I appreciate your comment, Minister. Let me make it clear I am not asking about a bill before the parliament, because that is in breach of standing orders, as you have indicated. We had that discussion before the break. What I am asking Ms Jones about is the evidence that she put to the committee before the break where she indicated that the Queensland Wild Rivers Act did not, in her view, breach and did not affect native title rights.

Senator Wong—What are you asking her about that? Has she changed her mind?

Senator BARNETT—No. I am wanting to explore that issue with Ms Jones. She has expressed an opinion. I would like to explore that opinion with her.

CHAIR—Ms Jones will also be aware that, as the chair, I have ruled that because the Wild Rivers Act is currently before this committee for inquiry, it is appropriate that any questions in relation to that legislation be put to that inquiry in the right forum with the right people present so that any evidence we receive can be put towards our report, which is not due to be tabled until 30 June.

Senator BARNETT—Ms Jones, could you provide any reason to back up your opinion that the Wild Rivers Act in Queensland does not affect native title rights?

CHAIR—Senator Barnett, as I said, I am not accepting that that question is in order for this current committee inquiry. So perhaps if Ms Jones wants to take it on notice, she could provide that answer to the committee secretary for the purposes of the deliberation of our inquiry.

Mr Wilkins—I gather that Ms Jones, Senator, has already given you her reason and has nothing further to add, really. Section 44(2) of the Wild Rivers Act confirms that the wild rivers declaration is given effect and the other Queensland acts cannot directly or indirectly limit a person's native title rights or interests.

CHAIR—So if you have other questions to the National Native Title Tribunal, Senator Barnett, let us proceed.

Senator BARNETT—Minister—

CHAIR—I have ruled these questions out of order. We currently have an inquiry before us.

Senator BARNETT—That is right.

CHAIR—If you want to choose to ask questions about that legislation, do it in the right forum at the right time.

Senator BARNETT—Minister Wong indicated that she was not aware of anybody else having a view contrary to that of Ms Jones. I put it to you, Minister, that there are a range of key stakeholders that have a contrary opinion to Ms Jones. I want to make you aware of those people, who include Noel Pearson. He has expressed his view extensively not just in Queensland but in other forums, including in other places.

Senator Wong—Senator Barnett—

CHAIR—Probably, in a more appropriate place, Ms Jones is part of that. But we will not go there tonight.

Senator Wong—Thank you, Chair. I would like to briefly respond, given that intervention. What I was responding to, Senator, was you putting a range of unspecified assertions about others' views to Ms Jones without outlining them to her. That is what I was responding to.

Senator BARNETT—Would you like me to outline them, because I would be happy to?

Senator Wong—No. Then I went on to make the point that, leaving aside the standing order issue, which I understand the Chair has ruled on in my absence, she has put a view about her opinion. I am not sure how it assists or whether it is appropriate for her to be quizzed about what another person unspecified might say which may or may not go to the same issue about which she has expressed her view.

Senator BARNETT—Sure. I was responding, Minister, to your comment that you were not aware of others who had a different opinion. I am alerting you to the fact that there are others who have a strongly different view.

Senator Wong—That was not actually what I was saying, Senator.

Senator BARNETT—Well, that is what is in the *Hansard*.

Senator Wong—I cannot help it if you find it difficult understanding.

CHAIR—Are there any other questions of the National Native Title Tribunal?

Senator BOSWELL—I want to express my concern that these questions, which are important, should not be allowed to be asked under some absolutely spurious suggestion that the bill is before a committee. That is nonsense, and you know it. We have often addressed bills that are before committees. I register my protest. I think you are wrong; I think you are terrified of Noel Pearson.

CHAIR—We will not go to Noel Pearson's comments and behaviour, Senator Boswell. You know all too well the background we have been dealing with recently. Perhaps if my secretary can provide me with the advice from the Clerk that we received prior to dinner, I shall table it and we will distribute it. We will possibly incorporate it in *Hansard* as well. It is advice from the Clerk of the Senate regarding the procedures before estimates when a bill is

before a Senate committee. I have read it and I will not repeat it again, but I think we will table this advice about questions about the provisions of bills.

Your questions may well be valid. The point that I am putting and ruling on as Chair on this advice is that the provisions of the bill will be conducted at hearings and meetings of the committee specifically designated for that inquiry. That is not the purpose of the Legal and Constitutional Legislation Committee this evening. So if you have further questions, Senator Boswell—

Senator BOSWELL—I have got no further questions.

CHAIR—in relation to wild rivers, please provide them to the committee secretary and we will deal with them in the course of that committee inquiry. In the meantime, I think we will get those three paragraphs distributed for everybody and incorporated into *Hansard*.

The document read as follows—

It might be useful to set down the substance of the advice I gave yesterday on whether questions could be asked at estimates hearings about the provisions of a bill which is before a Senate committee.

Under a resolution passed by the Senate in 1999 (adopting a report of the Procedure Committee), the Senate delineated the scope of questions at estimates hearings as “any questions going to the operations or financial positions of departments and agencies”. While this is a very wide ambit, I do not think that it extends to questions about provisions of bills, for example, questions about the meaning, purpose, intention or effect of clauses in bills. Questions about departmental operations connected with bills would be relevant, for example, whether a department engaged consultants to assist in the preparation of a bill, at what cost it was prepared, and how it is to be administered.

When a bill is before a Senate committee, this means that the Senate has given that committee the task of conducting an inquiry specifically into that bill. This indicates an intention that any inquiry into the provisions of the bill be conducted at hearings and meetings of the committee specifically designated for that inquiry, and not pursued at estimates hearing which interested senators might not be able to attend and for which there is usually no notification of such specific subject matters or inquiries.

CHAIR—There are no other questions to the National Native Title Tribunal. Ms Fryer-Smith, thank you very much for being here this morning.

[8.24 pm]

Australian Security Intelligence Organisation

CHAIR—I welcome officers from ASIO, the Australian Security and Intelligence Organisation. Mr Irvine, good evening and welcome to our legislation committee’s deliberation of estimates and the current budget before this parliament. Before we start with your evidence this evening and your answers to questions we may have, do you have a statement that you want to provide to the committee?

Mr Irvine—No, I do not.

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

Senator BARNETT—Mr Irvine, thanks for being here. We notice from the budget papers that ASIO has been cut \$15.1 million over four years. We have also noticed a claim in the budget papers that this will not affect ASIO’s operations. We also notice that ASIO, I think

just very recently, launched a recruitment drive in March. I would like you or somebody at the table to explain how that is possible.

Mr Irvine—I will ask my colleague Mr Fricker to perhaps explain in more detail. Generally, we have been able to achieve some savings through a variety of efficiency measures within the organisation in terms of a reorganisation and so on. That has enabled us to provide money back into the budget. At the same time ASIO remains funded to continue to recruit up to the numbers agreed some three or four years ago. That recruitment process can continue within the current budget through until its scheduled conclusion, assuming we do get all the numbers, at the end of this financial year.

Senator BARNETT—Let us drill down and go into the detail. Where will the cuts be made and what programs will be cut over the next four years?

Mr Irvine—There will be no cuts to programs. This has been achieved primarily through efficiencies. We have reduced the numbers of divisions in the organisation.

Senator BARNETT—From what to what?

Mr Irvine—I think down from 12 to 10.

Senator BARNETT—So what does that mean, in effect? Are you amalgamating some divisions?

Mr Irvine—We have abolished two divisions and redistributed the functions from those divisions within the rest of the organisation.

Senator BARNETT—So in abolishing those two divisions you have not made redundancies? You have just transferred the staff, or are they made redundant?

Mr Irvine—I think it is fair to say that there were no redundancies in doing that. The natural attrition of staff and so on has enabled us to achieve those objectives.

Senator BARNETT—So you are operating via natural attrition to reduce the numbers to ensure the costs are within the budget?

Mr Irvine—In fact, it is not so much attrition; it is related to the rate with which we are employing new people under our growth plan.

Mr Fricker—That is absolutely right. So it is not a case of cutting down on the number of staff in ASIO. We are still on a growth path, as the Director-General said, plateauing out in 2011. What we have done is achieved some operational efficiencies by rationalising our management structures, by introducing some business process reforms across the organisation and by rolling out some of the new IT facilities and information sharing systems that we have. Other improvements in our IT are virtualising servers and rationalising storage systems et cetera. All of these things assist in achieving efficiencies off our budget.

Senator BARNETT—Let me just ask upfront: are you going into deficit to achieve these cuts?

Mr Irvine—No.

Senator BARNETT—It is a little hard to comprehend that you are going into a growth plan yet you are achieving the cuts, but I appreciate you are doing your best to respond to that. How significant is the growth plan? Can you explain that for us?

Mr Fricker—Currently, it is around 1,700 staff right now. We have a target of about 1,860 staff with our budgeted growth.

Senator BARNETT—That is 1,860 by when?

Mr Fricker—Next financial year.

Senator BARNETT—By 30 June next year?

Mr Fricker—Yes. During the 2010-11 year. That is our target.

Senator BARNETT—So by the end of next year, it will be 1,860 or thereabouts?

Mr Irvine—Thereabouts.

Senator BARNETT—And you are about 1,700 now. So that is quite a significant increase.

Mr Irvine—Yes.

Senator BARNETT—What sort of percentage increase? That is a five per cent increase, is it?

Mr Fricker—That is correct.

Senator BARNETT—It is more than that. It is closer to a 10 per cent increase. If you are on 1,700 now, you are getting an extra 160. It is about nine per cent, is it not?

Mr Fricker—Yes.

Senator BARNETT—I am just trying to work out what your costs for staff are now. What will be the costs for staff on 30 June next year?

Mr Irvine—I think that to give you an accurate answer of that, I would have to take that on notice.

Senator BARNETT—Can you understand that if you are increasing recruiting and you are increasing growth by about nine per cent staff-wise, you must have some very significant cuts in other places. I do not know if you are closing offices. Are you closing offices anywhere?

Mr Irvine—No.

Senator BARNETT—Are you still moving to your new headquarters?

Mr Irvine—Yes.

Mr Fricker—What we should explain is that, because ASIO is going through a growth period, our appropriations are increasing each year. This \$15 million cut is, as the director-general said, a reduction in our planned growth. So the organisation is still funded to grow. Our operating expenditure will still be funded through appropriations. The \$15 million, as I said, is not a reduction on today's budget figures; it is a reduction on our projected figures into the out years.

Senator BARNETT—The budget papers show that ASIO will be adopting strategic work practices. What are these new strategic work practices? Can you define them for us?

Mr Fricker—As I was saying a moment ago, what we are doing is looking across the organisation at how we can rationalise our business processes and how we can rationalise our resources in our organisation as well as our strategic information technology capabilities to essentially make sure we get the best bang for the buck that we can out of that infrastructure. So they are across the board looking at our corporation functions and our corporate capabilities to make sure that we are achieving, as I said, productivity benefits from those improvements.

Senator BARNETT—You accept and agree that you have increased responsibilities over the last 12 months and into the future as a result of recent legislative changes?

Mr Irvine—Increased responsibilities will come to us essentially with the royal assent to that legislation. Yes, I do accept that.

Senator BARNETT—And which bill are you referring to, Mr Irvine?

Mr Irvine—This is in relation to people smuggling.

Senator BARNETT—Or the anti people smuggling bill?

Mr Irvine—Yes.

Senator TROOD—I gather from what you have just said, Mr Fricker, that you are comfortable about accommodating the additional staff?

Mr Fricker—Yes.

Senator TROOD—In the context of this organisation that is growing as a result of the increased funding that has been provided over a period of time, will the 89, which will take up the average staffing level, be accommodated relatively easily?

Mr Fricker—Yes. We have our new headquarters being constructed.

Senator TROOD—I do not think there is a person in Canberra who has not noticed that, Mr Fricker.

Mr Fricker—Well, it is a magnificent hole in the ground at the moment, but it will transform itself. That clearly is part of a wide range of organisational growth programs that we have running. Your question goes to staff accommodation and making sure our staff have the right amenity, facility and security to do their work. Clearly our key plank in that platform is the new headquarters that we are building.

Senator TROOD—I see. Have decisions been made as to the allocation of these staff into various activities in relation to ASIO?

Mr Irvine—The new staff?

Senator TROOD—Yes.

Mr Irvine—There is a very complete staffing plan that was developed some three or four years ago, when this expansion began. It does stipulate, although we have an ability to vary it, roughly what staff are required and where.

Senator TROOD—Are you able to share that with the committee?

Mr Irvine—In what sense: geographic or functional?

Senator TROOD—I am in your hands in this matter. I am happy for you to describe where these extra staff members are going to be deployed within the organisation.

Mr Irvine—I will answer that in general terms. What the additional staff are assisting us to do is to cover the ground more effectively in the counterterrorism area, to assist us to develop our IT capabilities and to assist us in some of the other areas—assessment, for example. Five years ago, when we looked at it, it was clear that ASIO needed an across-the-board expansion of capacity and capability. So, in a sense, this is going across the board.

Senator TROOD—So this is a supplementation, is it, for various areas of the organisation?

Mr Irvine—I would describe it simply as an enhancement of the capability of the organisation to meet the sorts of challenges, particularly in the counterterrorism area but also in other areas, that are facing the organisation in this day and age.

Senator TROOD—Does it involve increasing the number of graduate level recruits in the organisation?

Mr Irvine—Most definitely. We are looking for graduates. We are looking for people who have also had experience elsewhere. We are looking right across the board. There are IT people in particular and university graduates who can come in and begin a basic training and develop their skills with us, people from other departments and other areas of employment where they have the appropriate skill sets and can come in laterally, if you like.

Senator TROOD—And how easy is it to find the people with the experience and qualifications that you need?

Mr Irvine—It is very easy. It is not always quite so easy to get the sort of people we want. The market still is, oddly enough, quite tight.

Senator TROOD—My reference was really to the people that meet your appropriately high criteria for employment. I imagine you have a lot of applicants but not all of them will meet your standards. I guess I am interested to know whether or not you are satisfied that you are able to recruit the people you need for the positions that you have available.

Mr Irvine—To give you an honest answer, I would say that I am not entirely satisfied. I would love it to be better. I would like to be able to get more appropriately qualified people on stream quicker than we are doing at present. It is not that we are panicking or it is a difficult situation. Because the standards are so high, those sorts of people take time to attract and recruit.

Senator TROOD—The organisation does security assessments of asylum seekers?

Mr Irvine—Yes.

Senator TROOD—That would seem to be an increasing demand upon your resources. Is that an accurate statement?

Mr Irvine—Yes. I think that is accurate, yes, definitely.

Senator TROOD—Do you have any figures that can tell us what sort of an increase there has been, if indeed there has been a significant increase, between the 2008-09 year and the 2009-10 year?

Mr Irvine—Yes. Just let me find them.

Mr Fricker—I brought with me a table with a very large number of figures on it. I know from experience I should go through these very carefully and make sure that I am giving you the statistics—

Senator TROOD—I think that is wise, Mr Fricker. It may be easier, if you are able to, to table the whole table.

Mr Fricker—It is in no fit state for me to do that. It is a combination of scribbled notes for me as well.

Senator TROOD—Perhaps you could render it in a form that is legible and then table it.

Mr Fricker—All right.

Senator TROOD—In the meantime, if you have those statistics, I would be grateful for them.

Mr Fricker—Very good. These are security assessments. Just to be clear here, I am talking about assessments that ASIO has completed for irregular maritime arrivals. To be clear, just in terms of how our statistics are gathered here, these include the *Oceanic Viking* passengers. That is just the way in which ASIO has gathered its statistics. I make that point because the Department of Immigration and Citizenship may have a slightly different definition for the *Oceanic Viking*, for example, because they were not brought to Australia as irregular maritime arrivals. So with that caveat I will give you the statistics. In the 2008-09 year, we completed 207 irregular maritime arrival security assessments. In the period July 2009 to 31 March 2010, we completed 2,028 assessments for irregular maritime arrivals.

Senator TROOD—That is 2,028?

Mr Fricker—That is correct. That is assessments completed.

Senator BARNETT—That is a tenfold increase.

Mr Fricker—That is correct. As I say, the comprehensive statistics in the picture of IMAs in previous years must be provided by Immigration and Citizenship. This only reflects those assessments referred to ASIO and completed by ASIO.

Senator TROOD—We will deal with immigration on another evening.

Mr Fricker—I just wanted to make sure that I was contextualising these numbers correctly.

Senator TROOD—I see. But you are the clearing agency, are you not, for all of these irregular maritime arrivals, as you call them?

Mr Irvine—We provide security assessments—

Senator TROOD—Yes. That is what I mean.

Mr Irvine—on cases referred to us.

Senator TROOD—Which is most of those people who are arriving irregularly, I assume?

Mr Irvine—Certainly I think it is a large proportion of those people who are arriving on Christmas Island at the present time, yes.

CHAIR—Mr Irvine, how many of them would be people who would overstay visas or those who might arrive by air or students?

Mr Irvine—The figure we have given you refers to irregular maritime arrivals—

CHAIR—Just the maritime arrivals?

Mr Irvine—the bulk of which are—

CHAIR—Do you have figures for the other assessment areas you are asked to undertake?

Mr Fricker—Apart from IMAs, we do not usually gather statistics on the means by which the individuals arrived in Australia. Our statistics are gathered more on the assessments that we have turned around and simply whether they are temporary or permanent visas.

CHAIR—What is the total number you would have dealt with in that period, though?

Mr Fricker—The total of visa security assessments for 2008-09 was 59,884. In the period July 2009 to 31 March 2010, it was 26,226.

CHAIR—That is the total number of people you have been asked to make an assessment on?

Mr Irvine—Yes, right across the board.

Mr Fricker—Across all classes of visa. That is correct.

Senator TROOD—As Senator Barnett said, there has been a tenfold increase in the irregular maritime arrivals over that period of time. How have you accomplished that with the resources that are available?

Mr Irvine—We are responding to DIAC priorities. We have had a lot of people working very hard. We have had to rationalise some of our activities in other areas. I do not say we are detracting from our security assessment activities in other areas, but there has been a drop in the number of security assessments completed in some other areas. For example, the number of protection visas or other visa classes has fallen by about 40 per cent. Part of that has been achieved through a much more sensible and rational process that we have agreed on with the department of immigration as to when they are referred to us in what circumstances. A lot of what you might call unnecessary checking has in fact been eliminated.

Senator TROOD—I can see how you might routinely deal with the process in a different kind of way with regard to some assessments, but this is a massive increase in demand on your services, clearly—

Mr Irvine—Yes.

Senator TROOD—beyond something you can easily accommodate, I would have thought, with just the routine shifting of people. How many additional staff have you had to move into this area to deal with this demand?

Mr Fricker—We would not go into specifics in terms of how many people we have allocated within the organisation as a matter of security, because you can reverse-engineer that to then deduce how many staff we have applied to other security targets. So, as a matter of normality, we do not break down our resource allocations to that level of detail. However, might I add that technology has played a large part in the efficiency gains made in this area as

well. Together with the department of immigration we have invested quite a bit in IT systems, automated connectivity between our agencies, data standardisation and levels of automation in the process. They have delivered significant productivity gains as well, which has helped both agencies meet this challenge.

Senator TROOD—Let me accommodate the sensitivity of numbers. Save for the fact, can you tell us whether or not you have had to double or triple or increase the numbers in that form? Have you not done that? There are not many people who could reverse-engineer double, triple or quadruple and come up with a number in relation to the size of the agency, I would have thought.

Mr Irvine—I think to go into great detail on that would give us this problem, from our point of view, of security. What I will say we have done is that, when we have been required to, we are able to surge staff for short periods of time. We have done that. I do not see a derogatory effect elsewhere in the organisation. We are managing.

Senator TROOD—Surging staff sounds a bit uncomfortable. As you are surging staff, does that mean having staff work longer hours? Do more staff work longer hours? Is that the kind of thing you mean, or does it involve longer hours and deploying more staff? I am interested in getting a relatively clear understanding about how much the presence of these irregular maritime arrivals is placing pressure on the resources. You have told us that you are relatively comfortable. You have been extremely well resourced over a number of years. You have said that, and I think everybody recognises that. But this is an extraordinary increase in a particular area of the organisation's capability. I am trying to get a sense of how much of a demand that is placing upon your resources.

Mr Irvine—It is placing a great demand on the management of ASIO to prioritise and to move resources within the organisations where they are needed. We have done that. So far, anyway, I am reasonably comfortable that we are managing an increased caseload of IMAs without a serious deleterious effect on the rest of the activities of the organisation.

Senator TROOD—Thank you for that. As the pressure of dealing with this number has increased, do you know whether the time it has taken to process an individual case has increased significantly or not? Have you been able to dispose of the numbers in more or less the same period of time?

Mr Irvine—With regard to irregular maritime arrivals, we are operating currently, and have been for some time, on the average case taking about 35 days from the time that it is referred to us to the time that we present a recommendation to the department of immigration. There are cases that take longer. There are more complex cases that just require a lot of work. There are some cases which we can do more quickly. But about 35 days is the current operating norm.

Senator TROOD—That is the current operating norm. Mr Irvine, has that been the norm for a period of time? Have you been working to that kind of time line?

Mr Irvine—Certainly for much of this year. Actually, it has come down. Frankly, I think it has come down from over 40 days to about 35 currently.

Senator TROOD—So you are actually taking less time to assess more cases?

Mr Irvine—At the moment, yes.

Senator TROOD—I see. I wonder whether you are familiar with this newspaper report that appeared in the *Australian* in March which said ASIO was sinking under asylum seeker caseload. The suggestion was made there—in part, I have to say, supported by some observations by Mr Carnell before he left the IGIS position—that there had been an increase in the number of complaints in relation to the time it was taking for ASIO to undertake assessments. Are you familiar with that?

Mr Irvine—I am familiar with that, yes.

Senator TROOD—Is this an inaccurate report?

Mr Irvine—It is a fact that complaints to IGIS amounted, I think, to about 461 administrative inquiries made to IGIS. That does represent a significant increase over previous years. But of those 461 complaints, in fact only two related to administrative errors by ASIO, which were acted upon immediately, and our processes were reviewed to avoid similar errors recurring. About one-third of those complaints did not actually relate to ASIO at all. So, yes, there has been an increase. There is another reason, I think, why there might be an increase. Mr Carnell noted this at the time. There is an increased awareness by applicants and by migration agents of the option, as it were, of being able to refer things to the Inspector-General of Intelligence and Security. So I am not overly concerned at those figures.

Senator TROOD—I see. So part of your explanation is that people have become much more aware of their rights. Some of the claims in relation to ASIO are frivolous in the sense that the claim does not have anything to do with ASIO's activities.

Mr Irvine—That is true.

Senator TROOD—In that sense I mean frivolous. So that leaves a balance of claims. We do not have a figure for it. Have you examined the claims that you could say to be justified in the light of ASIO's activities and determined whether or not you need to make some changes in the way you are doing things?

Mr Irvine—We do constantly review those processes, but at the moment I do not see any need for us to be making changes. It is a fact there has been an increasing number of people applying to the inspector-general. As I say, not all of them in fact relate to ASIO. Of those that do, we are still trying to ensure that we process claims within about 90 days. And 90 days is in fact set down by legislation according to one of the categories of visa.

Senator TROOD—So are the claims that are properly directed towards ASIO essentially claims about the time it is taking for the claims to be processed?

Mr Irvine—Yes. That is true. But it is getting to the stage where we are now having instances where someone is putting in a visa application and immediately putting in an application to the inspector-general. It just seems that that is becoming, as it were, part of the established process being used by applicants and migration agents.

Senator TROOD—Are you aware, and you may not be, how long it takes IGIS to contact you after they receive a complaint?

Mr Irvine—No. I could not give you a time on that.

Senator TROOD—When you receive a complaint that IGIS has received, what then is your procedure? Does that require a thorough review of the applicant's or the individual's assessment? Is that what you do in response to a complaint?

Mr Fricker—Perhaps I could briefly describe it. Yes, if we receive any form of complaint or correspondence from IGIS, we do as a matter of priority go to the file of the particular case. We extract from our history and our transaction record when we receive the application what we have done with it since, if there has been any communication which has gone back to the applicant or to the department, and prepare a case for explanation to the IGIS. That is done in every case.

Senator TROOD—Is that reassessment, Mr Fricker, included in your statistics with regard to the original assessment or is that yet another category?

Mr Fricker—Forgive me, Senator. Perhaps I was a bit loose with my language there. It is not a reassessment in terms of another security assessment. It is a separate lay assessment about performance in the handling of that case to account for ourselves to the IGIS. I apologise.

Senator TROOD—No, I understand the point. And that is undertaken by a different group of officers to the agency. Is that right?

Mr Fricker—It is undertaken by a combination of our officers from that same area within the agency but, importantly, by officers from the office of the IGIS. So the IGIS and his or her staff have complete access to all of our records. They will come to our office and inspect the records for themselves.

Senator TROOD—Did I understand you, Mr Irvine, to say that you undertake that review in 90 days? Is that the figure you are referring to?

Mr Irvine—No. The statutory period for protection visas is 90 days.

Senator TROOD—Do you have any statistics as to how long it takes you to undertake, generally speaking, these reviews?

Mr Irvine—To do the reviews?

Mr Fricker—The reviews for the inspector-general? No, I do not. But the inspector-general reports on our performance in his annual report—or her, sorry, I should say: the inspector-general, in the office's annual report.

Senator TROOD—She at the moment, yes.

Mr Fricker—She at the moment, correct. So that is where our performance is measured, if you like, and reported.

Senator TROOD—I see. Do you keep any statistics as to the occasions when a review has been requested by IGIS and the substance of the review has been shown to be true or accurate?

Mr Irvine—In a sense, as you said before, of the 461 complaints, IGIS found that only two of those complaints related to administrative error by ASIO.

Senator TROOD—I see.

Senator BARNETT—Thanks again, Mr Irvine. Just on this matter, these figures are astounding. In the nine months to 31 March, you have 2,028 assessments that have been undertaken. As I calculate it through to 30 June, if you have had about 700 assessments per quarter, that would bring it up to 2,800 for the full year or thereabouts, which is actually closer to a fourteenfold increase year on year. Does that sound about right to you?

Mr Irvine—That projection seems about right.

Senator BARNETT—I am doing it based on the figures you have given us. I assume that in the first quarter from July last year the figures were perhaps a little less and they have grown over time, have they, quarter on quarter?

Mr Irvine—I do not have the quarter on quarter figures, no.

Senator BARNETT—So we cannot assume that?

Mr Irvine—I think you can assume that for the first quarter the number of irregular maritime arrivals referred to us was lower than it is at the present time.

Senator BARNETT—I am just taking it from the 207 from the financial year earlier and then suddenly it is 2,028 in nine months. I assume that it has gone up like that. The projection has increased significantly over that nine-month period. Would you say that it is still increasing at a similar rate to the last nine months?

Mr Irvine—What I can say is that the number of irregular maritime arrivals has increased. Certainly the references to us have increased in that way if you project it forward. But that is a big if. I do not know. But if you project it forward—

Senator BARNETT—Well, we do not know what is going to happen in the future, but based on current trends?

Mr Irvine—Those figures would be reasonably accurate, yes.

Senator BARNETT—And the referrals come from DIAC, I assume?

Mr Irvine—That is correct.

Senator BARNETT—Solely from DIAC?

Mr Irvine—Yes.

Senator BARNETT—And the assessments are primarily related to irregular maritime arrivals on Christmas Island. Is that correct?

Mr Irvine—Yes. Irregular maritime arrivals, definitely.

Senator BARNETT—Would the bulk of them be from there? The vast majority?

Mr Irvine—That is true, but I think that is probably a question to direct to DIAC.

Senator BARNETT—Sure. We can ask DIAC. Can we assume that you have officers on Christmas Island? I do not want to know all the details there. Where are the assessments undertaken?

Mr Irvine—The assessments are undertaken in Australia but with reference to people on Christmas Island, yes.

Senator BARNETT—So the key question, then, is: how many adverse assessments have there been year on year? I can recall from the February estimates you said there were two adverse assessments in the year 2008-09.

Mr Irvine—That is correct.

Senator BARNETT—And then 11 adverse assessments in the six months through to 31 December. So can you give us an update on the number of adverse assessments?

Mr Irvine—There have been five adverse assessments relating to irregular maritime arrivals and 10 relating to other applications for permanent visas or temporary visas.

Senator BARNETT—Over that nine-month period?

Mr Irvine—Over the nine-month period, yes.

Senator BARNETT—So that includes the 11 adverse assessments that you gave us in February?

Mr Irvine—Yes.

Senator BARNETT—So now we have 15 and you have broken it down into five and 10?

Mr Irvine—Yes.

Senator BARNETT—Right. I am with you. We have some questions for DIAC. But it would suggest to you that the border control measures are seriously out of whack in terms of the substantial increase in numbers over that period of time. You have referred to the processing times and you are dealing with it within your resources, as you say, adequately, subject to the constraints that you are under. So you are handling it at the moment based on the resources that you have?

Mr Irvine—That is correct. We are handling it at the moment with the resources that we have.

Senator BARNETT—Do you mind me asking whether in the next 12 months if this projection continues you can cope?

Mr Irvine—I believe that we should be able to cope. But obviously there will be pressures.

Senator BARNETT—There will be challenges for you and pressures for you. No doubt if they come to light, you will have to discuss that with your minister and with the department accordingly?

Mr Irvine—Absolutely.

Senator BARNETT—I appreciate that very much.

Senator PARRY—I have a final question on that issue. When would an irregular maritime arrival not be referred to ASIO?

Mr Fricker—Well, we are not required to do security assessments on minors. At the moment, every IMA is being referred to us for a security assessment. That is not in any legislative requirement. It is entirely an intelligence led, risk assessed position that ASIO takes.

Senator PARRY—Except minors?

Mr Fricker—That is right. We will not do security assessments on minors.

Senator PARRY—Thank you. I would just like to move now to the aviation security identification cards and the maritime identification security cards—the ASICs and MSICs. Last financial year, the last reporting period, 56,266 checks were carried out by ASIO. I have two questions. Do you have a breakdown of ASIC-MSIC checks? Do you have numbers year to date?

Mr Irvine—Senator, I can give you the numbers year to date. Last year, as you correctly pointed out, was 5,266.

Senator PARRY—56,000.

Mr Irvine—Sorry, 56,266. This year to 31 March, the figures were 63,403. On the figures I have before me at the moment, I cannot give you that breakdown, but I will take it on notice.

Senator PARRY—Thank you. Do you have an anecdotal or a gut feeling or anything which would suggest a rough percentage?

Mr Irvine—No. I am sorry. I would not.

Senator PARRY—I will accept that on notice. Do you have a cost to ASIO for processing each ASIC and MSIC?

Mr Fricker—We do do it on a cost recovery basis. Forgive me. I cannot recall what the figure is per check. I would have to take that question on notice.

Senator PARRY—I think another officer at the table may have that information.

Mr Wilkins—Senator, I think Karl Alderson from the Attorney-General's Department, who deals with this scheme, might be able to assist with some of this information.

Dr Alderson—In terms of the two areas you have just covered, it might be useful for you to know that in terms of the total numbers, the number of valid ASICs and MSICs currently in force is approximately the same number. There is currently 127,000 ASICs approximately and 130,000 MSICs.

Senator PARRY—Dr Alderson, thank you. I do not want that figure. I am aware of some of those figures. It is just a breakdown of the MSICs and ASICs. Can you assist with that figure that ASIO actually conducts an assessment for?

Dr Alderson—In terms of the number of checks that we have processed from 1 July 2009 to 30 April 2010, we have processed 14,734 MSIC applications and 67,235 ASIC applications.

Senator PARRY—Thank you. That is exactly what I was looking for.

Dr Alderson—On the fees, for each check that ASIO does as part of the checking process, it charges AusCheck approximately \$11. We charge for the total checking process that we do. Depending on the check—because there are various types of check we do—the current fees are around \$90 per check.

Senator PARRY—So ASIO gets the referral. ASIO refers that to AusCheck. AusCheck charges \$90 and ASIO charges \$11.

Dr Alderson—Senator, that is because in terms of the volume of work that AusCheck does, the larger part actually relates to a different part to ASIO, and that is the criminal history checking process.

Senator PARRY—So the bill that would go to the requesting authority would be \$101. Is that correct?

Dr Alderson—No. ASIO's fee is factored in. We charge a total fee for the background. That includes components that we pay ASIO for their role, that we pay CrimTrac for their role and for our own costs.

Senator PARRY—So the invoice is \$90 per check?

Dr Alderson—Yes.

Senator PARRY—I go back to ASIO. Is it \$11 cost recovery per check?

Mr Fricker—Yes. That is our present calculation. It may well be revised in the future, but that is the calculated cost recovery now.

Senator PARRY—Currently, I understand, there are some 100 or so authorising entities for MSICs and ASICs around Australia. Does ASIO—or, for that matter, AusCheck, while its representative is at the table—feel as though that is a little bit too loose and it should be centralised, where there is a centralised issuing authority? You have no opinion on it?

Dr Alderson—No, we do not have a particular view on that. The policy decision around who should be ASIC- and MSIC-issuing bodies and what that framework should be sits with the infrastructure minister.

Senator PARRY—If there were to be one centralised Commonwealth agency that looked after that—let us imagine it was AusCheck—would the cost per check still be the same, or would there be additional administrative costs?

Dr Alderson—It would be a very different kind of scheme. For example, AusCheck is a very small unit and entirely Canberra based, whereas the issuing bodies have direct relationships with the employees and the people issued with cards in all sorts of locations throughout Australia.

Senator PARRY—How long does it take for a response, once a request has been received from an issuing authority, to a yes or no?

Dr Alderson—We complete more than 95 per cent of our checks within 20 working days. We complete about half of them within 10 working days and 95 per cent within 20 working days, and that last five per cent takes a bit longer.

Senator PARRY—So is ASIO's check completely an intelligence based assessment and yours more of a criminal record assessment? Is that correct?

Dr Alderson—Yes, that is right. AusCheck also plays the coordinating role, so we gather the information from the issuing body and send it off to ASIO and to CrimTrac. We do some criminal history analysis and then we feed the results of that check back. Therefore, the issuing body does not need to deal directly with ASIO. We are an intermediary, although the substantive security intelligence side is looked after by ASIO.

Senator PARRY—So, if ASIO says no, does ASIO have to supply a reason for the negative response?

Dr Alderson—In terms of the individual who is the subject of an adverse assessment, that is governed by procedures under the ASIO Act, which do not provide for an automatic providing of reasons. It provides a mechanism for appeal of that adverse assessment to the AAT and then for particular procedures around what information can and cannot be disclosed.

Senator PARRY—Who becomes the appellant—the issuing authority or the person applying for the card?

Dr Alderson—The individual.

Senator PARRY—How many adverse findings has ASIO made in the reporting period with the 56,266?

Mr Irvine—I think the figure is zero.

Senator PARRY—So everyone applying for a card, unless they were flagged by ASIO through intelligence, would automatically then receive an ASIC or an MSIC, unless there is an adverse finding from ASIO?

Mr Irvine—No. It may well be that there is a criminal record or other elements.

Senator PARRY—Yes. I am not talking about criminal records—purely intelligence based information.

Mr Irvine—At the moment, yes.

Senator PARRY—I come back to AusCheck. How many out of that 56,000 that were referred to ASIO has AusCheck said no to?

Dr Alderson—From 1 July 2009 to 30 April 2010, AusCheck has found 235 applicants for ASICs or MSICs ineligible on the basis of a criminal history check. That was 70 MSIC applicants and 165 ASIC applicants. We found 301 ASIC applicants to have only a qualified eligibility, which entitles them to a one-year card.

Senator PARRY—This is clearly in a statutory provision as to the types of criminal offences that you can use for rejections?

Dr Alderson—That is correct, yes. We apply the criteria that are set out in aviation transport security and maritime transport security regulations.

Senator PARRY—How many of those have been appealed by the applicant?

Dr Alderson—I will have to check. I apologise that I do not have the exact figure, so I will take that on notice, but I can give you approximate figures if that would be helpful.

Senator PARRY—Yes.

Dr Alderson—There are two types of appeal available from our decision. You can appeal to the Administrative Appeals Tribunal or you can seek a discretionary decision from the minister for infrastructure. In a typical year, there are normally about 20 appeals from our decisions to the AAT. There would be in the order of 100 to 150 appeals to the infrastructure secretary.

Senator PARRY—And what about the cost for both types of appeals? Does it cost AusCheck or ASIO for the appeal? Would it probably be AusCheck only?

Dr Alderson—Yes. All of those in practice have related to criminal history and have been matters that have been handled by AusCheck rather than ASIO. Appeals to the infrastructure secretary, on my understanding, do not attract any charge. That is at no cost. We provide information to the infrastructure secretary to assist in the decisions in those cases, and that is at no cost. Appeals to the AAT attract their standard filing fees.

Senator PARRY—Thank you. Finally, is ASIO satisfied that the checking mechanism for the issue of MSICs and ASICs is as robust as it needs to be?

Mr Irvine—I think the answer to that is: yes, we are. We keep looking at these things. If we find that we need to enhance those checking procedures, we will.

Senator PARRY—Thank you.

Senator LUDLAM—Some of these questions are a little general. In the budget there is an announcement over the coming 18 months for ASIO and five partner agencies to be subject to an independent review. I believe that has been budgeted at about \$3 million over two years. Can you tell us what the status is of this review, from your point of view?

Mr Irvine—That is probably more appropriately a question directed at the Department of the Prime Minister and Cabinet, which is arranging for that review. I think it is better to talk to them about the scope of the review, because we have not actually seen the full terms of reference, just how detailed it will be and what particular areas the government wishes the review to focus on.

Senator LUDLAM—So you have not been invited to participate or submit or been involved in anything thus far? You are waiting to hear?

Mr Irvine—Yes.

Senator LUDLAM—You would be aware that there has been some reporting of that review already. One of the things that have been canvassed—this has been discussed in the press; if it is not accurate, please tell me so—is that ASIO officers will be authorised to carry weapons for self-defence.

Mr Irvine—I was really very surprised by that report. I think most officers in ASIO were as well. It has no basis in fact.

Senator LUDLAM—That has no basis in fact. I will not put to you ASIS questions. That was the main piece of scuttlebutt, I suppose, that was being reported about ASIO officers. Can you confirm for us that that is not the case, that that is not something you are seeking?

Mr Irvine—I can confirm most definitely that that is not something I am seeking.

Senator LUDLAM—Thank you very much for being so direct. There is also \$9.1 million over four years to the establishment of a multiagency counterterrorism control centre. Can you just clarify for us what that status is either within or outside ASIO? What will be your agency's role?

Mr Irvine—In the counterterrorism white paper, which the government introduced earlier in the year, it made provision for the establishment within ASIO of this counterterrorism

control centre. Its function is to assist all of those people dealing with the various elements of counterterrorism in the intelligence community in particular but also to work closely with the Australian Federal Police to ensure that we have effective cooperation, effective coordination of activities and effective prioritisation in setting both collection and assessment and investigative priorities for Australia's national counterterrorism effort. The unit is in the process of being established. In fact, it has stood up at the present time.

Senator LUDLAM—Sorry, what is the technical definition of that? It exists?

Mr Irvine—It exists, yes. It was stood up about two weeks ago. It consists of officers drawn from within ASIO and from the counterterrorism areas within ASIO but also consists of officers seconded from other intelligence agencies. So we are talking here about a unified, united counterterrorism effort within the intelligence community.

Senator LUDLAM—With ASIO as the lead agency?

Mr Irvine—In this case, yes.

Senator LUDLAM—Will that office report through you in future estimates committee hearings?

Mr Irvine—I will be responsible, as Director-General of Security, for its management. Its activities will go through me to the National Intelligence Coordination Committee, which is operated out of PM&C and ultimately through that Secretaries Committee on National Security and so on through to the National Security Committee of Cabinet.

Senator LUDLAM—So it reports more directly to the Prime Minister than to the Attorney?

Mr Irvine—More directly to the Prime Minister than to?

Senator LUDLAM—Than to the Attorney-General's office. Its reporting obligations, or your reporting obligations, are to PM&C?

Senator Wong—Sorry. I do not think that follows from what Mr Irvine just said.

Senator LUDLAM—If I am wrong, then let me know. That is fine.

Mr Irvine—I am responsible to the Attorney for ASIO. Therefore, I am responsible to the Attorney for the management of this unit. But its recommendations and its activities will be discussed in the broader intelligence coordination community, yes.

Senator LUDLAM—How many people from ASIO are engaged in that office currently?

Mr Irvine—I do not have a final figure because it is not yet completely fully staffed. But there will be roughly about seven, I think.

Senator LUDLAM—Seven from ASIO. Can you tell us how many are seconded from other agencies and from which agencies?

Mr Irvine—There will be three people seconded from three other agencies initially. There could be more.

Senator LUDLAM—They are presumably the kind of agencies we would expect?

Mr Irvine—Yes.

Senator LUDLAM—Do you want to list them for us if you have the number?

Mr Irvine—They will be seconded from the Defence Signals Directorate, from ASIS and from the Australian Federal Police.

Senator LUDLAM—So that is quite a small unit in total. Is that more of a coordinating group, or will it conduct its own investigations?

Mr Irvine—It is a coordinating group. I wanted to have a complete overview of the government's counterterrorism activities to ensure that the information and the intelligence and other information is flowing correctly and that it is being utilised and that we are operating according to agreed counterterrorism priorities.

Senator LUDLAM—I am presuming they are going to be hosted at your new headquarters down in Campbell when that is finally established?

Mr Irvine—In due course, yes.

Senator LUDLAM—While we are there, could you provide us with an update on the construction of that facility?

Mr Irvine—Certainly. The project is proceeding on schedule. The excavation works have been completed. To drive by the site, you can see the amount of work and the beginnings of the building structure. All the retaining walls and the concrete pours have been completed or will be completed shortly for Level 1. The official term is a skywalk platform, but it looks to me much more like a lift-well. It is proceeding up to I think about Level 2. The excavation for the car park will be completed by the end of this month. The construction of the façade structure should commence around about August. We are still on schedule for a building handover by the managing contractor for mid-2012.

Senator LUDLAM—Thank you. Do you have any estimates for us as to how much over budget that facility is going to be by the time it has been constructed?

Mr Irvine—At the present time, all indications are that the project is running within the budget.

Senator LUDLAM—That is because its projected final cost went up quite substantially. What is your estimated final cost?

Mr Irvine—It did go up, but the current budget is \$589 million.

Senator LUDLAM—You are estimating that by mid-2012—

Mr Irvine—The budget was \$606 million, but it has since been reduced to \$589 million.

Senator LUDLAM—By mid-2012. Thank you. You have also been provided \$101.6 million over four years, which includes capital funding, to ASIO, the Attorney-General's Department, ACC and the Australian Federal Police for the further development of telecommunications interception capabilities and delivery systems. From the point of view of your agency, can you just describe for us what that money will buy?

Mr Irvine—That money will buy ASIO's ability to conduct its statutory responsibilities for various forms of electronic interception. I would not want to go, if you do not mind, into a great amount of detail as to what all of that involves.

Senator LUDLAM—That is fine. I suspect if I pursue any further down this line of questioning, we will end up where we have in the last two sessions.

CHAIR—Do you have any other questions?

Senator LUDLAM—No. I will leave it there, Chair. I know where that is going.

CHAIR—We will take a coffee break. Senator Barnett, do you have many questions?

Senator BARNETT—Two. But I will be a little while.

CHAIR—Let us take a coffee break now. Mr Irvine and Mr Fricker, you will have to come back, I am afraid. I am sorry, but you do not get an early mark.

Proceedings suspended from 9.29 pm to 9.46 pm

Senator BARNETT—Mr Irvine, can you update us on that figure in terms of those irregular maritime arrivals for 2008-09. Have you got 2007-08 figures there?

Mr Irvine—In 2007-08 it was 21.

Senator BARNETT—There you are. That says something, does it not? And how many adverse assessments were there, if any?

Mr Irvine—There were no adverse assessments for those 21.

Senator BARNETT—Fantastic. And would you have 2006-07?

Mr Irvine—No, I do not.

Senator BARNETT—Not a problem. That is very helpful. I think it confirms the very strong evidence building in terms of the immigration system being—some would say and I would say—out of control. But that is not a matter for you. Let us go to another topic, if I could.

Mr Fricker—We have been discussing the distribution of workload and the quantum of work that ASIO has done. We have just singled out the irregular maritime arrivals, but we have not discussed the total number of permanent visa security assessments, for example.

Senator BARNETT—We did touch on that earlier. You gave us the figures for 2008-09 and 2009-10 for the total across all visa types. We have those figures.

Senator Wong—Would you like 2007-08?

Senator BARNETT—If you are offering it, I am happy to receive it.

Mr Irvine—The total visa security assessments in 2007-08 were 72,688. It dropped to 59,884.

Senator BARNETT—Thank you. I refer to a *Canberra Times* article on 17 May this year which refers to the terms of reference for an independent inquiry into Australia's intelligence and security services outlined in last week's budget. It says that speculation about what might be recommended is well underway. It goes on and says:

Furthermore, the Government has been hinting for some time about the need to give domestic intelligence agencies greater powers, especially since a secret review recommended they be allowed to tap phones within Australia, carry weapons and engage in "paramilitary activities".

Would you be able to respond to that?

Mr Irvine—Perhaps you were out of the room, Senator Barnett, when I responded to an earlier question. There is no question in my mind, as Director-General of Security, for ASIO to carry weapons nor is there any suggestion that we would engage in some form of paramilitary activity overseas or in Australia. There are perfectly well-qualified organisations with the appropriate responsibilities to conduct those sorts of activities and they do not need ASIO to do their job for them.

Senator BARNETT—What about tapping phones? You are getting increased powers to do that?

Mr Irvine—I am not aware that we are in fact getting increased powers. Our powers are established under the Telecommunications (Interception) Act and under the ASIO Act. While there might be some tinkering at the edges from a legislative point of view, I do not see that as representing any new powers per se.

Senator BARNETT—Can you give us any details as to the reasons behind the inquiry, if you have that information.

Mr Irvine—I would prefer that this question be referred to the Department of the Prime Minister and Cabinet. It is a fact that some five or six years ago there was an inquiry into the intelligence community conducted by Mr Philip Flood. In that he recommended that in about five years there be another inquiry. We can expect that to occur.

Senator BARNETT—Thank you very much. That is most useful. Do you know who will be involved in the inquiry?

Mr Irvine—No, I do not.

Senator BARNETT—Will you be involved in the inquiry?

Mr Irvine—In terms of appearing before it and giving evidence to it, yes, almost certainly.

Senator BARNETT—Do you know when it will start?

Mr Irvine—No, I do not.

Senator BARNETT—Do you know when it will finish?

Mr Irvine—No.

Senator BARNETT—You have no idea on the expected cost, I assume? That is a matter for the Prime Minister and Cabinet and that will depend on the terms of reference?

Mr Irvine—The ultimate cost will depend on how the inquiry is constituted and how long it runs.

Senator BARNETT—Have you been consulted on the terms of reference?

Mr Irvine—Not yet, but I would expect to be.

Senator BARNETT—There was a report in the *Sydney Morning Herald* dated 28 April which said that a spokesman for Mr Rudd denied the review existed while a spokesman for the Attorney-General, Mr McClelland, and the defence minister directed inquiries to the Prime Minister's office. So it seems like it is top secret. Is it top secret?

Mr Irvine—The way in which that particular article came out required a denial, because that is not what I thought was intended. I thought that what was intended in due course was a review of the community as recommended by Mr Philip Flood.

Senator BARNETT—So do you know how those allegations or views got into the media in terms of paramilitary activity, power to tap phones and the carrying of weapons by ASIO officers?

Mr Irvine—I wish I did.

Senator BARNETT—You have no idea?

Senator Wong—He probably should not say that, actually. Everyone will start to get very worried.

Senator BARNETT—I wonder if we can get to the bottom of it. I have no further questions of ASIO other than to ask: can we presume that you will be involved in the security arrangements regarding the forthcoming visit of President Obama?

Mr Irvine—ASIO will provide appropriate threat assessments to what is essentially a wider government effort.

Senator BARNETT—Yes, indeed. There were reports that the US intelligence agencies will be providing threat assessments. So one would ask: which threat assessments are to be used—the Australian threat assessments or the US?

Mr Irvine—The Australian government will use Australian threat assessments. We will obviously consult with our ally, as we do on many, many security related issues.

Senator LUDLAM—I have a couple of questions I want to ask that relate to some of the lines of questioning of Senator Barnett and Senator Trood about the security assessments that ASIO is doing of arrivals—people who find themselves on Christmas Island and so on. What degree of cooperation is there in discharging those obligations with foreign governments?

Mr Irvine—In the security intelligence business from time to time we do consult with and cooperate with friendly governments. We do not as a matter of habit refer individual cases of asylum seekers back to the government of the country from which they have come.

Senator LUDLAM—That is more or less what I am interested in. Can you tell us the reasons why you would not do that?

Mr Irvine—There are operating procedures under UNHCR-type considerations that would make you want to be careful about doing that.

Senator LUDLAM—Just to be blunt, that is to not perhaps potentially put the security of the asylum seekers themselves at risk in disclosing their identities to the governments from which they have fled? Is that what that is about?

Mr Irvine—That is the first consideration.

Senator LUDLAM—Do you want to sketch what all the considerations are, just to be clear?

Mr Irvine—That would be the first consideration for an asylum seeker. You would need to think very carefully before you ever referred it back to the sending country or host country or whatever you want to call it.

Senator LUDLAM—You are not prevented from doing it by law, though. It sounds as if it is just operationally that you choose not to do that.

Mr Irvine—I would need to check the extent to which it is law, regulation or custom.

Senator LUDLAM—I would appreciate that. You also make it sound as if in some circumstances that is something that you would do.

Senator Wong—Which part of Mr Irvine's answer makes you draw that conclusion? This is just for my edification.

Senator LUDLAM—He was very careful to avoid making it sound as if under no circumstances would you go to a foreign government. You have made it sound as though under some circumstances—exceptional conditions—you would. I just wanted to tease out whether that is the case or not.

Mr Irvine—I would not want to go into hypotheticals, but I think you can be assured that we would be extremely reluctant to go to any government where you have an asylum seeker.

Senator LUDLAM—If intelligence about particular individuals who might have made their way to Australia is offered by those governments, you would explain that you are not pulling that intelligence. But if the intelligence is pushed and if it comes to you from one of the governments, would you accept that? What would you do with it if that kind of intelligence was offered to you?

Mr Irvine—When we receive information unasked for, we will look at it. We will evaluate it. We will consider whether we can judge it to be plausible and reliable. But we would not be asking.

Senator LUDLAM—I want to be very clear about what I have asked you to take on notice. You have been very fairly clear. I am interested in the circumstances in which you would go to host governments. I am thinking specifically about the government of Sri Lanka at the moment, given that that is very topical right now. You would go to them with details of specific asylum seekers seeking intelligence if you have not ruled out that under all cases you would not do that?

Mr Irvine—No.

Senator LUDLAM—So you have asked to take on notice whether it is governed by law, custom or international convention. I am very interested specifically in what the guiding—

Mr Irvine—I am currently finding it very difficult to think of a circumstance where we would.

Senator LUDLAM—I appreciate that. I am also seeking your guidance as to what body of law—or it may be custom or practice—applies.

Mr Irvine—Certainly. We will give that to you.

Senator LUDLAM—Thank you.

CHAIR—ASIO, I think we are finished with you for the night. Mr Irvine and Mr Fricker, thanks very much. Thanks for your time this evening.

[9.59 pm]

CHAIR—That sees us complete the questioning of the interstate agencies and programs, so we are now going to move to the Attorney-General's Department. Let's proceed to outcome 1: a just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system.

Senator ABETZ—I think Mr Campbell would be relevant officer and it will not surprise him what the topic is: Elizabeth and Middleton reefs or islands. I want to revisit that. You will not need all that paperwork because I know what your answers will be.

Senator Wong—Well, Senator Abetz, why do we have to have the questions then? We could all go home.

Senator ABETZ—Allow me to revisit Australia's claim to an extended exclusive economic zone in the context of the use of Elizabeth and Middleton islands as the base points. I have been assured, I note, on many occasions that my concerns are baseless. However, those assurances do fly in the face of learned opinion from a large range of eminent sources. I have been advised from answers to previous questions that against the range of respected international advice the Australian government relies—and correct me if I am wrong—on the advice from officers of Attorney-General's and has never commissioned any independent opinion. Is that correct?

Mr Campbell—The advice has come from the Office of International Law in the Attorney-General's Department.

Senator ABETZ—So Attorney-General's has never commissioned any independent opinion?

Mr Wilkins—I just do not want to cast aspersions. Mr Campbell is a QC who has considerable experience in this area. It is not as if—

Senator ABETZ—All right, opinion from outside the Attorney-General's?

Mr Campbell—There has been no outside advice sought by the Attorney-General's Department.

Senator ABETZ—That has been the case to date and it still remains the case?

Mr Campbell—It still remains the case.

Senator ABETZ—That still remains the case. There have been suggestions—

Mr Campbell—Could I just qualify that slightly: an officer of the Australian Government Solicitor has had some involvement in the case in the past.

Senator ABETZ—Thank you. There have been suggestions that there are massive new oil and gas reserves which Australia will gain from an extended EEZ. Billions of dollars appear to be at stake. I understand that Professor Norton Moore recently wrote to the Attorney-General, pointing out what he believed to be the weaknesses in Australia's claim, and the risk to our national interest.

Senator WONG—I am sorry, I did not catch the name.

Senator ABETZ—Professor Norton Moore wrote to the Attorney-General in recent times. This is a fellow who was only the chair of the National Security Council Interagency Task Force on the Law of the Sea and US ambassador and deputy special representative of the president to the UN conference on the law of the sea et cetera! He has a CV that I think would be unparalleled. But nevertheless he wrote to the Attorney-General suggesting that it might be prudent for the Attorney-General to seek independent or outside legal advice. I am wondering whether that suggestion has been taken up or whether that suggestion has also been summarily dismissed as all other opinions that do not from a government source have been dismissed.

Mr Campbell—Yes, Professor Norton Moore wrote to the Attorney-General. I believe the Attorney-General responded to Professor Norton Moore. Of course, Professor Norton Moore was one of the authors of one of the advices sought by the Ure-Chan Group. No advice has not been sought from outside counsel since Professor Norton Moore wrote.

Senator ABETZ—So that suggestion has not been taken up.

Mr Campbell—I cannot quite recall the suggestion in Professor Norton Moore's letter but if he did make that suggestion, it has not been taken up.

Senator ABETZ—Were you involved in drafting the response that the Attorney-General sent?

Mr Campbell—Yes, I was.

Senator ABETZ—And you cannot recall.

Mr Campbell—I cannot recall that particular suggestion. I am not saying it is not there; I just cannot recall.

Senator ABETZ—What was the date of the Attorney-General's response to Professor Norton Moore? Was it 19 April 2010?

Mr Campbell—I think it would have been around then.

Senator ABETZ—Just as long as I understand what correspondence we are dealing with. Thank you for that.

Possibly this is a question more to you, Minister. I refer you—and through you, if I may, the Attorney-General—to the Prime Minister's media conference of 9 March this year, in relation to Mr Garrett and definitions of ministerial responsibility. The Prime Minister emphasised that one of the basic requirements of responsible ministerial behaviour is to commission risk assessments in relation to government decisions on policies and programs—in this case, not programs but policies. I put it to the Attorney-General and the government that they have been warned on many occasions of the risks to Australia's claim to a 200 nautical mile EEZ and associated continental shelf around Elizabeth Island and Middleton Reef. I assume, from previous answers, that no risk assessment has been commissioned to date, outside of the opinion of the Australian government legal source.

Senator Wong—On behalf of the Attorney-General I responded, in question No. 2502, to a question by you, Senator, where you asked a range of questions about legal opinion. That

answer detailed a range of both opinions on behalf of the group and Commonwealth responses to it. Some of these issues predate not only this government but, in fact, the previous government. I note that the first assertion was in fact provided on 15 November 1994, according to Ure-Chan Group. This has obviously been an issue that has been on foot for some years. The advice I have is that successive Australian governments—that is certainly consistent with the time frame in the answers to questions on notice to which I refer—have consistently rejected the assertion of ownership of Elizabeth and Middleton reefs by the group over a period of decades. Mr Campbell has previously indicated that view again. On the basis of the information I have, in terms of the questions on notice, this has obviously been an issue that a number of governments and attorneys would have considered.

Senator ABETZ—Thank you for all that, but the question related to a matter that occurred after all that, and that is the Prime Minister’s press conference on 9 March this year, when he emphasised that one of the basic requirements of responsible ministerial behaviour is to commission risk assessments in relation to government decisions on policies. I am asking whether the government has followed through on this view of the world, as expressed by the Prime Minister, and sought a risk assessment in relation to this matter. I simply ask: wouldn’t it be prudent and, indeed, a relatively simple action to take some legal advice—

Senator Wong—We have taken legal advice.

Senator ABETZ—let me finish—that does not emanate from the government’s sources, namely the Australian Government Solicitor or—

Senator Wong—The government’s sources, being the Australian Government Solicitor of the Commonwealth—

Senator ABETZ—And the Attorney-General’s—

Senator Wong—which includes both individuals and, institutionally, the same persons who advised your government. I do not know what your implication is, Senator, but I do not think it would be fair to—

Senator ABETZ—If the Rudd government is saying it is now slavishly following everything the Howard government decided, so be it. Let that be on the record. But can I say it is a bit of a fig leaf for any government to try to say, ‘That is what a previous government did.’ All I am asking is: is the government going to live up to the Prime Minister’s assertion from 9 March this year that one of the requirements of responsible ministerial behaviour is to commission risk assessments? That is what the Prime Minister said. I am now wondering whether, in the light of this, the Attorney-General might like to reflect and determine whether it would be prudent and, indeed, be a pretty simple action to get some advice other than from the Australian Government Solicitor and the Attorney-General’s department to avoid what is clearly a potential risk to the national interest.

Senator Wong—There are some fairly remarkable lengths of logic in that question. I infer from the question that you—

Senator ABETZ—What is—

Senator Wong—I had not finished, Senator. First, I do not have the Prime Minister's statement in front of me, so I will have to take, for the purposes of this discussion, it as read from what you have suggested. I caveat that. Second—

Senator ABETZ—Could I just ask you, Minister, on that—

Senator Wong—I had not finished, Senator.

Senator ABETZ—All right. I will not. That is why I asked. If I cannot, I will not.

Senator Wong—Second, I infer from what you are asking that somehow the provision of legal advice by the AGS is not regarded now by the opposition as being an appropriate assessment of risk by the Commonwealth. If that is the opposition's position, it is a rather extraordinary position. Third, if what you are asking is that I refer to the Attorney-General the question of whether or not he considers an appropriate risk assessment has been undertaken on this matter, I will do so.

Senator ABETZ—Thank you very much. But I just find it astounding that you, of all ministers, are not aware of the Prime Minister's media conference on 9 March this year—

Senator Wong—That is not what I said; don't verbal me, Senator.

Senator ABETZ—dealing with—

Senator Wong—Don't verbal me. That is not what I said.

Senator ABETZ—Excuse me. You are allowed to interrupt me, are you?

Senator Wong—I do not have the Prime Minister's statement.

Senator ABETZ—I love your double standards.

Senator Wong—Don't misrepresent me, Senator.

Senator ABETZ—I love your double standards, Minister; you are still at it.

Senator Wong—Do not misrepresent me.

Senator ABETZ—Do we have a chair to stop this sort of behaviour by the minister?

CHAIR—Senator Abetz, I think I have said your name and the minister's name a number of times now. But, of course, if you were not continually being so rude and listened to the chair, you might actually stop when I call your name.

Senator ABETZ—Excuse me?

CHAIR—I did actually call your name, Senator Abetz; but you ignored that.

Senator ABETZ—I didn't hear it.

CHAIR—Well, that is a different matter, isn't it? If you want to actually continue with your questions, you can. I do not think it is reasonable to expect any minister, or any officer at the table for that matter, to have in their head a conference of 9 March. A number of conferences happen every single day. If you want to provide the transcript for the minister to look at then please do that and we can answer your questions.

Senator Wong—I wish to place on the record that Senator Abetz mis—

Senator ABETZ—Oh, come on! I just—

CHAIR—No, Senator Abetz: I have called the minister to respond to that.

Senator ABETZ—This is outrageous.

Senator Wong—I wish to place on the record that Senator Abetz misrepresented my answer, and the *Hansard* will show that. I invite him to consider the position he now holds, and perhaps to ensure that his questions reflect the position he now holds—

Senator ABETZ—Your diminished position.

Senator Wong—because they certainly do not at the moment.

CHAIR—Senator Abetz, do you have further questions? I know Senator Ludlam has, and I am happy to go to him.

Senator ABETZ—I have not even been allowed to ask my questions. With both a minister and a chair against you, it becomes very difficult to ask questions.

CHAIR—I am simply suggesting that what you need to do is listen—

Senator ABETZ—When the air is clear, let me know.

CHAIR—to the chair when I ask you to call to order. If you have questions to ask, please do so; but it is unfair to expect that people at the table have in their memory transcript or knowledge of a press conference that was held on 9 March, unless you provide that to them.

Senator ABETZ—I was not referring to a transcript; I was referring to the fact that it seems quite astounding that this minister in particular, given the pink batt debacle, and her new responsibilities—or now Mr Combet's responsibilities—that she should not have that media conference of 9 March 2010 firmly impressed upon her mind, when the Prime Minister said in regard to Mr Garrett and definitions of ministerial responsibility, that there was a need for responsible ministerial behaviour—

CHAIR—Either there is a question here, Senator Abetz, relating to the Attorney-General's portfolio; otherwise, I will go to Senator Ludlam. What is your question in relation to outcome 1?

Senator ABETZ—Can I get a question out with either the minister or the chair interrupting?

CHAIR—What is your question in relation to this outcome?

Senator Wong interjecting—

Senator ABETZ—Well, if you listened, you might actually learn—

Senator Wong—It's the usual diatribe from Senator Abetz; it's not a question.

Senator ABETZ—Thank you. That is also helpful, Minister.

Senator Wong—I am just making the point, Senator, that you do not ask questions; you give lectures and then you are surprised when people respond to them.

CHAIR—Do you have a question, Senator Abetz?

Senator Wong—If you have a question, we will deal with it.

Senator ABETZ—Have you both finished?

CHAIR—I am chairing this, Senator Abetz. I am happy to go to Senator Ludlam if you do not have a question.

Senator ABETZ—I do have a question.

CHAIR—Well, please ask it.

Senator ABETZ—I just want to be able to get it out without interruption from the chair or the minister.

CHAIR—Please ask it.

Senator ABETZ—I will have a third or fourth attempt at it. Minister, you are telling us that you cannot recall the media conference of 9 March, in which you must have been personally involved, at which the Prime Minister emphasised, in relation to Mr Garrett, the importance of responsible ministerial behaviour requiring the commissioning of risk assessments? That does not draw any memory for you?

Senator Wong—That was not the evidence I gave.

Senator ABETZ—So you do recall the media conference?

Senator Wong—I am happy to have a discussion about this media conference, but I fail to see how this question goes at all to the issue before the chair, which is the budget estimates of the Attorney-General's portfolio.

CHAIR—I think you are right, Minister.

Senator Wong—If it goes to the issue of risk assessment, I provided an answer on that.

Senator ABETZ—The Prime Minister usually speaks on behalf of the government, and he made a general comment that a requirement of responsible ministerial behaviour is to commission risk assessments. If that is a general government principle, as enunciated by the current Prime Minister, I am wondering whether you would be so good as to pass that on to the Attorney-General and ask what risk assessment has actually been undertaken pursuant to this edict of the Prime Minister on 9 March this year as it might relate to the Elizabeth and Middleton islands/reefs and the Australian exclusive economic zone.

Senator Wong—If you had been listening to my answer of about 15 minutes ago rather than formulating the lecture we have just had, you would have heard my answer on that issue. I am happy to get *Hansard* and read it back to you, if you wish.

Senator ABETZ—What is your answer?

Senator Wong—I responded in three parts, and I would refer you to that answer.

Senator ABETZ—In relation to the risk assessment, will you be asking the Attorney-General to come back to us on notice with an indication of whether an appropriate risk assessment has been undertaken pursuant to the Prime Minister's edict of 9 March this year?

Senator Wong—As I previously indicated, the second part of my answer was that I inferred from your question that you did not regard the various and extensive legal advice and consideration of this issue of successive governments to be risk assessment. The third part was that I would refer your question to the Attorney-General and see if there was any response. So I have already indicated that.

Senator ABETZ—So no further risk assessment pursuant to the views of Professor Norton Moore?

Senator Wong—I think what you are asking is the same question with which you started. I think your suggestion—or perhaps I misunderstand you—is that it is not good enough to get AGS advice. Is that right? If that is the position, why don't you just be up-front about it?

Senator ABETZ—If you want to reverse roles, I am more than happy for that to occur. But when you are armed with legal opinions from notable people such as Professor Norton Moore, the late Monroe Leigh, Professor James Crawford and Bret Walker SC as well as related comments from Henry Burmester QC and Professor Victor Prescott, I have to say that it may be worth while getting some outside advice to test the robustness of the internal advice in the face of all that eminent international legal opinion from Australia and indeed overseas. It just seems, from a risk assessment point of view, that that would be a very good thing to do. If the government is not prepared to undertake such a risk assessment—and I would have thought it would be pretty easy to get an opinion or two to confirm Mr Campbell's views—we might be able to put this to bed. But if the government stubbornly refuses to do so, so be it.

Senator Wong—Do we have a question at some point in this? Is that a lecture or a question? What I was going to say is: thank you for your suggestion, I will pass it on to the Attorney-General.

Senator ABETZ—If you had been polite like that at the very beginning without interrupting me—

Senator Wong—I could not get to the end of the question—

Senator ABETZ—as you are again—

Senator Wong—because you spent so much time giving us a lecture.

Senator ABETZ—we could have truncated this a lot earlier.

Senator Wong—It would be more productive if you just spoke to the mirror, Senator, sometimes.

Senator ABETZ—There she goes again, without the chair's interruption. Astounding.

Senator Wong—I think you just like hearing the sound of your own voice, seriously.

CHAIR—We will go to Senator Ludlam for questions.

Senator LUDLAM—I think we skipped to 1.2, but I want to come back to 1.1 and talk about access to justice funding.

Senator BRANDIS—I am sorry to interrupt Senator Ludlam. I also have a bracket of questions about access to justice but, before we reach that topic, there are also some questions that I and Senator Barnett wanted to ask concerning national regulation of the legal profession. I suspect that access to justice might go for longer than the time available to us tonight. The questions in relation to the national regulation of the legal profession can, I suspect, be dealt with in less than half an hour. I wonder if it might be a more efficient way of disposing of matters to deal with the access to justice matters tomorrow and deal with the national regulation of the legal profession issues now.

Senator Wong—I suppose in part, Chair, that might depend on Senator Ludlam's availability.

Senator LUDLAM—So we have knock this all off now?

CHAIR—No, we are going to the Canberra based agencies tomorrow and then back to the department once we have done those agencies.

Senator LUDLAM—In that case, that is fine.

Senator BRANDIS—Thanks, Senator Ludlam. I do not want to constrain it; I just thought that would be a more efficient way of doing it so we can have plenty of time to deal with that tomorrow.

CHAIR—Senator Brandis, we will go to your questions now.

Senator BRANDIS—Thank you, and I am grateful to Senator Ludlam for his courtesy. Mr Wilkins, I think you are the man to ask about the current state of play concerning the national regulation of the legal profession. We are all, of course, aware that the Attorney-General has made some announcements in the last several days. We are also aware that the Council of Chief Justices and the Attorney-General of Western Australia in particular, and others as well but those in particular, have been very forceful in their criticism of the model that has been adopted and in particular of the evident diminution of the role of the profession and of the state and territory supreme courts as the ultimate jurisdictional authorities over the profession which is implicit in that model. Can you tell me please, Mr Wilkins, where we stand in relation to the national regulation of the legal profession? Then I propose to ask you some more particular questions about the criticisms that have been made of the announcement that came from the Attorney at the end of the week before last.

Mr Wilkins—There is a package of draft legislation and draft rules which have been put together by a task force, which I am a member of, and also officers from the states of New South Wales, Victoria, the ACT and the Australian Law Council. This has been agreed as a consultation package by the Council of Australian Governments and it has been released for consultation. That is where we are at the moment. There are a series of meetings occurring with chief justices and attorneys-general and also with the various relevant parties, local law societies et cetera in each state and territory. Two members of the task force are going to each of those. I have attended consultations in New South Wales. I have spoken to the Chief Justice of the High Court. I have spoken to the chief judges of the various federal courts. Other members of the task force will be going to other various jurisdictions, if they have not already.

As I say, the package is out for consultation. People have been invited to put in their views on the bill and on the various mechanisms in the bill and in the rules. Those views will be put back to the COAG through the Standing Committee of Attorneys-General and will take into account the various views that have been put up about the strengths and weaknesses of the bill and the rules.

Senator BRANDIS—Thank you. I would like to draw you out a little further about the consultations that have taken place to bring the process to the point which it has now reached. In particular I want to dwell for a moment on the fact that the Council of Chief Justices has been, if I may say so, very vocal in its criticism of at least aspects of the proposal. Does the

Australian government have a position in relation to the issue which seems to have troubled the Council of Chief Justices—that is, the extent to which the profession ought to be, in relation to admission standards and discipline in particular, regulated ultimately under the jurisdiction of the state and territory supreme courts?

Mr Wilkins—I will make a few comments on that and then I will go to an answer to your question. The first thing is that the bill preserves the position of the supreme courts of the states and territories in relation to admissions—it explicitly reserves the powers of those courts.

Senator BRANDIS—But subject to a common national standard?

Mr Wilkins—No. It actually preserves the power. Whatever the supreme court wanted to do it could do under the terms of the legislation. The hope is that that reserve power, as it were, would not need to be utilised, but it could be. The general structure of the regulatory system is to set up a new legal services board which is a national body. The main contention from the chief justices has surrounded the way in which that board is appointed and its membership. I think that the Commonwealth does not have a position on that. The Attorney has made it clear—and I gather from the Standing Committee of Attorneys-General and the rest of the attorneys and from the express terms of consultation that COAG asserted—that the Commonwealth's position on the composition and the appointment of that board is not fixed in cement. There is a position out there for discussion. So the end result is highly negotiable and will depend on the sorts of views that come in. A variety of views have been put up about what the composition of that board would be. The chief justices have put up a suggestion.

Senator BRANDIS—Pausing there, you said in your last answer at various points that the Commonwealth does not have a position, and later you said the Commonwealth does not have a fixed position. May I put it to you that the Commonwealth did take a position to the Standing Committee of Attorneys-General, which, albeit possibly a highly negotiable position, represents nevertheless where the Commonwealth stands at the minute. Can you state that position for us, please?

Mr Wilkins—Well, I am not aware what it is, and I did the drafting.

Senator BRANDIS—If you did the drafting, surely you are in a position to tell us what the position taken by the Commonwealth to the Standing Committee of Attorneys-General was.

Mr Wilkins—I just tried to do that. As I understood it, the Attorney-General's position is that this bill should be put out for consultation.

Senator BRANDIS—Yes, but let's not get ahead of ourselves.

Mr Wilkins—Methinks it is a co-regulatory system, if that is what you mean—

Senator BRANDIS—I understand that—

Mr Wilkins—so it should be some mix of government appointees, judicial appointees and—

Senator BRANDIS—I understand that, but the fact that we have reached that point in the process at which there is a draft bill proposed to be put out for consultation indicates at least a provisional view on the part of the Commonwealth in relation to the disciplinary standards in

particular. That is the issue on which the chief justices have parted company from the Commonwealth. Can you tell us what the Commonwealth's, albeit provisional, position is?

Mr Wilkins—It is not the Commonwealth's position. It is—

Senator BRANDIS—Does the Commonwealth have a position?

Mr Wilkins—No.

Senator BRANDIS—'No'—the Commonwealth has no position?

Mr Wilkins—That is right. This is a consultation document. What the Attorney has said about that particular clause is that it is highly contentious, and they want to hear what people have to say about it. Clearly it is a co-regulatory scheme, so it needs to be some mix of the profession and probably judicial appointments, and perhaps there are a number of other stakeholders, but—

Senator BRANDIS—Do I understand you to be telling us that the Commonwealth has no view as to the composition of the national legal services board or its powers?

Mr Wilkins—The Commonwealth—by which you mean the cabinet—

Senator BRANDIS—I mean whatever position—

Mr Wilkins—has no view.

Senator BRANDIS—the Commonwealth Attorney-General takes to the Standing Committee of Attorneys-General or to whatever subcommittee of that body is seized of this matter.

Mr Wilkins—The Attorney-General has said that this matter is matter for consultation; there is no fixed view. There is a view put forward in the bill which came from the task force, of which I am a member. I am hardly 'the Commonwealth' for this purpose, any more than the New South Wales representative was 'New South Wales' or the Victorian representative was 'Victoria'. There is a position put in the bill so that there is simply not a gap there out for consultation, but that by no means represents the Commonwealth's position.

Senator BRANDIS—Does the Commonwealth adopt that position—that is, the position, to use your phrase, 'put out there' in the bill?

Mr Wilkins—No. The Commonwealth has not adopted the position, except to the extent that it agrees that the bill should be out there for consultation.

Senator BRANDIS—Mr Wilkins, with all due respect, if a bill has been published, albeit an exposure draft or a draft of the bill for consultation, it must, may I suggest to you, indicate at least a provisional view, on behalf of those who put the bill out there for consultation, that that is what they would prefer to see.

Mr Wilkins—I do not think the Attorney has made it explicit that that is not the case in this particular instance.

Senator BRANDIS—So the exposure draft of the bill, which has been published with the sanction of, among others, the Commonwealth Attorney-General, does not represent the Commonwealth's view?

Mr Wilkins—For that particular clause, as I said, the one that goes to the appointment and the composition of the legal services board, that is correct.

Senator BRANDIS—It does not represent the Commonwealth's view?

Mr Wilkins—That is correct.

Senator BRANDIS—What else in the bill does not represent the Commonwealth's view?

Mr Wilkins—I have explained the status of the bill. As far as I know, there are no other major areas but there are certainly some clauses in the bill which are highly negotiable.

Senator BRANDIS—What are they?

Mr Wilkins—The entire thing.

Senator BRANDIS—Do we take it from your last answer that there is no provision in the draft bill that represents the Commonwealth's view?

Mr Wilkins—Let me go back to where I started. The bill is a consultation document.

Senator BRANDIS—Yes, I understand that.

Mr Wilkins—In other words, the Commonwealth Attorney-General—as opposed to the Commonwealth in this case—

Senator BRANDIS—Sorry?

Mr Wilkins—It has not been through the normal processes of cabinet, so it does not therefore represent—

Senator BRANDIS—Surely you are not telling us that—albeit, as you have been at pains to point out, this is highly provisional or tentative—the Commonwealth Attorney-General's position is not the position of the Commonwealth?

Mr Wilkins—I am saying that it has not been through the Commonwealth cabinet yet and has not been through any of the state cabinets—

Senator BRANDIS—You said that. But surely—

Mr Wilkins—It is COAG's—

Senator BRANDIS—To the extent to which the Commonwealth Attorney-General has sanctioned the publication of a draft bill, that represents, albeit provisionally, the position of the Commonwealth. Is that not the case?

Mr Wilkins—That is not the case with respect to the clause for the appointment of the legal services board—as I have just made clear.

Senator BRANDIS—All right. Coming back to my earlier question of a few moments ago: in what other respects does the bill not represent the position of the Commonwealth?

Mr Wilkins—It does represent the position of the Commonwealth for consultation purposes—in other words—

Senator BRANDIS—'For consultation purposes'! Okay. Does the provision in relation to the national legal services board represent the position of the Commonwealth for consultation purposes?

Mr Wilkins—No.

Senator BRANDIS—In what other respects does the bill not represent the position of the Commonwealth for consultation purposes?

Mr Wilkins—In no other respects that I know of, in the sense that the Attorney-General has drawn attention to the fact that there are different models and lots of different views about that particular provision and that there is no fixed view about that.

Senator BRANDIS—If the provisions of the bill concerning the national legal services board do not represent the position of the Commonwealth even for consultation purposes, whose views do they represent?

Mr Wilkins—The task force's.

Senator BRANDIS—The task force being?

Mr Wilkins—The task force is made up of: me; Laurie Glanfield, who is the Director-General of the Department of Justice and Attorney General in New South Wales; Louise Glanville, who I think is the deputy director-general of the Department of Justice in Victoria; Stephen Goggs, who is Deputy Chief Executive Officer of the ACT Department of Justice and Community Safety; and Bill Grant, who is the CEO of the Australian law council.

Senator BRANDIS—The Law Council of Australia. Is that all?

Mr Wilkins—That is it.

Senator BRANDIS—The provisions of the draft bill—

Mr Wilkins—The provisions of that clause, yes.

Senator BRANDIS—Please do not interrupt me. The provisions of the draft bill in relation to the National Legal Services Board represent for consultation purposes the common view of five people—four senior bureaucrats, with one from the Commonwealth, one from New South Wales, one from Victoria and one from the ACT, plus a senior executive officer of the Law Council of Australia. Is that right?

Mr Wilkins—Based on our conversations with a wide range of stakeholders, yes.

Senator BRANDIS—Are you telling the parliament that that provision, which is the provision that has become contentious, has not been subscribed to or signed off by the Commonwealth of Australia? Is that right?

Mr Wilkins—That is right.

Senator BRANDIS—Nor has it been, to the best of your knowledge, by the governments of any of the three jurisdictions whose senior public servants are represented—that is, New South Wales, Victoria and the ACT?

Mr Wilkins—That is right.

Senator BRANDIS—I wonder aloud: what status does it have?

Mr Wilkins—That clause?

Senator BRANDIS—Yes.

Mr Wilkins—It is a clause which is out there for consultation. Clearly there will need to be some provision made for the membership and the appointment of members of the Legal Services Board. That will be based on the views which are put forward by the various interested parties. Obviously the chief justices have put forward a clear view. The attorneys-general will have a view.

Senator BRANDIS—But they have not formulated that yet?

Mr Wilkins—No.

Senator BRANDIS—The Attorney-General of Western Australia, Mr Porter, has done so.

Mr Wilkins—I have not seen it.

Senator BRANDIS—You have seen the media reports, surely?

Mr Wilkins—No, I have not seen the media reports.

Senator BRANDIS—You have not seen that the Attorney-General of Western Australia was reported in the *Australian* newspaper on the Friday before last as being at one with the council of chief justices in his criticism of the composition of the National Legal Services Board?

Mr Wilkins—No, I have not seen that.

Senator BRANDIS—That surprises me.

Mr Wilkins—As I said, the final position on that will be determined once people have had a chance to look and see what the various views are that have come from interested parties—law societies, consumers and parliamentarians—and then a decision will be made through the normal processes of the Council of Australian Governments and the advice of the Australian governments. This is the way in which the decision will be made.

Senator BRANDIS—Leaving to one side the interesting issue of the status of this clause of the draft bill and its provenance, it is apparent to you, is it not, that it has attracted the universal opposition of the chief justices on the basis that in particular in relation to disciplinary matters it propounds a model in which regulation of the profession would cease to be a function of the state and territory supreme courts and the profession in the various states and territories and would be absorbed into a national bureaucracy essentially governed or controlled by majority by nominees of the Standing Committee of Attorneys-General or the various executive governments of the states and territories?

Mr Wilkins—There are a number of implications from that question. I certainly think that there is a consensus amongst the chief justices that they do not like the current clause and that they think that there should be greater representation from the legal profession on the Legal Services Board.

Senator BRANDIS—If I may interrupt you for a moment, the position of the chief justices—with some of whom I myself have spoken—is a little firmer than that. It is not merely a question of distaste for the model; it is a question of an objection in principle being taken. This constitutes, in their view, a reasonably fundamental violation or alteration of the proper governance of the profession through the courts under the superintendence of the courts.

Mr Wilkins—I am not sure from my discussions with some of the chief justices that it is quite that. I think it is more a question that the co-regulatory type of balance has not been got right. But maybe we have spoken to different people.

Senator BRANDIS—For the record, remind us how many members it is proposed will sit on the National Legal Services Board.

Mr Wilkins—That is up for discussion, but somewhere between seven and nine.

Senator BRANDIS—Under the current draft that is up for discussion, allowing for the caveats that you have placed on this in your earlier answers, by whom will each of those seven to nine people be nominated?

Mr Wilkins—It might be easiest just to read what the provision says.

Senator BRANDIS—All right. Please read it onto the record.

Mr Wilkins—It says:

The Board is to consist of

- (a) 1 member appointed by the host Attorney-General—
that is the host who is passing the legislation—
on the recommendation of the Standing Committee—
that is the Standing Committee of Attorneys-General—
from a panel of 3 persons nominated by the Council of Chief Justices; and
- (b) 1 member appointed by the host Attorney-General on the recommendation of the Standing Committee from a panel of 3 persons nominated by the Law Council of Australia; and
- (c) no more than 5 members appointed by the host Attorney-General on the recommendation of the Standing Committee on the basis of their expertise in one or more of the following areas:
 - (i) the practice of law;
 - (ii) the protection of consumers;
 - (iii) the regulation of the legal profession.

Senator BRANDIS—Those are seven members, of whom the chief justices get one.

Mr Wilkins—That is correct.

Senator BRANDIS—The current model for the regulation of the profession in Australia, as you know, Mr Wilkins, is that it is governed by state and territory law under the auspices of state and territory bar associations and law societies and under the ultimate jurisdiction of the state and territory supreme courts, of whom legal practitioners are officers and to whom they are answerable. You would acknowledge, would you not, that to move from the existing model to a model in which the chief justices—in other words, the state and territory supreme courts—have one representative among seven members of the peak body is a very radical departure?

Mr Wilkins—I personally do not entirely agree with your characterisation of where the regulatory system currently sits, but for the purposes of this discussion it is reasonably accurate, and that is a shift.

Senator BRANDIS—I am glad you think it is reasonably accurate.

Mr Wilkins—I think it does not acknowledge enough that there is a co-regulatory aspect, particularly in some jurisdictions—in New South Wales and Victoria, for example. It is different in different states and territories. But yes—

Senator BRANDIS—At least five of these seven people are going to be nominated by the executive government, aren't they?

Mr Wilkins—That is true.

Senator BRANDIS—I think I will leave it there, because I think Senator Barnett wanted to follow up with some questions.

Senator BARNETT—Senator Brandis has outlined some of the concerns that I have as well. At the opening of the hearing this morning, I tabled a letter on behalf of the Tasmanian legal profession from the Law Society of Tasmania, signed by the President, Graeme Jones, together with a letter signed by the Chief Justice of Tasmania, the Hon. Ewan Crawford. Both of them have described the proposals put forward as—I will quote the Chief Justice:

... an insult to the profession and confirms an intention to reject a need to maintain its independence

He continues:

It is troubling to me that there is revealed a lack of respect for the Chief Justices and their ability to select a suitable appointee.

Further, he urges 'reconsideration'. Frankly, from a Chief Justice, that is quite strong language whether it be a Tasmanian Chief Justice or any other Chief Justice.

Likewise, Mr Jones in his letter to me of 21st May stated:

... we see the Reform Taskforce challenging the independence of the legal profession by transferring that independence to the Executive.

He continues on in strong language. He then highlight concerns—and this is an area that I would like to address with you—about smaller suburban and rural legal practices and that it is probably fair to say that any reform like this is likely to benefit the larger law firms, particularly the national law firms. Also, a report by ACIL advises that there is some significant cost-benefit analysis.

Are you convinced that such a proposal would benefit the smaller states and, indeed, the smaller law firms in terms of, firstly, cost-benefit analysis and, secondly, having adequate representation for those smaller practices?

Mr Wilkins—On the first question, yes, I think it will benefit the legal profession. It is not only an attempt to get uniform standards and uniform administration to those standards across Australia in bringing in an Australian legal profession as such. There is a 700-page act that currently regulates the profession in states like New South Wales and Victoria. I assume that, because it is all based on a uniform model, it is similar in Tasmania, if they have adopted the same legislation. It is highly prolix and complicated. There are lots of issue around the red tape and regulation in there that affects practitioners. So it would be a good idea to come up with a much simpler scheme. We think this is a simpler scheme.

With respect to the issue that Senator Brandis raised concerning the composition of the governing boards et cetera, I agree. It is something that people can discuss and clearly are

discussing, and there will be many more discussions about it. But the actual deregulatory aspects of this proposal should be good for the legal profession generally. Yes, the big law firms are very interested in having a seamless movement of people across state borders. Yes, that is important.

Senator BRANDIS—But that is an admission issue rather than a discipline issue, Mr Wilkins.

Mr Wilkins—Sorry, Senator.

Senator BRANDIS—I just interpolate to say that that is an admission and recognition of qualifications issue rather than a disciplinary issue. But where the rubber hits the road on this issue is primarily when it comes to regulatory and, in particular, disciplinary jurisdictions.

Mr Wilkins—The Legal Services Board is not in charge of discipline. That will be dealt with, as it is now, by the disciplinary tribunals in each state and territory. There was no change to that. All that the Legal Services Board does is to set standards for the profession; it makes rules that govern things like trust accounts and costs. The Law Council of Australia has submitted conduct rules. There are a variety of rules of that sort, which is what the Legal Services Board does. It does not do discipline. That is a matter for the local tribunals ultimately to deal with, and that is the case in jurisdictions now. I thought you were referring to the making of the disciplinary standards. The board will not be doing the discipline.

Senator BRANDIS—I am sorry, Mr Wilkins, I am referring to both. I think the disciplinary standards are the key issue here. The application of those standards may still be a matter of local jurisdiction but the assumption from the local jurisdiction of the authority to determine what those standards are is itself—and this is a point the chief justices make—a gross invasion of the autonomy of the states and territories, the professions and the courts of whom the practitioners are ultimately officers.

Mr Wilkins—The chief justices have not in my hearing and my reading contended that that is gross intrusion on state autonomy.

Senator BARNETT—They have not, or they have?

Mr Wilkins—They have not. They have contended that they think that at least the balance is wrong in terms of the influence that the profession and the judiciary has over the setting of those standards. It has not been about maintaining separation between the different states and territories. It has been more about the balance of appointments on the Legal Services Board.

Senator BARNETT—Can I beg to differ with you there, Mr Wilkins—if you have concluded on that part, Senator Brandis. Mr Porter from Western Australia highlights the constitutional issues raised by the proposal before him and before the legal profession around Australia. In fact, he raised it last Friday, 21 May, in the *Australian*. He indicated that, if there is an overreaching by the Commonwealth into state matters, there are clearly constitutional issues that need to be considered and addressed. He is quoted in the article as saying that it was a fundamental that Western Australia's legislative executive and judicial powers be fully retained. He said that such a system would be unacceptable, especially if it was detrimental to appropriate state based regulation of local lawyers. I draw that to your attention. There are clearly a few more issues that need to be looked at.

Mr Wilkins—There will be discussions with Western Australia. Can I make one thing clear, which does not seem to be clear: the Commonwealth will not be part of this. This is a state and territory scheme. There will be state and Territory legislation. There may be on the margins some Commonwealth legislation because the High Court admits people, but it is essentially a state and territory scheme. There will not be one Commonwealth bureaucrat involved in this scheme in the sense of being on the Legal Services Board.

Senator BARNETT—I have the media release from Robert McClelland of 14 May 2010. It seems to me that throughout his media release he is essentially proposing and supporting the bill, and you have indicated in response Senator Brandis that it is really not Mr McClelland's bill; he is not really supporting it—

Mr Wilkins—No, that is not what I said. What I said was that clause about the appointment of the Legal Services Board was something that the Attorney explicitly said was a matter for debate and consideration. He was not saying he was adopting that. But clearly as a consultation draft, the rest of it, is something—

Senator BARNETT—Where has he said that in his release?

Mr Wilkins—I do not know whether he said it in his release—

Senator BARNETT—I cannot see it in his release, Mr Wilkins. I cannot see it there—

Mr Wilkins—He certainly said it to the media when I was within hearing of that, and he said it to the state Attorneys at SCAG.

Senator BARNETT—It is clearly not coming through that way, and that is no doubt why Senator Brandis has pressed you on it.

Senator Wong—There were many things that Senator Brandis and Mr Wilkins did not agree on. I did not think that what the Attorney had said about the clause was one of them.

Senator BARNETT—Be that as it may. If I can just finish: Mr Wilkins, in terms of the smaller law firms, the advice that I have is that, yes, there is a cost-benefit analysis but has it been done for and on behalf of the smaller suburban and rural law firms? You have given me a view that you think it will be to their benefit. I am asking you: is there any evidence to support the fact that it will be, apart from the ACIL report that gives big round figures, which will no doubt support the big national law firms. We know that it will benefit them for sure. But what about the smaller firms in suburban and rural areas?

Mr Wilkins—I have just explained that. I think that the deregulatory aspects of the legislation may well be helpful. At the very least, there will not be any detrimental effects on small practitioners.

Senator BARNETT—You can give that guarantee?

Mr Wilkins—Yes.

Senator BARNETT—That is useful to have on the record.

CHAIR—It is 11 o'clock so committee is adjourned until 9:00 a.m. tomorrow. Thank you everybody.

Committee adjourned at 11.00 pm

